SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

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

For Quarter Ended August 31, 2003

Commission File Number 001-14920

McCORMICK & COMPANY, INCORPORATED

(Exact name of registrant as specified in its charter)

MARYLAND	**52-0408290**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
18 Loveton Circle, P. O. Box 6000, Sparks, MD	**21152-6000**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code **(410) 771-7301**

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 filing requirements for the past 90 days. Yes ☒ No o

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

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

	Shares Outstanding September 30, 2003
Common Stock	15,220,332
Common Stock Non-Voting	123,601,767

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PART I - FINANCIAL INFORMATION

ITEM 1 FINANCIAL STATEMENTS

McCORMICK & COMPANY, INCORPORATED
CONDENSED CONSOLIDATED STATEMENT OF INCOME (UNAUDITED)
(in thousands except per share amounts)

	Three Months Ended August 31,		Nine Months Ended August 31,	
	2003	2002	2003	2002
Net sales	$ 557,612	$ 477,319	$ 1,570,973	$ 1,419,939
Cost of goods sold	345,131	302,653	974,587	891,731
Gross profit	212,481	174,666	596,386	528,208
Selling, general and administrative expense	148,403	117,920	420,326	367,911
Special charges	1,349	2,786	1,942	4,692
Operating income	62,729	53,960	174,118	155,605
Interest expense	10,027	9,611	29,216	29,570
Other income, net	(703)	(359)	(7,317)	(1,034)
Income from consolidated operations before income taxes	53,405	44,708	152,219	127,069
Income taxes	17,098	14,257	46,988	39,420
Net income from consolidated operations	36,307	30,451	105,231	87,649
Income from unconsolidated operations	4,401	4,376	9,728	14,195
Minority interest	(628)	(875)	(2,954)	(2,454)
Net income from continuing operations	40,080	33,952	112,005	99,390
Discontinued operations (net of tax):				
Net income from discontinued operations	1,665	1,225	4,838	3,241
Gain on sale of discontinued operations	9,561	—	9,561	—
Net income	$ 51,306	$ 35,177	$ 126,404	$ 102,631
Earnings per common share:				
Basic:				
Net income from continuing operations	$ 0.29	$ 0.24	$ 0.80	$ 0.71
Net income from discontinued operations	$ 0.01	$ 0.01	$ 0.03	$ 0.02
Gain on sale of discontinued operations	$ 0.07	$ —	$ 0.07	$ —
Net income	$ 0.37	$ 0.25	$ 0.91	$ 0.74
Average shares outstanding - basic	139,447	139,906	139,549	139,388
Diluted:				
Net income from continuing operations	$ 0.28	$ 0.24	$ 0.79	$ 0.70
Net income from discontinued operations	$ 0.01	$ 0.01	$ 0.03	$ 0.02
Gain on sale of discontinued operations	$ 0.07	$ —	$ 0.07	$ —
Net income	$ 0.36	$ 0.25	$ 0.89	$ 0.72
Average shares outstanding - diluted	143,087	142,762	142,658	142,288
Cash dividends declared per common share	$ 0.12	$ 0.105	$ 0.34	$ 0.315

See notes to condensed consolidated financial statements.

McCORMICK & COMPANY, INCORPORATED
CONDENSED CONSOLIDATED BALANCE SHEET
(in thousands)

	August 31, 2003 (unaudited)	August 31, 2002 (unaudited)	November 30, 2002
ASSETS			
Current Assets			
Cash and cash equivalents	$ 12,184	$ 23,329	$ 47,332
Accounts receivable, net	283,695	259,733	303,324
Inventories			
Raw materials and supplies	182,791	142,416	123,564

Finished products and work-in process	204,928	155,359	160,157
	387,719	297,775	283,721
Prepaid expenses and other current assets	29,591	29,962	28,695
Current assets of discontinued operations	—	52,760	61,555
Total current assets	713,189	663,559	724,627
Property, plant and equipment	836,683	775,145	761,929
Less: accumulated depreciation	(416,841)	(380,895)	(371,849)
Total property, plant and equipment, net	419,842	394,250	390,080
Goodwill, net	665,939	495,809	498,738
Intangible assets, net	7,382	6,131	6,497
Prepaid allowances	92,224	116,153	96,624
Investments and other assets	120,504	149,949	135,140
Non-current assets of discontinued operations	—	79,341	79,083
Total assets	$ 2,019,080	$ 1,905,192	$ 1,930,789
LIABILITIES AND SHAREHOLDERS' EQUITY			
Current Liabilities			
Short-term borrowings	$ 203,518	$ 259,534	$ 136,700
Current portion of long-term debt	705	943	570
Trade accounts payable	167,926	163,145	175,062
Other accrued liabilities	276,938	274,945	324,548
Current liabilities of discontinued operations	—	23,716	36,410
Total current liabilities	649,087	722,283	673,290
Long-term debt	450,011	450,911	450,871
Other long-term liabilities	200,545	143,952	211,164
Long-term liabilities of discontinued operations	—	3,163	3,163
Total liabilities	1,299,643	1,320,309	1,338,488
Shareholders' Equity			
Common stock	84,647	74,199	74,681
Common stock non-voting	168,317	155,095	155,975
Retained earnings	501,389	395,724	458,952
Accumulated other comprehensive income	(34,916)	(40,135)	(97,307)
Total shareholders' equity	719,437	584,883	592,301
Total liabilities and shareholders' equity	$ 2,019,080	$ 1,905,192	$ 1,930,789

See notes to condensed consolidated financial statements.

McCORMICK & COMPANY, INCORPORATED
CONDENSED CONSOLIDATED STATEMENT OF CASH FLOWS (UNAUDITED)
(in thousands)

	Nine Months Ended August 31,	
	2003	2002
Cash flows from continuing operating activities		
Net income	$ 126,404	$ 102,631
Net income from discontinued operations	(4,838)	(3,241)
Gain on sale of discontinued operations	(9,561)	—
Net income from continuing operations	112,005	99,390
Adjustments to reconcile net income from continuing operations to net cash provided by operating activities:		
Depreciation and amortization	46,953	37,987
Income from unconsolidated operations	(9,728)	(14,195)
Changes in operating assets and liabilities	(146,943)	(103,419)
Dividends from unconsolidated affiliates	16,278	18,799
Other	308	(262)
Net cash provided by continuing operating activities	18,873	38,300
Cash flows from continuing investing activities		
Acquisition of businesses	(199,517)	(500)
Purchase price adjustment	50,007	—
Capital expenditures	(56,322)	(85,090)
Proceeds from sale of discontinued assets	138,261	—
Proceeds from sale of fixed assets	9,243	2,394

Net cash used in continuing investing activities	(58,328)	(83,196)
Cash flows from financing activities		
Short-term borrowings, net	66,379	49,390
Long-term debt repayments	(567)	(250)
Common stock issued	24,643	27,634
Common stock acquired by purchase	(40,570)	(8,271)
Dividends paid	(47,470)	(43,930)
Net cash provided by financing activities	2,415	24,573
Effect of exchange rate changes on cash and cash equivalents	6,377	7,520
Net cash (used in)/provided by discontinued operations	(4,485)	4,801
Decrease in cash and cash equivalents	(35,148)	(8,002)
Cash and cash equivalents at beginning of period	47,332	31,331
Cash and cash equivalents at end of period	$ 12,184	$ 23,329

See notes to condensed consolidated financial statements.

McCORMICK & COMPANY, INCORPORATED
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of McCormick & Company, Incorporated (the "Company") have been prepared in accordance with the instructions to Form 10-Q and do not include all the information and notes required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments, which are of a normal and recurring nature, necessary to present fairly the financial position and the results of operations for the interim periods.

The results of consolidated operations for the three and nine-month periods ended August 31, 2003 are not necessarily indicative of the results to be expected for the full year. Historically, the Company's consolidated sales and net income are lower in the first half of the fiscal year and increase in the second half. The increase in sales and earnings in the second half of the year is mainly due to the U.S. consumer business, where customers purchase for the fourth quarter holiday season.

For further information, refer to the consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the year ended November 30, 2002.

Accounting and Disclosure Changes

In June 2002, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 146 "Accounting for Costs Associated with Exit or Disposal Activities." SFAS No. 146 generally requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. The Company adopted SFAS No. 146 on December 1, 2002. There was no material effect upon adoption of this statement.

In December 2002, the FASB issued Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." Interpretation No. 45 requires that at the time a company issues a guarantee, the company must recognize an initial liability for the fair value, or market value, of the obligations it assumes under that guarantee. This interpretation is applicable on a prospective basis to guarantees issued or modified after December 31, 2002. This Interpretation principally impacts the Company's guarantees in connection with certain raw material purchase contracts. The Company adopted Interpretation No. 45 on December 1, 2002 and the effect of adoption was immaterial. The Company will continue to evaluate the impact of Interpretation No. 45 on newly issued or modified guarantees. See Note 7 regarding guarantee amounts.

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities." Interpretation No. 46 requires a variable interest entity to be consolidated by a company if that company is subject to a majority of the risk of loss from the variable interest entity's activities or entitled to receive a majority of the entity's residual returns or both. Currently, entities are generally consolidated by a company that has a controlling financial interest through ownership of a majority voting interest in the entity. The Company will be required to adopt Interpretation No. 46 in the first quarter of 2004. Upon adoption, the Company will consolidate the lessor of a leased distribution center as more fully described in Note 7. The Company is also evaluating what effects, if any, the adoption of Interpretation No. 46 will have on its accounting for investments in joint ventures.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock Based Compensation - Transition and Disclosure." SFAS No. 148 amends the transition and disclosure requirements of SFAS No. 123, "Accounting for Stock-Based Compensation." This statement is effective for financial statements for fiscal years ending after December 15, 2002 and for interim periods beginning after December 15, 2002. As permitted by SFAS No. 148, the Company uses the intrinsic value method to account for stock options in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations. Accordingly, no compensation expense has been recognized for the Company's stock options since

all options granted had an exercise price equal to the market value of the underlying stock on the grant date. The following table illustrates the effect on net income and earnings per common share if the Company had applied the fair value recognition provisions of SFAS No. 123 to stock-based employee compensation.

	Three Months Ended August 31,		Nine Months Ended August 31,	
	2003	2002	2003	2002
	(in thousands)			
Net income as reported	$ 51,306	$ 35,177	$ 126,404	$ 102,631
Deduct: stock based employee compensation expense, net of tax	(2,721)	(2,352)	(8,575)	(6,909)
Pro forma net income	$ 48,585	$ 32,825	$ 117,829	$ 95,722
Earnings per common share:				
Basic - as reported	$ 0.37	$ 0.25	$ 0.91	$ 0.74
Basic - pro forma	$ 0.35	$ 0.23	$ 0.84	$ 0.69
Diluted - as reported	$ 0.36	$ 0.25	$ 0.89	$ 0.72
Diluted - pro forma	$ 0.34	$ 0.23	$ 0.83	$ 0.67

Reclassifications

As a result of the Company's sale of its packaging operations and U.K. brokerage business, the Company's previously reported consolidated financial statements for 2002 have been reclassified to separately present the operations of these discontinued businesses.

Certain other amounts in the prior year have been reclassified to conform to the current year presentation. The effect of these

reclassifications is not material to the financial statements.

2. DISCONTINUED OPERATIONS

On August 12, 2003, the Company completed the sale of substantially all the operating assets of its packaging segment (Packaging) to the Kerr Group, Inc. Packaging manufactures certain products used for packaging the Company's spices and seasonings as well as packaging products used by manufacturers in the vitamin, drug and personal care industries. Under the terms of the sale agreement, Packaging was sold for $142.5 million and included the assumption of all normal trade liabilities. Of the $142.5 million, $132.5 million was paid in cash and the remaining $10.0 million will be paid over five years based on Packaging meeting certain performance objectives. The final purchase price is also subject to a working capital adjustment and other contingencies related to the performance of certain customer contracts. The Company recorded a net gain on the sale of Packaging of $11.6 million (net of income taxes of $8.0 million) in the third quarter of 2003. Included in this gain is a net pension and post retirement curtailment gain of $3.6 million. The contingent consideration associated with the sale of Packaging will be recognized in the future as an adjustment to the gain based on the performance criteria established. The Company also entered into a multi-year, market priced, supply agreement with the acquiring company.

On July 1, 2003 the Company sold the assets of Jenks Sales Brokers (Jenks), a division of the Company's wholly owned U.K. subsidiary, to Jenks' senior management for $5.8 million in cash. Jenks provides sales and distribution services for other consumer product companies and was previously reported as a part of the Company's consumer segment. The Company recorded a net loss on the sale of Jenks of $2.0 million (net of an income tax benefit of $0.4 million) in the third quarter of 2003.

Beginning in the third quarter of 2003, the operating results of Packaging and Jenks have been reported as "Income from discontinued operations" in the condensed consolidated statement of income in accordance with the provisions of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets". Prior periods have been reclassified, including the reallocation of certain overhead charges to other business segments. Interest expense has been allocated to discontinued operations based on the ratio of the net assets of the discontinued operations to the total net assets of the Company. The condensed consolidated balance sheet and condensed consolidated statement of cash flows have also been reclassified to separately present the assets, liabilities and cash flows of the discontinued operations.

Summary operating results for the discontinued businesses are as follows:

	Three Months Ended August 31,		Nine Months Ended August 31,	
	2003	2002	2003	2002
	(in thousands)			
Net sales from Packaging	$ 33,855	$ 44,053	$ 120,336	$ 127,034
Net sales from Jenks	8,138	23,639	59,570	69,564
Net sales from discontinued operations	$ 41,993	$ 67,692	$ 179,906	$ 196,598
Pre-tax income from Packaging	$ 3,574	$ 5,566	$ 12,648	$ 15,400
Interest expense allocation	(664)	(910)	(2,538)	(2,954)
Income taxes	(1,138)	(1,820)	(3,953)	(4,867)
Net income from Packaging	1,772	2,836	6,157	7,579

Pre-tax loss from Jenks	(139)	(2,238)	(1,783)	(6,013)
Interest expense allocation	(15)	(63)	(100)	(185)
Income taxes	47	690	564	1,860
Net loss from Jenks	(107)	(1,611)	(1,319)	(4,338)
Net income from discontinued operations	$ 1,665	$ 1,225	$ 4,838	$ 3,241

The following table presents summarized balance sheet information of the discontinued operations as of August 31, 2002 and November 30, 2002:

	August 31, 2002		November 30, 2002	
	Packaging	Jenks	Packaging	Jenks
Accounts receivable, net	$ 18,153	$ 15,463	$ 18,991	$ 19,487
Inventories	13,587	5,130	15,542	7,066
Prepaid expenses and other current assets	427	—	469	—
Total current assets	32,167	20,593	35,002	26,553
Property, plant and equipment, net	77,876	399	77,705	479
Other long-term assets	1,066	—	899	—
Total assets	$ 111,109	$ 20,992	$ 113,606	$ 27,032
Trade accounts payable	$ 9,218	$ 4,106	$ 10,374	$ 16,855
Other accrued liabilities	8,939	1,453	9,181	—
Total current liabilities	18,157	5,559	19,555	16,855
Long-term debt	3,050	—	3,050	—
Other long-term liabilities	113	—	113	—
Total liabilities	$ 21,320	$ 5,559	$ 22,718	$ 16,855

3. SPECIAL CHARGES

During the fourth quarter of 2001, the Company adopted a plan to further streamline its operations. This plan included the consolidation of several distribution and manufacturing locations, the reduction of administrative and manufacturing positions in all segments and across all geographic areas, and the reorganization of several joint ventures. As of August 31, 2003, 249 of the 275 position reductions had been achieved.

The total plan will cost approximately $32.6 million ($25.6 million after tax). Total cash expenditures in connection with these costs will approximate $16.7 million, which will be funded through internally generated funds. The total cost of the plan includes $1.8 million of special charges related to Packaging and Jenks that have been reclassified to income from discontinued operations in the condensed consolidated statement of income.

Savings from the plan are used for investment spending on initiatives such as brand support and supply chain management. These savings are included within the cost of goods sold and selling, general and administrative expenses in the condensed consolidated statement of income. Once the plan is fully implemented, annualized savings are

expected to be approximately $8.0 million ($5.3 million after tax), most of which have been realized to date.

Excluding the costs incurred related to the discontinued Packaging and Jenks businesses, the special charges recorded and cash expenditures to date under the program are $20.1 million and $9.9 million respectively. Costs yet to be incurred ($10.7 million) from the 2001 restructuring plan include the reorganization of several joint ventures and additional costs related to the consolidation of manufacturing locations (primarily costs for employee termination benefits and relocation of employees and machinery and equipment). Additional cash expenditures under the plan will approximate $5.0 million. The Company expects to complete these actions in 2003 and 2004.

During the three and nine months ended August 31, 2002, the Company recorded special charges related to continuing operations of $2.8 million ($2.5 million after tax) and $4.7 million ($3.8 million after tax), respectively. The costs recorded in 2002 were part of the streamlining actions announced in the fourth quarter of 2001, but could not be accrued at that time. These actions included the write-off of an investment in an industry purchase consortium, costs of the consolidation of manufacturing in Canada, and the closure of a U.S. distribution center. These expenses were classified as special charges in the condensed consolidated statement of income.

During the three and nine months ended August 31, 2003, the Company recorded special charges related to continuing operations of $1.3 million ($0.9 million after tax) and $1.9 million ($1.3 million after tax), respectively. The costs recorded in 2003 primarily include additional costs associated with the consolidation of production facilities in Canada. These expenses were classified as special charges in the condensed consolidated statement of income.

The major components of the special charges and the remaining accrual balance as of August 31, 2002 follow (in millions):

	Severance and personnel costs	Asset Write-downs	Other exit costs	Total
November 30, 2001	$ 5.8	$ —	$ 3.8	$ 9.6
Special charges	1.0	3.0	0.7	4.7
Amounts utilized	(3.2)	(3.0)	(1.7)	(7.9)
August 31, 2002	$ 3.6	$ —	$ 2.8	$ 6.4

The major components of the special charges and the remaining accrual balance as of August 31, 2003 follow (in millions):

	Severance	Asset	Other	Total

	and personnel costs	Write-downs	exit costs	
November 30, 2002	$ 4.2	$ —	$ 1.7	$ 5.9
Special charges	0.7	(0.6)	1.8	1.9
Amounts utilized	(3.2)	0.6	(3.5)	(6.1)
August 31, 2003	$ 1.7	$ —	$ —	$ 1.7

4. EARNINGS PER SHARE

The following table sets forth the reconciliation of shares outstanding:

	Three months ended August 31,		Nine months ended August 31,	
	2003	2002	2003	2002
	(in thousands)			
Average shares outstanding - basic	139,447	139,906	139,549	139,388
Effect of dilutive securities:				
Stock options and employee stock purchase plan	3,640	2,856	3,109	2,900
Average shares outstanding - diluted	143,087	142,762	142,658	142,288

5. COMPREHENSIVE INCOME

The following table sets forth the components of comprehensive income:

	Three months ended August 31,		Nine months ended August 31,	
	2003	2002	2003	2002
	(in thousands)			
Net income	$ 51,306	$ 35,177	$ 126,404	$ 102,631
Other comprehensive income (net of tax):				
Minimum pension liability adjustment	415	—	(273)	(3,899)
Net unrealized gain/(loss) on investments	646	(778)	729	554
Foreign currency translation adjustments	(46,259)	24,322	60,131	49,623
Derivative financial instruments	6,068	(2,126)	1,804	(2,474)
Comprehensive income	$ 12,176	$ 56,595	$ 188,795	$ 146,435

6. BUSINESS SEGMENTS

The Company operates in two business segments: consumer and industrial. The Company sold its packaging segment during the third quarter of 2003 (see Note 2). The consumer and industrial segments manufacture, market and distribute spices, herbs, seasonings, flavorings and other specialty food products throughout the world. The consumer segment sells to the consumer food market under a variety of brands, including the McCormick brand, Ducros in continental Europe, Club House in Canada, and Schwartz in the U.K. The industrial segment sells to food processors, restaurant chains, distributors, warehouse clubs and institutional operations.

In each of its segments, the Company produces and sells many individual products that are similar in composition and nature. It is impractical to segregate and identify profits for each of these individual product lines.

The Company measures segment performance based on operating income. Because of manufacturing integration for certain products within the segments, products are not sold from one segment to another but rather inventory is transferred at cost. Intersegment sales are not material. Corporate and eliminations includes general corporate expenses and other charges not directly attributable to the segments.

The following segment information has been restated to reflect the sale of Jenks, which was previously included as part of the consumer segment, and Packaging. Certain fixed overhead charges previously allocated to Packaging have been reallocated to the other business segments.

	Consumer	Industrial	Corporate & Eliminations	Total
Three months ended August 31, 2003				
Net sales	$ 271.6	$ 286.0	$ —	$ 557.6
Operating income	43.8	28.2	(9.3)	62.7
Income from unconsolidated operations	3.6	0.8	—	4.4
Nine months ended August 31, 2003				
Net sales	$ 755.7	$ 815.3	$ —	$ 1,571.0
Operating income	117.5	81.0	(24.4)	174.1
Income from unconsolidated operations	8.3	1.4	—	9.7

	Consumer	Industrial	Corporate & Eliminations	Total

Three months ended August 31, 2002				
Net sales	$ 210.9	$ 266.4	$ —	$ 477.3
Operating income	31.7	29.8	(7.5)	54.0
Income from unconsolidated operations	4.1	0.3	—	4.4
Nine months ended August 31, 2002				
Net sales	$ 649.0	$ 770.9	$ —	$ 1,419.9
Operating income	102.6	78.0	(25.0)	155.6
Income from unconsolidated operations	13.2	1.0	—	14.2

7. GUARANTEES

As of August 31, 2003, the Company had guarantees related to raw material purchase contracts of $14.5 million and other guarantees of $7.7 million. The Company has also guaranteed 85% of the residual value of a leased distribution center and $14.0 million of the debt of the lessor, which leases this facility to the Company. The lease, which expires in 2005 and has two consecutive renewal options, is currently treated as an operating lease. A third party maintains a substantial residual equity investment in the lessor, and therefore, the lessor is not currently consolidated with the Company. The Company has determined that the lessor will be consolidated with the Company's results upon adoption of FASB Interpretation No. 46 in the first quarter of 2004. The effect of consolidating the lessor will not have a material impact on the Company's financial statements.

8. FINANCIAL INSTRUMENTS

On August 12, 2003, the Company entered into interest rate swap contracts for a total notional amount of $100 million to receive interest at 6.4% and pay a variable rate of interest based on six-month LIBOR. The Company designated these swaps, which expire on February 1, 2006, as fair value hedges of the changes in fair value of $100 million of the $150 million 6.4% fixed rate Medium Term Note (MTN) maturing on February 1, 2006. As of August 31, 2003, the fair value of these swap contracts was a loss of $1.2 million, which is offset by a corresponding gain on the hedged debt. No hedge

ineffectiveness is recognized in the condensed consolidated statement of income as the interest rate swaps' provisions match the applicable provisions of the debt.

9. ACQUISITIONS

On June 4, 2003, the Company purchased Zatarain's, the leading New Orleans style food brand in the United States, for $180.0 million in cash funded with commercial paper borrowings. Zatarain's manufactures and markets flavored rice and dinner mixes, seafood seasonings, and many other products that add flavor to food. The excess purchase price over the estimated fair value of the net assets purchased was $169.5 million. The allocation of the purchase price is based on preliminary estimates, subject to revision, after appraisals have been finalized. Revisions to the allocation, which may be significant, will be reported as changes to various assets and liabilities, including goodwill and other intangible assets. As of August 31, 2003, the goodwill balance included the entire excess purchase price of the Zatarain's acquisition, as the valuation of specific intangible assets has not yet been completed. We expect the valuation to result in a significant value for non-amortizable brands. We do not anticipate significant amounts to be allocated to amortizable intangible assets and, therefore, the amount of intangibles amortization is not expected to be material to the results of operations in future periods.

On April 29, 2003, the Company settled all of its purchase price adjustment claims arising out of the acquisition of Ducros, S.A. and Sodis, S.A.S. (Ducros) in 2000. The Company received payment of 49.6 million euros (equivalent to $55.4 million). Of the $55.4 million received, $5.4 million represents interest earned on the settlement amount from the date of acquisition in accordance with the terms of the original purchase agreement. The interest income is included in "other income, net" in the condensed consolidated statements of income for the three and nine months ended August 31, 2003. The remaining $50.0 million of the settlement amount was recorded as a reduction to goodwill related to the acquisition.

On January 9, 2003, the Company acquired the Uniqsauces business, a condiment business based in Europe, for $19.5 million in cash. Uniqsauces manufactures and markets condiments to retail grocery and food service customers, including quick service restaurants. The purchase price of this acquisition was allocated to fixed assets and working capital. No goodwill was recorded as a result of this acquisition.

ITEM 2 MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

In the third quarter of 2003, sales from continuing operations reached $557.6 million, a 16.8% increase above the third quarter of 2002. Sales benefited from the 2003 acquisition of the Zatarain's and Uniqsauces businesses, which accounted for 7.9% of the increase.

Higher volumes, particularly in the U.S. consumer business, added 5.3%, and favorable foreign exchange rates contributed an additional 3.9% to sales.

Earnings per share from continuing operations for the third quarter were $0.28 compared to $0.24 in the third quarter of 2002, an increase of 16.7%. In addition to strong sales performance, gross profit margin from continuing operations (gross profit as a percentage of net sales) increased to 38.1% for the quarter due primarily to the growth in our higher margin consumer business sales. Operating expenses were adversely impacted by higher benefit costs, distribution expense and increased promotion and advertising support behind new products and seasonal items. Special charges, primarily related to the consolidation of facilities in Canada, were $1.3 million. In the third quarter, the results of the Company's joint venture in Mexico improved as compared to a difficult performance in the first half of 2003. As a result, third quarter income from unconsolidated operations equaled last year's level. The $0.04 increase in third quarter earnings per share from continuing operations was a direct result of increased operating income.

On August 12, 2003, the Company completed the sale of substantially all the operating assets of its packaging segment (Packaging) to the Kerr Group, Inc. Packaging manufactures certain products used for packaging the Company's spices and seasonings as well as packaging products used by manufacturers in the vitamin, drug and personal care industries. Under the terms of the sale agreement, Packaging was sold for $142.5 million and included the assumption of all normal trade liabilities. Of the $142.5 million, $132.5 million was paid in cash and the remaining $10.0 million will be paid over five years based on Packaging meeting certain performance objectives. The final purchase price is also subject to a working capital adjustment and other contingencies related to the performance of certain customer contracts. The Company recorded a net gain on the sale of Packaging of $11.6 million (net of income taxes of $8.0 million) in the third quarter of 2003. Included in this gain is a net pension and post retirement curtailment gain of $3.6 million. The contingent consideration associated with the sale of Packaging will be recognized in the future as an adjustment to the gain based on the performance criteria established. The Company also entered into a multi-year, market priced, supply agreement with the acquiring company.

On July 1, 2003 the Company sold the assets of Jenks Sales Brokers (Jenks), a division of the Company's wholly owned U.K. subsidiary, to Jenks' senior management for $5.8 million in cash. Jenks provides sales and distribution services for other consumer product companies and was previously reported as a part of the Company's consumer segment. The Company recorded a net loss on the sale of Jenks of $2.0 million (net of an income tax benefit of $0.4 million) in the third quarter of 2003.

Beginning in the third quarter of 2003, the operating results of Packaging and Jenks have been reported as "Income from discontinued operations" in the condensed consolidated statement of income in accordance with the provisions of SFAS No. 144, "Accounting for the

Impairment or Disposal of Long-Lived Assets". Prior periods have been reclassified, including the reallocation of certain overhead charges to other business segments. Interest expense has been allocated to discontinued operations based on the ratio of the net assets of the discontinued operations to the total net assets of the Company. The condensed consolidated balance sheet and condensed consolidated statement of cash flows have also been reclassified to separately present the assets, liabilities and cash flows of the discontinued operations.

On June 4, 2003, the Company completed the purchase of Zatarain's, the leading New Orleans style food brand in the United States, for $180.0 million in cash funded with commercial paper borrowings. With annualized sales of approximately $100 million in the United States, Zatarain's manufactures and markets flavored rice and dinner mixes, seafood seasonings, and many other products that add flavor to food. The excess purchase price over the estimated fair value of the net assets purchased was $169.5 million. The allocation of the purchase price is based on preliminary estimates, subject to revision, after appraisals have been finalized. Revisions to the allocation, which may be significant, will be reported as changes to various assets and liabilities, including goodwill and other intangible assets. As of August 31, 2003, the goodwill balance included the entire excess purchase price of the Zatarain's acquisition, as the valuation of specific intangible assets has not yet been completed. We expect the valuation to result in a significant value for non-amortizable brands. We do not anticipate significant amounts to be allocated to amortizable intangible assets and, therefore, the amount of intangibles amortization is not expected to be material to the results of operations in future periods.

On January 9, 2003, the Company acquired the Uniqsauces business, a condiment business based in Europe, for $19.5 million in cash. With annualized sales of approximately $40-$45 million, Uniqsauces manufactures and markets condiments to retail grocery and food service customers, including quick service restaurants.

RESULTS OF OPERATIONS - SEGMENTS

CONSUMER BUSINESS

	Three months ended August 31,		Nine months ended August 31,	
	2003	2002	2003	2002
	(in millions)			
Net sales	$ 271.6	$ 210.9	$ 755.7	$ 649.0
Operating income	43.8	31.7	117.5	102.6

For the third quarter, sales from continuing operations for McCormick's consumer business rose 28.8% compared to the same period of 2002. Excluding the net impact of foreign exchange, which accounted for 5.6% of the increase, sales rose 23.2%. The acquisition of Zatarain's and Uniqsauces contributed 13.8% of the sales increase. In local currency, consumer sales rose 31.6% in the Americas, 9.0% in Europe and 5.8% in the Asia/Pacific region. Sales from the Company's

acquisition of Zatarain's accounted for about one-half of the increase in the Americas. Also contributing to this unusual increase was a comparison to a sales decline of 4.0% in the Americas in the third quarter of 2002. This decline resulted from higher customer purchases in the second quarter of 2002 in anticipation of the Company's implementation of new systems under the Beyond 2000 program. For the consumer business in Europe, sales from the Uniqsauces acquisition drove the increase for the quarter. In all regions, distribution of new products contributed to sales growth. For the nine months ended August 31, 2003, total consumer sales increased 16.4% compared to 2002. The acquisitions of Zatarain's and Uniqsauces contributed 5.4% of the sales increase, and the impact of foreign exchange added another 6.2%. The remaining increase resulted from increased distribution of new products.

Third quarter operating income from continuing operations for the consumer business increased 38.2% compared to the same period of 2002. Operating income margin (operating income as a percentage of sales) increased to 16.1% in the third quarter of 2003 from 15.0% in the comparable period last year. This increase resulted from higher margins of Zatarain's products and higher sales of other consumer businesses. This was offset by higher operating costs including pension and post-retirement costs, distribution expenses and an increase in the investment in brand advertising and promotion of 27.4% in support of new products and seasonal items. For the nine months ended August 31, 2003, operating income for the consumer business increased 14.5%. This increase was driven by increased sales partially offset by the higher operating costs discussed above. Operating income margin for the nine months ended August 31, 2003 decreased to 15.5% from 15.8% in the comparable period last year.

INDUSTRIAL BUSINESS

	Three months ended August 31,		Nine months ended August 31,	
	2003	2002	2003	2002
	(in millions)			
Net sales	$ 286.0	$ 266.4	$ 815.3	$ 770.9
Operating income	28.2	29.8	81.0	78.0

For the third quarter of 2003, industrial sales increased 7.4% versus the same period last year. Excluding the net impact of foreign exchange, which accounted for 2.5% of the increase, sales rose 4.9%. The acquisition of Uniqsauces in 2003 contributed 3.3% of the sales increase. In local currency, industrial sales increased 0.3% in the Americas, 26.5% in Europe and 7.3% in the Asia/Pacific region. In the Americas, an increase in sales of new and existing products to quick service restaurants was offset by lower sales to food processors. A portion of this sales reduction related to lower pricing in response to a decrease in certain raw material costs. In addition, sales to broadline distributors were relatively flat in the quarter. In Europe, over 80% of the increase was driven by sales from Uniqsauces. The remaining increase was based on strong sales to restaurant customers and manufacturers of snack seasoning products. For the nine months ended August 31, 2003, industrial sales increased 5.8%. The

acquisition of Uniqsauces in 2003 contributed 2.7% of the sales increase, and the net impact of foreign exchange added another 2.4%. Volume increases were partially offset by the effects of lower pricing and product mix discussed above.

In the third quarter of 2003, industrial business operating income decreased 5.4% compared to the same period of 2002. Operating income margin decreased to 9.9% in the third quarter of 2003 from 11.2% in the comparable period last year. Operating income was impacted by the higher cost of vanilla, higher pension and benefit costs and a less favorable mix of sales. Year-to-date, operating income for the industrial business has increased 3.8% versus the prior year as a result of the items mentioned above. Operating income margin for the nine months ended August 31, 2003 decreased to 9.9% from 10.1% in the comparable period last year.

RESULTS OF OPERATIONS - COMPANY

Gross profit margin on continuing operations for the third quarter was 38.1%, 1.5% above last year. In the consumer business, gross profit margin increased due to the addition of the higher margin Zatarain's business and targeted price increases. In the industrial business, gross profit margin decreased mainly due to the higher cost of vanilla beans and a less favorable mix of sales. The factors noted in the third quarter also impacted the nine months ended August 31, 2003, improving the Company's gross profit margin 0.8% to 38.0% from 37.2% in the comparable period last year.

Selling, general and administrative expenses from continuing operations increased in the third quarter and nine months ended August 31, 2003, as compared to the same periods of last year in both dollars and as a percentage of net sales. These increases were primarily due to higher benefit costs, increased advertising and promotional costs and increased distribution expenses. The increase in benefit costs is mainly due to higher pension and post-retirement costs in 2003 compared to the same periods of 2002. In the consumer business, advertising and promotional expense increased in support of seasonal items and the launch of several new products. The increase in distribution expenses is primarily due to the addition of higher distribution costs with the acquisition of the Zatarain's business, higher fuel costs and higher costs during the consolidation of facilities in Canada.

Pension expense for 2003 is expected to increase approximately 75% over the 2002 expense of $15.2 million. The increase in pension expense in 2003 is primarily due to a decrease in the discount rate from 7.25% to 7.0%, a decrease in the long-term rate of return from 10.0% to 9.0%, the adoption of a more recent mortality rate at the end of 2002 and the less than expected investment return experienced in 2001 and 2002.

Interest expense from continuing operations increased in the third quarter of 2003 compared to the same period last year. This increase was driven by higher average debt levels resulting from the acquisition of the Zatarain's business in the third quarter of 2003. For the nine months ended August 31, 2003, interest expense from continuing operations decreased versus the comparable period of last year. This decrease was due to favorable short-term interest rates in 2003 and

lower average debt levels in the first half of 2003 prior to the purchase of Zatarain's.

"Other income, net" increased to $7.3 million for the nine months ended August 31, 2003 compared to $1.0 million for the comparable period last year. This increase was principally due to $5.4 million of interest income recorded in the second quarter of 2003 from the settlement of the Ducros purchase price adjustment. The remainder of the $55.4 million payment was recorded as a reduction to goodwill.

The effective tax rate from continuing operations for the quarter and nine months ended August 31, 2003, was 32.0% and 30.9%, respectively, versus 31.9% and 31.0% for the quarter and nine months ended August 31, 2002.

Income from unconsolidated operations for the quarter was unchanged when compared to the third quarter of 2002. Income from unconsolidated operations decreased 31.5% for the nine months ended August 31, 2003 when compared to the same period last year. This decline is mainly attributable to diminished performance in the McCormick de Mexico joint venture during the first half of 2003. This business continues to experience profit pressure from aggressive competition, higher raw material costs and a weak Peso versus the prior year.

Income from discontinued operations for the quarter was $1.7 million, which included one month of the operating results of Jenks and two and one half months of the operating results of Packaging. Year to date income from discontinued operations was $4.8 million, which included seven months of the operating results of Jenks as well as eight and one half months of the operating results of Packaging. Income from discontinued operations for the quarter and year to date were higher in 2003 when compared to the same period in 2002 mainly due to higher operating losses from Jenks during 2002. Also included in discontinued operations for the three and nine months ended August 31, 2003 was a net gain on the sale of discontinued operations of $9.6 million. This

consists of the gain on the sale of Packaging of $11.6 million partially offset by the loss on the sale of Jenks of $2.0 million. All amounts included in income from discontinued operations are net of income taxes.

SPECIAL CHARGES

During the three and nine months ended August 31, 2002, the Company recorded special charges related to continuing operations of $2.8 million ($2.5 million after tax) and $4.7 million ($3.8 million after tax), respectively. The costs recorded in 2002 were part of the streamlining actions announced in the fourth quarter of 2001, but could not be accrued at that time. These actions included the write-off of an investment in an industry purchase consortium, costs of the consolidation of manufacturing in Canada, and the closure of a U.S. distribution center.

During the three and nine months ended August 31, 2003, the Company recorded special charges related to continuing operations of $1.3 million ($0.9 million after tax) and $1.9 million ($1.3 million

after tax), respectively. The costs recorded in 2003 primarily include additional costs associated with the consolidation of production facilities in Canada. These expenses were classified as special charges in the consolidated statement of income.

See Footnote 3 to the Condensed Consolidated Financial Statements for more information regarding the Company's 2001 restructuring plan.

MARKET RISK SENSITIVITY

Foreign Exchange Risk

The fair value of the Company's portfolio of forward and option contracts was an unrealized loss of $2.3 million as of August 31, 2003, compared to an unrealized loss of $0.9 million as of August 31, 2002 and $0.5 million as of November 30, 2002. The notional value of the Company's portfolio of forward and option contracts was $38.4 million as of August 31, 2003, up from $32.3 million as of August 31, 2002 and $27.0 million as of November 30, 2002. The increase since November 30, 2002 was mainly due to increased foreign exchange contracts covering Canadian dollar exposures.

Interest Rate Risk

The Company manages its interest rate exposure by entering into both fixed and variable rate debt. In addition, the Company may enter into interest rate derivatives to achieve a cost effective mix of fixed and variable rate indebtedness.

As of August 31, 2003, the Company had $75 million of outstanding interest rate swap contracts to pay a fixed rate of interest of 6.35%. In return, under these swap contracts, the Company will receive a variable rate of interest, based on the six-month LIBOR, for the period from 2001 through 2011. The net effect of the interest rate swap contracts effectively fixes the interest rate of $75 million of commercial paper at 6.35%. As of August 31, 2003 the fair value of these swap contracts was an unrealized loss of $9.2 million compared to an unrealized loss of $10.7 million in the same period last year and an unrealized loss of $11.3 million as of November 30, 2002. The Company has designated these outstanding interest rate swap contracts as cash flow hedges of the variable interest rate risk associated with $75 million of commercial paper. The unrealized gain or loss on these swap contracts is recorded in other comprehensive income, as the Company intends to maintain the commercial paper outstanding and hold these swap contracts until maturity. Realized gains or losses are reflected in interest expense in the applicable period. Hedge ineffectiveness associated with these hedges was not material in the quarter.

On August 12, 2003, the Company entered into interest rate swap contracts for a total notional amount of $100 million to receive interest at 6.4% and pay a variable rate of interest based on six-month LIBOR. The Company designated these swaps, which expire on February 1, 2006, as fair value hedges of the changes in fair value of $100 million of the $150 million 6.4% fixed rate Medium Term Note (MTN) maturing on February 1, 2006. As of August 31, 2003, the fair value of these swap contracts was a loss of $1.2 million, which is

offset by a corresponding gain on the hedged debt. No hedge ineffectiveness is recognized in the condensed consolidated statement of income as the interest rate swaps' provisions match the applicable provisions of the debt.

Credit Risk

The customers of the consumer business are predominantly food retailers and food wholesalers. Recently, consolidations in these industries have created larger customers, some of which are highly leveraged. This has increased the Company's exposure to credit risk. Several customers over the past two years have filed for bankruptcy protection; however, these bankruptcies have not had a material effect on the Company's results. The Company feels that the risks have been adequately provided in its bad debt allowance.

CONTRACTUAL OBLIGATIONS AND COMMERCIAL COMMITMENTS

As of August 31, 2003, there has not been a material change in the Company's contractual obligations and commercial commitments outside of the ordinary course of business except as otherwise disclosed in Footnote 2 and Footnote 9 to the Condensed Consolidated Financial Statements regarding acquisitions and dispositions of businesses.

LIQUIDITY AND FINANCIAL CONDITION

In the condensed consolidated statement of cash flows, the changes in operating assets and liabilities are presented excluding the effects of changes in foreign currency exchange rates as these do not reflect actual cash flows. Accordingly, the amounts in the condensed consolidated statement of cash flows do not agree with changes in the operating assets and liabilities that are presented in the condensed consolidated balance sheet. In addition, the cash flows from operating, investing and financing activities are presented excluding the effects of discontinued operations.

In the condensed consolidated statement of cash flows, net cash provided by continuing operating activities was $18.9 million for the nine months ended August 31, 2003 compared to $38.3 million provided in the nine months ended August 31, 2002. Increased inventory levels in 2003 were primarily responsible for this decrease in operating cash flow. The Company has made a strategic decision to carry a larger than normal inventory of vanilla beans in 2003 in order to be in a position to meet the demands of its customers as the availability of quality beans has declined significantly. The Company has also added inventory of new products to support recent launches of new branded consumer products. In addition to the effect of the increased inventory levels, accounts payable and accrued liabilities also experienced a larger decrease when compared to the previous year due to the timing of normal operating liabilities. This decrease in accounts payable and accrued liabilities was partially offset by a larger decrease in accounts receivable as compared to the corresponding period of the prior year due to continued improvement in our collection efforts.

Cash flows related to continuing investing activities used cash of

$58.3 million in the first nine months of 2003 versus $83.2 million in the comparable period of 2002. Net capital expenditures (capital expenditures less proceeds from sale of fixed assets) decreased to $47.1 million in 2003 compared to $82.7 million last year. The decrease in net capital expenditures is mainly due to higher capital expenditures in 2002 when spending related to the Beyond 2000 project was at its peak. Cash paid for the acquisitions of the Zatarain's and Uniqsauces businesses during 2003 was $199.5 million. Cash received from the sale of the packaging and Jenks businesses during 2003 was $138.3 million. We also received $55.4 million from the Ducros purchase price adjustment, of which, $5.4 million represented interest and is included in cash flows from continuing operating activities.

Cash flows from financing activities were $2.4 million during the nine months ended August 31, 2003 compared to $24.6 million in the same period last year. Short-term borrowings increased by $66.4 million during the nine months ended August 31, 2003. The Company used commercial paper borrowings to finance the $180.0 million purchase price of the Zatarain's acquisition. These borrowings were partially paid off with the $132.5 million of proceeds from the sale of Packaging. The remaining increase in short-term borrowings resulted from normal working capital requirements. During 2003, the Company issued common stock for $24.6 million related to the Company's stock compensation plans. In addition, the Company acquired 1,675,000 shares for $40.6 million under the share repurchase plan. As of August 31, 2003, there was $102.0 million remaining under the Company's $250.0 million share repurchase program. Without any significant acquisition activity, the Company expects to complete this program by mid 2004. Anticipating this completion, the Company's Board of Directors authorized a plan for the repurchase of an additional $300 million shares. The Company expects this new program to extend into 2006.

The Company's ratio of debt-to-total capital (total capital includes interest bearing debt, minority interest and shareholders' equity) was 47.0% as of August 31, 2003, down from 54.3% at August 31, 2002 and 49.2% at November 30, 2002. This decrease from prior year was primarily the result of a reduction in short-term borrowings in addition to an increase in shareholders' equity due to fluctuations in foreign exchange rates as well as earnings in excess of dividends. During the period, the Company's short-term debt varies; however, it is usually lower at the end of a quarter. The average short-term borrowings outstanding for the quarter ended August 31, 2003 and 2002 was $389.8 million and $310.2 million, respectively.

The reported values of the Company's assets and liabilities have been significantly affected by fluctuations in foreign exchange rates between periods. During the nine months ended August 31, 2003, the exchange rates for the Euro, British pound sterling, Canadian dollar and Australian dollar were substantially higher than the same period last year and at year-end. Exchange rate fluctuations resulted in an increase in accounts receivable of approximately $15.0 million, inventory of approximately $10.0 million, goodwill of approximately $38.4 million and other comprehensive income of approximately $60.1 million since August 31, 2002.

Management believes that internally generated funds and its

existing sources of liquidity under its credit facilities are sufficient to meet current and anticipated financing requirements over the next 12 months. The Company's availability of cash under its credit facilities has not materially changed since year-end. If the Company were to undertake an acquisition that requires funds in excess of its existing sources of liquidity, it would look to sources of funding from additional credit facilities or equity issuances.

ACCOUNTING AND DISCLOSURE CHANGES

In June 2002, the FASB issued SFAS No. 146 "Accounting for Costs Associated with Exit or Disposal Activities." SFAS No. 146 generally requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. The Company has adopted SFAS No. 146 as of December 1, 2002. There was no material effect upon adoption of this statement.

In December 2002, the FASB issued Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." Interpretation No. 45 requires that at the time a company issues a guarantee, the company must recognize an initial liability for the fair value, or market value, of the obligations it assumes under that guarantee. This interpretation is applicable on a prospective basis to guarantees issued or modified after December 31, 2002. The Company has adopted Interpretation No. 45 as of December 1, 2002 and there was no material effect upon adoption of this statement. The Company will continue to evaluate the impact of Interpretation No. 45 on newly contracted guarantees.

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities." Interpretation No. 46 requires a variable interest entity to be consolidated by a company if that company is subject to a majority of the risk of loss from the variable interest entity's activities or entitled to receive a majority of the entity's residual returns or both. Currently, entities are generally consolidated by a company that has a controlling financial interest through ownership of a majority voting interest in the entity. The Company will be required to adopt Interpretation No. 46 in the first quarter of 2004. Upon adoption, the Company will be required to consolidate the lessor of a leased distribution center as more fully described in Note 7 to the Condensed Consolidated Financial Statements. The Company is also evaluating what effects, if any, the adoption of Interpretation No. 46 will have on its accounting for investments in joint ventures.

In December 2002, the FASB issued SFAS No. 148, “Accounting for Stock Based Compensation - Transition and Disclosure.” SFAS No. 148 amends the transition and disclosure requirements of SFAS No. 123, “Accounting for Stock-Based Compensation.” This statement is effective for financial statements for fiscal years ending after December 15, 2002 and for interim periods beginning after December 15, 2002. As permitted by SFAS No. 148, the Company uses the intrinsic value method to account for stock options in accordance with Accounting Principles Board Opinion No. 25, “Accounting for Stock

Issued to Employees,” and related interpretations. Accordingly, no compensation expense has been recognized for the Company’s stock options since all options granted had an exercise price equal to the market value of the underlying stock on the grant date. The impact of adopting SFAS No. 148 was to provide additional disclosure in the Accounting Policies footnote to the Condensed Consolidated Financial Statements.

CRITICAL ACCOUNTING ESTIMATES AND ASSUMPTIONS

In preparing the financial statements in accordance with accounting principles generally accepted in the United States, management is required to make estimates and assumptions that have an impact on the assets, liabilities, revenue, and expense amounts reported. These estimates can also affect supplemental information disclosures of the Company, including information about contingencies, risk, and financial condition. The Company believes, given current facts and circumstances, its estimates and assumptions are reasonable, adhere to accounting principles generally accepted in the United States, and are consistently applied. Inherent in the nature of an estimate or assumption is the fact that actual results may differ from estimates and estimates may vary as new facts and circumstances arise. The Company makes routine estimates and judgments in determining the net realizable value of accounts receivable, inventory, fixed assets, and prepaid allowances. Management believes the Company’s most critical accounting estimates and assumptions are in the following areas:

Customer Contracts

In several of its major markets, the consumer segment sells its products by entering into annual or multi-year contracts with its customers. These contracts include provisions for items such as sales discounts, marketing allowances and performance incentives. The discounts, allowances, and incentives are expensed based on certain estimated criteria such as sales volume of indirect customers, customers reaching anticipated volume thresholds, and marketing spending. The Company routinely reviews these criteria, and makes adjustments as facts and circumstances change.

Goodwill Valuation

The Company reviews the carrying value of goodwill annually utilizing a discounted cash flow model. Changes in estimates of future cash flows caused by items such as unforeseen events or changes in market conditions, could negatively affect the reporting unit’s fair value and result in an impairment charge. However, the current fair values of our reporting units are significantly in excess of carrying values, and accordingly management believes that only significant changes in the cash flow assumptions would result in impairment.

Income Taxes

The Company files income tax returns and estimates income taxes in each of the taxing jurisdictions in which it operates. The Company is subject to a tax audit in each of these jurisdictions, which could result in changes to the estimated taxes. The amount of these changes

would vary by jurisdiction and would be recorded when known. Management has recorded valuation allowances to reduce its deferred tax assets to the amount that is more likely than not to be realized. In doing so, management has considered future taxable income and ongoing tax planning strategies in assessing the need for the valuation allowance.

Pension and Post-Retirement Benefits

Pension and other post-retirement plans’ costs require the use of assumptions for discount rates, investment returns, projected salary increases and benefits, mortality rates, and health care cost trend rates. The actuarial assumptions used in the Company’s pension reporting are reviewed annually and compared with external benchmarks to ensure that they accurately account for the Company’s future pension obligations. See Notes 8 and 9 of the Company’s Annual Report to Stockholders for the year ended November 30, 2002, for a discussion of these assumptions and how a change in certain of these assumptions could affect the Company’s earnings.

FORWARD-LOOKING INFORMATION

Certain statements contained in this report, including those related to the expected results of operations of businesses acquired by the Company, annualized savings from the Company’s streamlining activities, the holding period and market risks associated with financial instruments, the impact of foreign exchange fluctuations and the adequacy of internally generated funds and existing sources of liquidity are “forward-looking statements” within the meaning of Section 21E of the Securities and Exchange Act of 1934. Forward-looking statements are based on management’s current views and assumptions and involve risks and uncertainties that could significantly affect expected results. Operating results may be materially affected by external factors such as: competitive conditions, customer relationships and financial condition, availability and cost of raw and packaging materials, governmental actions and political events, and economic conditions, including fluctuations in interest and exchange rates for foreign currency. The Company undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

ITEM 3 QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

For information regarding the Company’s exposure to certain market risks, see Item 7A, Quantitative and Qualitative Disclosures About Market Risk, in the Company’s Annual Report on Form 10-K for the year ended November 30, 2002. Except as described in the Management’s Discussion and

Analysis of Financial Condition and Results of Operations, there have been no significant changes in the Company's financial instrument portfolio or market risk exposures since year end.

ITEM 4 CONTROLS AND PROCEDURES

Based on their evaluation as of August 31, 2003, the Company's management, including its Chairman, President & Chief Executive

Officer and its Executive Vice President, Chief Financial Officer & Supply Chain, have concluded that the Company's disclosure controls and procedures are effective to ensure that material information relating to the Company is included in the reports that the Company files or submits under the Securities Exchange Act of 1934. There have been no changes in the Company's internal control over financial reporting identified in connection with such evaluation that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, the Company's internal controls over financial reporting.

PART II - OTHER INFORMATION

ITEM 6 EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits. See Exhibit Index at pages 27 - 30 of this Report on Form 10-Q.

(b) Reports on Form 8-K. None.

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.

McCORMICK & COMPANY, INCORPORATED

Date: October 14, 2003

By: /s/ Francis A. Contino
Francis A. Contino
Executive Vice President, Chief
Financial Officer & Supply Chain

Date: October 14, 2003

By: /s/ Kenneth A. Kelly, Jr.
Kenneth A. Kelly, Jr.
Vice President & Controller

EXHIBIT INDEX

ITEM 601 EXHIBIT NUMBER		REFERENCE OR PAGE
(2)	Plan of acquisition, reorganization, arrangement, liquidation or succession	Not applicable.
(3)	Articles of Incorporation and By-Laws	
	Restatement of Charter of McCormick & Company, Incorporated dated April 16, 1990	Incorporated by reference from Registration Form S-8, Registration No. 33-39582 as filed with the Securities and Exchange Commission on March 25, 1991.
	Articles of Amendment to Charter of McCormick & Company, Incorporated dated April 1, 1992	Incorporated by reference from Registration Form S-8, Registration Statement No. 33-59842 as filed with the Securities and Exchange Commission on March 19, 1993.
	Articles of Amendment to Charter of McCormick & Company, Incorporated dated March 27, 2003	Incorporated by reference from Registration Form S-8, Registration Statement No. 333-104084 as filed with the Securities and Exchange Commission on March 28, 2003
	By-Laws of McCormick & Company, Incorporated Restated and Amended on September 17, 2002	Incorporated by reference from Exhibit 10.1 of the Registrant's Form 10-Q for the quarter ended August 31, 2002 as filed with the Securities and Exchange Commission on October 11, 2002.

(4)	Instruments defining the rights of security holders, including indentures	i) See Exhibit 3 (Restatement of Charter) ii) Summary of Certain Exchange Rights, incorporated by reference from Exhibit 4.1 of the Registrant's Form 10-Q for the quarter ended August 31, 2001 as filed with the Securities and Exchange Commission on October 12, 2001. iii) Indenture dated December 5, 2000 between Registrant and SunTrust Bank, filed herewith as Exhibit 4(iii). Registrant hereby undertakes to furnish to the Securities and Exchange Commission, upon its request, copies of additional instruments of Registrant with respect to long-term debt that involve an amount of securities that do not exceed 10 percent of the total assets of the Registrant and its subsidiaries on a consolidated basis, pursuant to Regulation S-K, Item 601b(4)(iii)(A).
(9)	Voting Trust Agreements	Not applicable.

(10) Material contracts

(i) Asset Purchase Agreement dated June 26, 2003 among Kerr Group, Inc., Kerr Acquisition Sub I, LLC and Setco, Inc., a wholly-owned subsidiary of Registrant, a copy of which is attached to this report as Exhibit 10(i). *

(ii) Asset Purchase Agreement dated June 26, 2003 among Kerr Group, Inc., Kerr Acquisition Sub II, LLC and Tubed Products, Inc., a wholly-owned subsidiary of Registrant, a copy of which is attached to this report as Exhibit 10(ii). *

(iii) Asset Purchase Agreement dated June 26, 2003 among Kerr Group, Inc., Kerr Acquisition Sub II, LLC and O.G. Dehydrated, Inc., a wholly-owned subsidiary of Tubed Products, Inc., a copy of which is attached to this report as Exhibit 10(iii). *

(iv) Registrant's supplemental pension plan for certain senior officers, as amended and restated effective June 19, 2001, is contained in the McCormick Supplemental Executive Retirement Plan, a copy of which was attached as Exhibit 10.1 to the Registrant's Form 10-Q for the quarter ended August 31, 2001, as filed with the Securities and Exchange Commission on October 12, 2001,

and incorporated by reference herein.

(v) Stock option plans, in which directors, officers and certain other management employees participate, are set forth on pages 33 through 36 of the Registrant's definitive Proxy Statement dated February 15, 2001, as filed with the Securities and Exchange Commission on February 14, 2001, and incorporated by reference herein.

(vi) The 2002 McCormick Mid-Term Incentive Plan, which is provided to a limited number of senior executives, is set forth on pages 23 through 31 of the Registrant's definitive Proxy Statement dated February 15, 2002, as filed with the Commission on February 15, 2002, and incorporated by reference herein.

(vii) Directors' Non-Qualified Stock Option Plan provided to members of the Registrant's Board of Directors who are not also employees of the Registrant, is set forth on pages 24 through 26 of the Registrant's definitive Proxy Statement dated February 17, 1999 as filed with the Securities and Exchange Commission on February 16, 1999, and incorporated by reference herein.

(viii) Deferred Compensation Plan, dated November 1, 1999, in which directors, officers and certain other management employees participate, and amended on January 1, 2000, August 29, 2000, September 5, 2000 and May 16, 2003, a copy of which Plan document and amendments are attached to this report as Exhibit 10(viii).

(ix) Stock Purchase Agreement among the Registrant, Eridania Beghin-Say and Compagnie Francaise de Sucrerie – CFS, dated August 31, 2000, which agreement is incorporated by reference from Registrant's Report on Form 8-K, as filed with the Securities and Exchange Commission on September 15, 2000.

(x) Stock Purchase Agreement dated May 7, 2003 among the Registrant, Zatarain's Brands, Inc., and the stockholders set forth on the stockholder signature pages of the Agreement, which agreement is incorporated by reference from Registrant's Form 10-Q for the quarter ended May 31, 2003, as filed with the Securities and Exchange Commission on July 11, 2003.

(xi) 364-Day Credit Agreement, dated May 30, 2003 between Registrant and Wachovia Bank, National Association, a copy of which is attached to this report as Exhibit 10(xi).

(xii) 364-Day Credit Agreement, dated June 19, 2001 among Registrant and Certain Financial Institutions, a copy of which is attached to this report as Exhibit 10(xii).

(xiii) Revolving Credit Agreement, dated as of June 19, 2001

among Registrant and Certain Financial Institutions, a copy of which is attached to this report as Exhibit 10(xiii).

(11)	Statement re: computation of per share earnings	Not applicable.
(15)	Letter re: unaudited interim financial information	Not applicable.
(18)	Letter re: change in accounting principles	Not applicable.
(19)	Report furnished to security holders	Not applicable.
(22)	Published report regarding matters submitted to vote of securities holders	Not applicable.
(23)	Consents of experts and counsel	Not applicable.
(24)	Power of attorney	Not applicable.

(31) Rule 13(a)-14(a)/15d-14(a) Certifications

31.1 - Certification of Robert J. Lawless pursuant to Rule 131-14(a)/15d-14(a).

31.2 - Certification of Francis A. Contino pursuant to Rule 131-14(a)/15d-14(a).

(32) Section 1350 Certifications

32.1 - Certification of Robert J. Lawless pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

32.2 - Certification of Francis A. Contino pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(99)	Additional Exhibits	None

* Portions of this exhibit have been omitted pursuant to a request for confidential treatment.

EXHIBIT 4(iii)

McCORMICK & COMPANY, INCORPORATED,

as Issuer,

and

SUNTRUST BANK,

as Trustee

INDENTURE

Dated as of December 5, 2000

Reconciliation and tie between Trust Indenture Act of 1939 and Indenture, dated as of December 5, 2000

Trust Indenture Act Section		Indenture Section
§ 310	(a)(1)	6.9
	(a)(2)	6.9
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(a)(5)	6.9
	(b)	6.8, 6.10
§ 311	(a)	6.13(a)
	(b)	6.13(b)
	(b)(2)	7.3(a)(2), 7.3(b)
§ 312	(a)	7.1, 7.2(a)
	(b)	7.2(b)
	(c)	7.2(c)
§ 313	(a)	7.3(a)
	(b)	7.3(b)
	(c)	7.3(a), 7.3(b)
	(d)	7.3(c)
§ 314	(a)	7.4
	(b)	Not Applicable
	(c)(1)	1.2
	(c)(2)	1.2
	(c)(3)	Not Applicable
	(d)	Not Applicable
	(e)	1.2
§ 315	(a)	6.1(a)
	(b)	6.2, 7.3(a) (6)
	(c)	6.1(b)
	(d)	6.1(c)
	(d)(1)	6.1(a) (1)
	(d)(2)	6.1(c) (2)
	(d)(3)	6.1(c) (3)
	(e)	5.14
§ 316	(a)(1)	1.1
	(a)(1)(A)	5.2, 5.12
	(a)(1)(B)	5.13
	(a)(2)	Not Applicable
	(b)	5.8
§ 317	(a)(1)	5.3
	(a)(2)	5.4
	(b)	10.3
§ 318	(a)	1.7

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

TABLE OF CONTENTS (1)

(1) Note: This table of contents shall not, for any purpose, be deemed to be a part of this Indenture.

INDENTURE, dated as of December 5, 2000, between McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Company"), and SUNTRUST BANK, a national banking association organized under the laws of the State of Georgia, as trustee (the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein called the "Securities"), to be issued in one or more series as in this Indenture provided.

All things necessary have been done to make this Indenture a valid agreement of the Company, in accordance with its terms.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(b) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of this Indenture; and

(d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"Act", when used with respect to any Holder, has the meaning specified in Section 1.4.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Attributable Debt" with respect to any sale leaseback transaction restricted by Section 10.8 means the lesser of (i) the total net amount of rent required to be paid during the remaining base term of the related lease or until the earliest date on which the lessee may terminate such lease upon payment of a penalty or a lump-sum termination payment (in which case the total net rent shall include such penalty or termination payment), discounted at the weighted average interest rate borne by the Outstanding Securities, compounded semi-annually, or (ii) the sale price of the property so leased multiplied by a fraction, the numerator of which is the remaining base term of the related lease and the denominator of which is the base term of such lease.

"Authenticating Agent" means any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Securities.

"Beneficial Owner" means, with respect to Global Securities, the Person who is the beneficial owner of such Securities as reflected on the books of the Depositary for such Securities or on the books of a Person maintaining an account with such Depositary (directly or as an indirect participant, in accordance with the rules of such Depositary).

"Board of Directors" means either the board of directors of the Company, as the case may be, or any duly authorized committee of that board.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day", when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which

banking institutions in that Place of Payment are authorized or obligated by law, regulation or executive order to close.

"Certificate of a Firm of Independent Public Accountants" means a certificate signed by any firm of independent public accountants of recognized standing selected by the Company. The term "independent" when used with respect to any specified firm of public accountants means such a firm which (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Company or in any other obligor upon the Securities of any series or in any affiliate of the Company or of such other obligor, and (3) is not connected with the Company or such other obligor or any affiliate of the Company or of such other obligor, as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions, but such firm may be the regular auditors employed by the Company. Whenever it is herein provided that any Certificate of a Firm of Independent Public Accountants shall be furnished to the Trustee for Securities of any series, such Certificate shall state that the signer has read this definition and that the signer is independent within the meaning hereof.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Company" means the Person named as the "Company" in the first paragraph of this instrument, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by any one of its Chairman of the Board, its President or a Vice President, and by any one of its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"Consolidated Net Tangible Assets" means the total assets of the Company and its consolidated subsidiaries, including the investment in (at equity) and the net amount of advances to and accounts receivable from corporations which are not consolidated subsidiaries less the following:

(i) current liabilities of the Company and its consolidated subsidiaries, including an amount equal to indebtedness required to be redeemed by reason of any sinking fund payment due in 12 months or less from the date as of which current liabilities are to be determined;

(ii) all other liabilities of the Company and its consolidated subsidiaries other than Funded Debt, deferred income taxes and liabilities for employee post-retirement health plans other than pensions recognized in accordance with Statement of Financial Accounting Standards No. 106;

(iii) all depreciation and valuation reserves and all other reserves (except for reserves for contingencies which have not been allocated to any particular purpose) of the Company and its consolidated subsidiaries;

(iv) the book amount of all segregated intangible assets of the Company and its consolidated subsidiaries, including, but without limitation, such items as goodwill, trademarks, trade names, patents and unamortized debt discount and expense less unamortized debt premium; and

(v) appropriate adjustments on account of minority interests of other Persons holding stock in subsidiaries.

Consolidated Net Tangible Assets shall be determined on a consolidated basis in accordance with generally accepted accounting principles and as provided herein.

"Corporate Trust Office" means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date of execution of this Indenture is located at 919 E. Main Street, Richmond, Virginia, 23219, Attn: Corporate Trust Department; provided that with respect to presentment, transfer, exchange, registration or payment of Securities, "Corporate Trust Office" means at the date hereof SunTrust Bank c/o Harris Trust Bank of New York, Wall Street Plaza, 88 Pine Street, 19th Floor, New York, New York 10005.

"corporation" includes corporations, associations, companies and business trusts.

"Defaulted Interest" has the meaning specified in Section 3.7.

"Depositary" means a clearing agency registered as such under the Exchange Act, as amended, or any successor thereto, which shall in either case be designated by the Company pursuant to Section 3.1 until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, "Depositary" as used with respect to the Securities of any series shall mean the Depositary with respect to the Securities of that series.

"Discounted Security" means any Security which provides for an amount (excluding any amounts attributable to accrued but unpaid interest thereon) less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2.

"Dollars" and the sign "$" mean the currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

"Event of Default" has the meaning specified in Article V.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exempted Indebtedness" means as of any particular time the sum of (i) all then outstanding indebtedness for borrowed money of the Company and Restricted Subsidiaries incurred after the date hereof and secured by any mortgage, security interest, pledge or lien other than those permitted by paragraph (a) of Section 10.7, and (ii) all Attributable Debt with respect to Sale and Leaseback Transactions entered into by the Company and Restricted Subsidiaries after the date hereof other than those permitted by paragraph (a) of Section 10.8.

"Funded Debt" means any indebtedness of the Company or a Restricted Subsidiary for borrowed money having a maturity of more than 12 months from the date such indebtedness was incurred or having a maturity of less than 12 months but by its terms being renewable or extendable beyond 12 months from the date such indebtedness was incurred at the option of the obligor.

"Global Security" means a Security evidencing all or part of a series of Securities which is executed by the Company and authenticated and delivered to the Depositary or pursuant to the Depositary's instructions, all in accordance with this Indenture and pursuant to a Company Order, which shall be registered in the name of the Depositary or its nominee and which shall represent the amount of uncertificated securities as specified therein.

"Government Obligations" means securities that are (i) direct obligations of the government which issued the currency in which the Securities of a particular series are payable or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the government that issued the currency in which the Securities of such series are payable, the payment of which is unconditionally guaranteed by such government, which, in either case, are full faith and credit obligations of such government payable in such currency and are not callable or redeemable at the option of the issuer thereof.

"Holder" means a Person in whose name a Security is registered in the Security Register.

"Indenture" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities established as contemplated by Section 3.1.

"Interest", when used with respect to a Discounted Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

"Interest Payment Date", when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"Maturity", when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"Officers' Certificate" means a certificate signed by the Chairman of the Board, the President, a Vice President or the Treasurer, and by the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company (including in-house counsel) or the Trustee, and who shall be reasonably acceptable to the Trustee.

"Outstanding", when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(a) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Securities, or portions thereof, for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and Securities, except to the extent provided in Section 4.3, with respect to which the Company has effected defeasance as provided in Article IV; and

(c) Securities that have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been

authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands the Securities are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) Securities owned by the Company, any obligor upon the Securities or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding, except that (A) in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded and (B) Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor; and (ii) the principal amount of any Discounted Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration pursuant to Section 5.2.

"Paying Agent" means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Securities on behalf of the Company.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", when used with respect to the Securities of any series, means the place or places where the principal of (and premium, if any) and interest on the Securities of that series are payable as specified as contemplated by Section 3.1.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for a mutilated Security or in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Security.

"Principal Property" means any manufacturing or processing plant or warehouse, together with the land upon which it is erected and any fixtures and equipment comprising a part thereof, owned by the Company or any Restricted

Subsidiary and located in the United States, the book value (net of depreciation) of which on the date as of which the determination is being made is an amount which exceeds 1% of Consolidated Net Tangible Assets, other than any such manufacturing or processing plant or warehouse or any portion thereof or any such fixture or equipment (together with the land upon which it is erected and any fixtures and equipment comprising a part thereof) (i) which is

financed by Industrial Development Bonds or (ii) which, in the opinion of the Board of Directors, is not of material importance to the total business conducted by the Company and its Subsidiaries, taken as a whole.

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price", when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"Regular Record Date" for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 3.1.

"Responsible Officer", when used with respect to the Trustee, means any officer assigned to the Corporate Trust Department of the Trustee, including any vice president, assistant vice president, assistant secretary or any other officer of the Trustee to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with the particular subject.

"Restricted Subsidiary" means any Subsidiary that owns, operates or leases one or more Principal Properties.

"Securities" has the meaning specified in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 3.5.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.7.

"Stated Maturity", when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

"Subsidiary" means each corporation of which the Company or the Company and one or more Subsidiaries, or any one or more Subsidiaries, directly or indirectly

own securities entitling the holders thereof to elect a majority of the directors, either at all times or so long as there is no default or contingency that permits the holders of any other class or classes of securities to vote for the election of one or more directors.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Trustee, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

"Yield to Maturity", when used with respect to any Discounted Security, means the yield to maturity, if any, set forth on the face thereof.

Section 1.2 Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company or any obligor on the Securities shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture (including any covenants, compliance with which constitutes a condition precedent) relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that, in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate (other than certificates provided pursuant to Section 10.9) or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to

enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.3 Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, any one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.4 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to

Section 6.1) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security or the Holder of every Security issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done, suffered or omitted to be done by the Trustee, any Paying Agent or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

Section 1.5 Notices, etc. to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(a) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed, in writing, to or with the Trustee at 919 E. Main Street, Richmond, Virginia, 23219, Attn: Corporate Trust Department; or

(b) the Company by the Trustee or by any Holder shall be sufficient for every purpose (except as provided in Section 5.1(c)) hereunder if in writing and mailed, first-class postage prepaid, to the Company addressed to it at 18 Loveton Circle, Sparks, Maryland, 21152, Attention: Secretary; or at any other address previously furnished in writing to the Trustee by the Company.

Section 1.6 Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his

address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Any notice when mailed to a Holder in the aforesaid manner shall be conclusively deemed to have been received by such Holder whether or not actually received by such Holder. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause, it shall be impracticable to mail notice of any event as required by any provision of this Indenture, then any method of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 1.7 Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with the duties imposed by any of Sections 310 through 317, inclusive, of the Trust Indenture Act through the operation of Section 318(c) thereof, such imposed duties shall control.

Section 1.8 Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.9 Successors and Assigns.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 1.10 Separability Clause.

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.11 Benefits of Indenture.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person (other than the parties hereto and their successors hereunder, any Paying Agent and the Holders) any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12 Governing Law.

This Indenture and the Securities shall be governed by and construed in accordance with the laws of the State of New York.

Section 1.13 Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest or principal (and premium, if any) need not be made on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, and no interest shall accrue with respect to such payment for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, to such next succeeding Business Day.

Section 1.14 Certain Matters Relating to Currencies.

Whenever any action or Act is to be taken hereunder by the Holders of Securities denominated in different currencies or currency units, then for purposes of determining the principal amount of Securities held by such Holders, the aggregate principal amount of the Securities denominated in a foreign currency or currency unit shall be deemed to be that amount of Dollars that could be obtained for such principal amount on the basis of a spot rate of exchange specified to the Trustee for such series in an Officers' Certificate for such Foreign Currency or currency unit into Dollars as of the date the taking of such action or Act by the Holders of the requisite percentage in principal amount of the Securities is evidenced to such Trustee.

The Trustee shall segregate moneys, funds and accounts held by the Trustee in one currency or currency unit from any moneys, funds or accounts held in any other currencies or currency units, notwithstanding any provision herein that would otherwise permit the Trustee to commingle such amounts.

ARTICLE II

SECURITY FORMS

Section 2.1 Forms Generally.

The Securities of each series shall be in substantially the form established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements

placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Securities.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

Section 2.2 Form of Trustee's Certificate of Authentication.

Subject to Section 6.14, the Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

SUNTRUST BANK
as Trustee

By _____
Authorized Officer

ARTICLE III

THE SECURITIES

Section 3.1 Amount Unlimited; Issuable in Series.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of any series,

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from all other Securities);

(2) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Sections 3.4, 3.5, 3.6, 9.6 or 11.7);

(3) the date or dates on which the principal of the Securities of the series is payable;

(4) the rate or rates at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue (which, in either case or both, if so provided in such Board Resolution, may be determined by the Company from time to time and set forth in the Securities of the series issued from time to time), the Interest Payment Dates on which such interest shall be payable and the Regular Record Date for the interest payable on any Interest Payment Date;

(5) the place or places where, subject to the provisions of Section 10.2, the principal of (and premium, if any) and interest on Securities of the series shall be payable, any Securities of that series may be surrendered for exchange, and notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served;

(6) the period or periods within which, the price or prices at which, the currency or currency unit in which, and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company;

(7) the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which, the currency or currency unit in which, and the terms and conditions upon which Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(8) if other than denominations of $1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(9) if other than the principal amount thereof, the portion of the principal amount of Securities of the series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.2;

(10) any Events of Default and covenants of the Company with respect to the Securities of that series, whether or not such Events of Default or covenants are consistent with the Events of Defaults or covenants set forth herein;

(11) if other than Dollars, the currency or currency unit in which payment of the principal of (and premium, if any) or interest, if any, on the Securities of that series shall be made or in which the Securities of that series shall be denominated and the particular provisions applicable thereto;

(12) if the principal of (and premium, if any) and interest, if any, on the Securities of that series are to be payable, at the election of the Company or a Holder thereof, in a currency or currency unit other than that in which such Securities are denominated or stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made, and the time and manner of determining the exchange rate between the currency or currency unit in which such Securities are denominated or stated to be payable and the currency or currency unit in which such Securities are to be so payable;

(13) if the amount of payments of principal of (and premium, if any) or interest, if any, on the Securities of that series may be determined with reference to an index based on a currency or currency unit other than that in which such Securities are denominated or stated to be payable or any other index, the manner in which such amounts shall be determined;

(14) if the Securities of that series do not bear interest, the applicable dates for purposes of Section 7.1;

(15) if the provisions of Section 4.1 relating to the satisfaction and discharge of this Indenture shall apply to the Securities of that series; or if provisions for the satisfaction and discharge of this Indenture other than as set forth in Section 4.1 shall apply to the Securities of that series;

(16) the application, if any, of Section 10.11 to the Securities of that series;

(17) whether the Securities of that series shall be issued in whole or in part in the form of one or more Global Securities and, in such case, the Depositary for such Global Security or Securities; and whether such Global Security or Securities shall be temporary or permanent; and

(18) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series shall be substantially identical except as to denomination, rate of interest, Stated Maturity and the date from which interest, if any, shall accrue, and except as may otherwise be provided in or pursuant to such Board Resolution relating thereto. The terms of such Securities, as set forth above, may be determined by the Company from time to time if so provided in or established pursuant to the authority granted in a Board Resolution. All Securities of any one series need not be issued at the same time, and unless otherwise provided, a series may be reopened for issuance of additional Securities of such series.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

Section 3.2 Denominations.

The Securities of each series shall be issuable in registered form without coupons in such denominations as shall be specified as contemplated by Section 3.1. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of $1,000 and any integral multiple thereof.

Section 3.3 Execution, Authentication, Delivery and Dating.

The Securities shall be executed on behalf of the Company by its Chairman of the Board, its President or one of its Vice Presidents and its Chief Financial Officer or Controller. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices on the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities; and the Trustee in accordance with such Company Order shall authenticate and deliver such Securities as provided in this Indenture and not otherwise. If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Sections 2.1 and 3.1, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel stating,

(a) if the form of such Securities has been established by or pursuant to Board Resolution as permitted by Section 2.1, that such form has been established in conformity with the provisions of this Indenture;

(b) if the terms of such Securities have been established by or pursuant to Board Resolution as permitted by Section 3.1, that such terms have been established in conformity with the provisions of this Indenture; and

(c) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles.

With respect to Securities of a series whose terms are to be established from time to time the Trustee shall be entitled to receive the Opinion of Counsel described in this Section in connection with the first authentication of Securities of that series. If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized officer, and such certificate upon any

Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

Section 3.4 Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities of such series which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for such series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of such series of authorized denominations. Until so exchanged, the temporary Securities of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 3.5 Registration, Registration of Transfer and Exchange.

The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as the Security Registrar may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby initially appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of any series at the office or agency in a Place of Payment for such series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series of the same tenor in any authorized denomination or denominations and of a like aggregate principal amount.

At the option of the Holder, Securities may be exchanged for other Securities of the same series of the same tenor in any authorized denomination or denominations and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer, or for exchange or redemption, shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made to a Holder for any registration of transfer or exchange or redemption of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.4, 9.6 or 11.7 not involving any transfer.

The Company shall not be required (a) to issue, register the transfer of or exchange any Security if such Security may be among those selected for redemption during a period beginning at the opening of business 15 days before the day of the selection of the Securities to be redeemed under Section 11.3 or Section 12.3 and ending at the close of business on the day of the mailing of the relevant notice of redemption, or (b) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of Securities being redeemed in part, or (c) to issue, register the transfer of or exchange any Security which has been surrendered for repayment at the option of the Holder, except the portion, if any, of such Security not to be so repaid.

Section 3.6 Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If (i) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) there is delivered to the Company and the Trustee such security or indemnity as may be required by them

to save each of them harmless, then, in the absence of notice to the Company and the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion, may, instead of issuing a new Security, pay any such Security.

Upon the issuance of any new Securities under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities of such series duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 3.7 Payment of Interest; Interest Rights Preserved.

Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name the Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, and at maturity, to the Persons to whom principal is payable.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date ("Defaulted Interest") shall forthwith cease to be payable to the Holder on the Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business and on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of

the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Subsection provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company in writing of such Special Record Date and, in the name and at the expense of the Company, the Trustee shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Person in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

(b) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 3.8 Persons Deemed Owners.

Prior to and at the time of due presentment for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 3.7) interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 3.9 Cancellation.

All Securities surrendered for payment, redemption, registration of transfer or exchange shall be delivered to the Trustee and shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All canceled Securities held by the Trustee shall be destroyed and, if requested, certification of their destruction delivered to the Company, unless by a Company Order the Company directs that canceled securities be returned to it.

Section 3.10 Computation of Interest.

Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.11 Global Securities.

If the Company shall establish pursuant to Section 3.1 that the Securities of a series are to be issued in whole or in part in the form of one or more Global Securities, then the Company shall execute and the Trustee shall, in accordance with Section 3.3 and the Company Order with respect to such series, authenticate and deliver one or more Global Securities in temporary or permanent form that (i) shall represent and shall be denominated in an amount equal to the aggregate principal amount of the outstanding Securities of such series to be represented by one or more Global Securities, (ii) shall be registered in the name of the depositary for such Global Security or Securities or the nominee of such depositary, (iii) shall be delivered by the Trustee to such depositary or pursuant to such depositary's instruction, and (iv) shall bear a legend substantially to the following effect: "Unless and until it is exchanged in whole or in part for Securities in definitive form, this Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary". The Trustee shall deal with the Depositary and its participants as representatives of the Beneficial Owners of the Global Securities for purposes of exercising the rights of the Holders hereunder and the rights of the Beneficial Owners of the Global Securities shall be limited to those established by law and agreements between such Beneficial Owners and the Depositary and its participants. Beneficial Owners shall not be entitled to certificates for Global Securities as to which they are the Beneficial Owners. Requests and directions from, and votes of, such representatives shall not be

deemed to be inconsistent if they are made with respect to different Beneficial Owners.

Notwithstanding any other provision of this Section or Section 3.5, unless and until it is exchanged in whole or in part for Securities in definitive form, a Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary. The Beneficial Owner's ownership of Securities shall be recorded on the records of a participant of the Depositary that maintains such Beneficial Owner's account for such purpose and the participant's record ownership of such Securities shall be recorded on the records of the Depositary.

If at any time the Depositary for the Securities of a series notifies the Company that it is unwilling or unable to continue as Depositary for the Securities of such series or if at any time the Depositary for Securities of a series shall no longer be registered or in good standing under the Exchange Act or other applicable statute or regulation, and the Company shall not have appointed a successor Depositary with respect to the Securities of such series, or if at any time there shall have occurred and be continuing an Event of Default under this Indenture with respect to the Securities of such series, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of definitive Securities of such series, will authenticate and deliver, Securities of such series in definitive form in an aggregate principal amount equal to the principal amount of the Global Security or Securities representing such series in exchange for such Global Security or Securities.

The Company may at any time and in its sole discretion determine that the Securities of any series issued in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities. In such event, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of definitive Securities of such series, will authenticate and deliver, Securities of such series in definitive form and in an aggregate principal amount equal to the principal amount of the Global Security or Securities representing such series in exchange for such Global Security or Securities.

If specified by the Company pursuant to Section 3.1 with respect to Securities of a series, the Depositary for such series of Securities may surrender a Global Security for such series of Securities in exchange in whole or in part for Securities of such series in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon, the Company shall execute and the Trustee shall authenticate and deliver, without charge,

(i) to each Person specified by the Depositary a new Security or Securities of the same series, of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Security; and

(ii) to the Depositary a new Global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Securities delivered to Holders thereof.

Upon the exchange of a Global Security for Securities in definitive form, such Global Security shall be canceled by the Trustee. Securities issued in exchange for a Global Security pursuant to this Section 3.11 shall be registered in such names and in such authorized denominations as the Depositary for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Persons in whose names such Securities are so registered.

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.1 Satisfaction and Discharge of Securities of any Series.

(a) The Company shall be deemed to have satisfied and discharged the entire indebtedness on all the Securities of any particular series (i) that have become due and payable, or (ii) by their terms are to become due and payable at their Stated Maturity within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the Securities of such series, or (iii) with respect to which this Section 4.1 is specified to be applicable pursuant to Section 3.1, and, so long as no Event of Default shall be continuing, the Trustee for the Securities of such series, upon Company Request and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of such indebtedness, when:

(1) either

(A) all Securities of such series theretofore authenticated and delivered and all coupons, if any, appertaining thereto (other than (i) any Securities and coupons of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6, (ii) coupons appertaining to Securities called for redemption and maturing after the relevant Redemption Date, whose surrender

is not required as provided in Section 11.6 and (iii) Securities and coupons of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in the last paragraph of Section 10.3) have been delivered to such Trustee for cancellation; or

(B) with respect to all Outstanding Securities of such series described in (A) above (and, in the case of (i) or (ii) below, any coupons appertaining thereto) not theretofore so delivered to the Trustee for the Securities of such series for cancellation:

(i) the Company has deposited or caused to be deposited with such Trustee as trust funds in trust an amount in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.1 for the Securities of such series), sufficient to pay and discharge the entire indebtedness on all such Outstanding Securities of such series and any related coupons for unpaid principal (and premium, if any) and interest, if any, to the Stated Maturity or any Redemption Date as contemplated by Section 4.2, as the case may be; or

(ii) the Company has deposited or caused to be deposited with such Trustee as obligations in trust such amount of Government Obligations as will, as evidenced by a Certificate of a Firm of Independent Public Accountants delivered to such Trustee, together with the predetermined and certain income to accrue thereon (without consideration of any reinvestment thereof), be sufficient to pay and discharge when due the entire indebtedness on all such Outstanding Securities of such series and any related coupons for unpaid principal (and premium, if any) and interest, if any, to the Stated Maturity or any Redemption Date as contemplated by Section 4.2, as the case may be; or

(iii) the Company has deposited or caused to be deposited with such Trustee in trust an amount equal to the amount referred to in clause (i) or (ii) in any combination of currency or currency unit or Government Obligations;

(2) the Company has paid or caused to be paid all other sums payable with respect to the Securities of such series and any related coupons;

(3) the Company has delivered to such Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of the entire indebtedness on all Securities of such series and any related coupons have been complied with; and

(4) if the Securities of such series and any related coupons are not to become due and payable at their Stated Maturity within one year of the date of such deposit or are not to be called for redemption within one year of the date of such deposit under arrangements satisfactory to such Trustee as of the date of such deposit, then the Company shall have given, not later than the date of such deposit, an Opinion of Counsel based on the fact that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (y), since the date hereof, there has been a change in the applicable United States federal income tax law, in either case to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred.

(b) Upon the satisfaction of the conditions set forth in this Section 4.1 with respect to all the Securities of all series, the terms and conditions of such series, including the terms and conditions with respect thereto set forth in this Indenture, shall no longer be binding upon, or applicable to, the Company, and the Holders of the Securities of such series and any related coupons shall look for payment only to the funds or obligations deposited with the Trustee pursuant to Section 4.1(a)(1)(B); provided, however, that in no event shall the Company be discharged from (i) any payment obligations in respect of Securities of such series and any related coupons which are deemed not to be Outstanding under clause (c) of the definition thereof if such obligations continue to be valid obligations of the Company under applicable law, (ii) from any obligations under Sections 4.2(b), 6.7, 6.10 and 10.11 and (iii) from any obligations under Sections 3.5 and 3.6 (except that Securities of such series issued upon registration of transfer or exchange or in lieu of mutilated, destroyed, lost or stolen Securities and any related coupons shall not be obligations of the Company) and Sections 7.1 and 10.2; and provided, further, that in the event a petition for relief under the Bankruptcy Act of 1978 or Title 11 of the United States Code or a successor statute is filed and not discharged with respect to the Company within 91 days after the deposit, the entire indebtedness on all Securities of such series and any related coupons shall not be discharged, and in such event the Trustee shall return such deposited funds or obligations as it is then holding to the Company upon Company Request.

Section 4.2 Application of Trust Money.

(a) All money and obligations deposited with the Trustee for any series of Securities pursuant to Section 4.1 shall be held irrevocably in trust and shall be made under the terms of an escrow trust agreement in form satisfactory to such Trustee. Such money and obligations shall be applied by such Trustee, in accordance with the provisions of the Securities, any coupons, this Indenture and such escrow trust agreement, to the payment, either directly

or through any Paying Agent (including the Company acting as its own Paying Agent) as such Trustee may determine, to the Persons entitled thereto, of the principal of (and premium, if any) and interest, if any, on the Securities for the payment of which such money and obligations have been deposited with such Trustee. If Securities of any series are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provision or in accordance with any mandatory sinking fund requirement, the Company shall make such arrangements as are reasonably satisfactory to the Trustee for any series of Securities for the giving of notice of redemption by such Trustee in the name, and at the expense, of the Company.

(b) The Company shall pay and shall indemnify the Trustee for any series of Securities against any tax, fee or other charge imposed on or assessed against Government Obligations deposited pursuant to Section 4.1 or the interest and principal received in respect of such Government Obligations other than any such tax, fee or other charge which by law is payable by or on behalf of Holders. The obligation of the Company under this Section 4.2(b) shall be deemed to be an obligation of the Company under Section 6.7(b).

(c) Anything in this Article IV to the contrary notwithstanding, the Trustee for any series of Securities shall deliver or pay to the Company from time to time upon Company Request any money or Government Obligations held by it as provided in Section 4.1 which, as expressed in a Certificate of a Firm of Independent Public Accountants delivered to such Trustee, are in excess of the amount thereof which would then have been required to be deposited for the purpose for which such money or Government Obligations were deposited or received provided such delivery can be made without liquidating any Government Obligations.

Section 4.3 Satisfaction and Discharge of Indenture.

Upon compliance by the Company with the provisions of Section 4.1 as to the satisfaction and discharge of each series of Securities issued hereunder, and if the Company has paid or caused to be paid all other sums payable under this Indenture, this Indenture shall cease to be of any further effect (except as otherwise provided herein). Upon Company Request and receipt of an Opinion of Counsel and an Officers' Certificate complying with the provisions of Section 1.2, the Trustees for

all series of Securities (at the expense of the Company) shall execute proper instruments acknowledging satisfaction and discharge of this Indenture.

Notwithstanding the satisfaction and discharge of this Indenture, any obligations of the Company under Sections 3.5, 3.6, 4.2(b), 6.7, 6.10, 7.1, 10.2 and 10.11 and the obligations of the Trustee for any series of Securities under Section 4.2 shall survive.

Section 4.4 Reinstatement.

If the Trustee for any series of Securities is unable to apply any of the amounts (for purposes of this Section 4.4, "Amounts") or Government Obligations, as the case may be, described in Section 4.1(a)(1)(B)(i) or (ii), respectively, in accordance with the provisions of Section 4.1 by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities of such series and the coupons, if any, appertaining thereto shall be revived and reinstated as though no deposit had occurred pursuant to Section 4.1 until such time as the Trustee for such series is permitted to apply all such Amounts or Government Obligations, as the case may be, in accordance with the provisions of Section 4.1; provided, however, that if, due to the reinstatement of its rights or obligations hereunder, the Company has made any payment of principal of (or premium, if any) or interest, if any, on such Securities or coupons, the Company shall be subrogated to the rights of the Holders of such Securities or coupons to receive payment from such Amounts or Government Obligations, as the case may be, held by the Trustee for such series.

ARTICLE V

REMEDIES

Section 5.1 Events of Default.

Unless otherwise specified in Section 3.1 with respect to any series of Securities, "Event of Default", wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest on any Security of such series when it becomes due and payable, and continuance of such default for a period of 30 days; or

(b) default in the payment of the principal of (or premium, if any, on) any Security of such series at its Maturity; or

(c) default in the performance, or breach, of any covenant or agreement of the Company in this Indenture (other than a default in the performance, or a breach, of a covenant or warranty which is specifically dealt with elsewhere in this Section or which has expressly been included in this Indenture solely for the benefit of series of Securities other than such series), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Securities of such series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(d) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other

similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days; or

(e) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by the Company to the filing of such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by the Company in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action.

Section 5.2 Acceleration of Maturity; Rescission and Annulment.

If an Event of Default with respect to the Securities of any series at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of such series may, and the Trustee upon the request of the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of such series shall, declare the principal amount (or, if the Securities of such series are Discounted Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Securities of such series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders) and, upon any such declaration such principal amount (or specified amount) shall become due and payable. If an Event of Default specified in Section 5.1(d) or (e) occurs and is continuing, then the principal of all the Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

At any time after such declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the holders of a majority in principal amount of the Outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

(i) the Company has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue interest on all Securities of such series,

(B) the principal of (and premium, if any, on) any Securities of such series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursement and advances of the Trustee, its agents and counsel; and

(ii) all Events of Default with respect to Securities of such series, other than the non-payment of principal of Securities of such

series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if:

(a) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or

(b) default is made in the payment of principal of (or premium, if any, on) any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal (and premium, if any) and interest, with interest upon the overdue principal (and premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by the Securities; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon the Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement for any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 5.4 Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor, upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims for the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any money or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.7.

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

Section 5.5 Trustee May Enforce Claims Without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

Section 5.6 Application of Money Collected.

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.7; and

SECOND: Subject to Article XII, to the payment of the amounts then due and unpaid upon the Securities for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal (and premium, if any) and interest.

Section 5.7 Limitation on Suits.

No Holder of any Securities of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of such series;

(b) the Holders of not less than 25% in principal amount for the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee indemnity satisfactory to the Trustee against the cost, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of such series;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, distribute or prejudice the rights of any other Holders, or to

obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

Section 5.8 Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right on the terms stated herein, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 3.7) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 5.9 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case the Company, the Trustee and the Holders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 5.10 Rights and Remedies Cumulative.

Except as provided in Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or to the Trustee and the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 5.12 Control by Holders.

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that

(a) such direction shall not be in conflict with any rule of law or with this Indenture; and

(b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 5.13 Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder and its consequences, except a default

(a) in the payment of the principal of (or premium, if any) or interest on any Security of such series, or

(b) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 5.14 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of any undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of

the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date).

Section 5.15 Waiver of Stay or Extension Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI

THE TRUSTEE

Section 6.1 Certain Duties and Responsibilities.

(a) With respect to Securities of any series, except during the continuance of an Event of Default with respect to Securities of such series,

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements for this Indenture.

(b) In case an Event of Default with respect to Securities of any series has occurred and is continuing, the Trustee shall with respect to Securities of such series exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) this Subsection (c) shall not be construed to limit the effect of Subsection (a) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) the Trustee shall not be liable with respect to Securities of any series and with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of such series relating to the time, method and place of conducting and proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 6.2 Notice of Defaults.

Within 90 days after the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security of such series or in the payment of any sinking fund installment with respect to Securities, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of the board of directors or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders; and provided, further, that in the case of any default of the character specified in Section 5.1(d) no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term “default” means

any event which is, or after notice or lapse of time or both would become, an Event of Default.

Section 6.3 Certain Rights of Trustee.

Subject to the provisions of Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate and Opinion of Counsel;

(d) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence or indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

Section 6.4 Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein, and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company and the Trustee or any Authenticating Agent assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee or any Authenticating Agent shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 6.5 May Hold Securities.

The Trustee, any Authenticating Agent, any Paying Agent, Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities, and, subject to Sections 6.8 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Section 6.6 Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder.

Section 6.7 Compensation and Reimbursement.

The Company agrees:

(a) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(c) to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

Section 6.8 Qualification of Trustee; Conflicting Interests.

The Trustee shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time required thereby. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the penultimate paragraph of Section 310(b) of the Trust Indenture

Act. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any series, there shall be excluded Securities of any particular series of Securities other than that series.

Section 6.9 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be:

(i) a corporation organized and doing business under the laws of the United States of America, any state thereof, or the District of Columbia, authorized under such laws to exercise corporate trust powers, and subject to supervision or examination by Federal or State authority, or

(ii) a corporation or other Person organized and doing business under the laws of a foreign government that is permitted to act as Trustee pursuant to a rule, regulation, or other order of the Commission, authorized under such laws to exercise corporate trust powers, and subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to a United States institutional trustee,

having a combined capital and surplus of at least $50,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. No obligor upon the Securities or a Person directly or indirectly controlling, controlled by, or under common control with such obligor shall serve as Trustee upon the Securities. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 6.10 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(c) The Trustee may be removed at any time with respect to the Securities of any series by an Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 310(b) of the Trust Indenture Act pursuant to Section 6.8 hereof after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months unless the Trustee's duty to resign is stayed in accordance with Section 310(b) of the Trust Indenture Act, or

(2) the Trustee shall cease to be eligible under Section 6.9 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any case, (i) the Company by a Board Resolution may remove the Trustee, or (ii) subject to Section 5.14, the Holder of any Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of any one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee with respect to the securities of such

series and shall comply with the applicable requirements of Section 6.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.11, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders of such Securities and accepted appointment in the manner required by Section 6.11, the Holder of any Security of such series who has been a bona fide Holder for at least six months may, subject to Section 5.14, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage

prepaid, to the Holders of Securities of such series as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 6.11 Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to

vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trust and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers, trusts and duties referred to in paragraph (a) or (b) of this Section, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

Section 6.12 Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating

Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.13 Preferential Collection of Claims Against Company.

(a) Subject to Subsection (b) of this Section, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company within three months prior to a default, as defined in Subsection (c) of this Section, or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the Holders of the Securities and the holders of other indenture securities (as defined in Subsection (c) of this Section):

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such three-month period and valid as against the Company and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2) of this Subsection, or from the exercise of any right of set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against the Company upon the date of such default; and

(2) all property received by the Trustee in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such three-month period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of the Company and its other creditors in such property or such proceeds. Nothing herein contained, however, shall affect the right of the Trustee:

(A) to retain for its own account (i) payments made on account of any such claim by any Person (other than the Company) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third Person, and

(iii) distributions made in cash, securities or other property in respect of claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Code or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such three-month period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property

held by it as security for any such claim, if such claim was created after the beginning of such three-month period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to believe that a default as defined in Subsection (c) of this Section would occur within three months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C), against the release of any property held as security for such claim as provided in paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C) and (D), property substituted after the beginning of such three-month period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the Trustee, the Holders and the holders of other indenture securities in such manner that the Trustee, the Holders and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Code or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from the Company of the funds and property in such special account and before crediting to the respective claims of the Trustee and the Holders of the Securities and the holders of other indenture securities dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Code or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term “dividends” shall include any distribution with respect to such claim, in bankruptcy or receivership or proceedings for reorganization pursuant to the Federal Bankruptcy Code or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such

bankruptcy, receivership or proceedings for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee and the Holders and the holders of other indenture securities, in accordance with the provisions of this paragraph, the funds and property held in such special account and proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee and the Holders and the holders of other indenture securities, with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee that has resigned or been removed after the beginning of such three-month period shall be subject to the provisions of this Subsection as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such three-month period, it shall be subject to the provisions of this Subsection if and only if the following conditions exist:

(i) the receipt of property or reduction of claim, which would have given rise to the obligation to account, if such Trustee had continued as Trustee, occurred after the beginning of such three-month period; and

(ii) such receipt of property or reduction of claim occurred within three months after such resignation or removal.

(b) There shall be excluded from the operation of Subsection (a) of this Section a creditor relationship arising from:

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction or by this Indenture, for the purpose of preserving any property which shall at any time be subject to the lien of this Indenture or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such advances and of the circumstances surrounding the making thereof is given to the Holders at the time and in the manner provided in this Indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar,

custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in Subsection (c) of this Section;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of the Company; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self-liquidating paper as defined in Subsection (c) of this Section.

(c) For the purposes of this Section only:

(1) the term "default" means any failure to make payment in full of the principal of or interest (and premium, if any) on any of the Securities or upon the other indenture securities when and as such principal or interest becomes due and payable;

(2) the term "other indenture securities" means securities upon which the Company is an obligor outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of this Section, and (iii) under which a default exists at the time of the apportionment of the funds and property held in such special account;

(3) the term "cash transaction" means any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks and payable upon demand;

(4) the term "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the

creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation;

(5) the term "Company" means any obligor upon the Securities;

(6) the term "Federal Bankruptcy Code" means the Bankruptcy Code or Title 11 of the United States Code; and

(7) the term "Federal Reserve Act, as amended" means Title 12 of the United States Code.

Section 6.14 Appointment of Authenticating Agent.

At any time when any of the Securities remain Outstanding the Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purpose of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent,

provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Securities of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested

with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Trustee agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 6.7.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

SUNTRUST BANK, as Trustee

By _____
Authenticating Agent

By _____
Authorized Officer

ARTICLE VII

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.1 Company to Furnish Trustee Names and Addresses of Holders.

The Company will furnish or cause to be furnished to the Trustee:

(a) semi-annually, not later than June 30th and December 30th in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of the preceding June 15th or December 15th, as the case may be; and

(b) at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

provided, however, that if and so long as the Trustee shall be the Security Registrar, no such list need be furnished.

Section 7.2 Preservation of Information; Communications to Holders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar or Paying Agent (if so acting). The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

(b) If three or more Holders (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states the applicants' desire to communicate with other Holders with respect to their rights under this Indenture or under the Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either

(1) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 7.2(a), or

(2) inform such applicants as to the approximate number of Holders whose names and addresses appear in the information

preserved at the time by the Trustee in accordance with Section 7.2(a), and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder whose name and address appear in the information preserved at the time by the Trustee in accordance with Section 7.2(a), a copy of the form of proxy or other communication which is specified in such requests, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Holders with reasonable promptness after the entry of such order and the renewal of such tender, otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 7.2(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 7.2(b).

Section 7.3 Reports by Trustee.

(a) Within 60 days after March 31st of each year commencing with the first March 31st after the first issuance of Securities, the Trustee shall transmit by mail to all Holders, as their names and addresses appear in the Security Register, a brief report dated as of such March 31st with respect to any of the following events which may have occurred within the prior 12 months (but if no such event has occurred within such period no report need be transmitted):

(1) any change to its eligibility under Section 6.9 and its qualifications under Section 310(b) of the Trust Indenture Act pursuant to Section 6.8 hereof;

(2) the creation of any material change to a relationship specified in Section 310(b)(1) through Section 310(b)(10) of the Trust Indenture Act;

(3) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities, on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than 1/2 of 1% of the principal amount of the Securities Outstanding on the date of such report;

(4) any change to the amount, interest rate and maturity date of all other indebtedness owing by the Company (or by any other obligor on the Securities) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in Section 6.13(b)(2), (3), (4) or (6);

(5) any change to the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(6) any additional issue of Securities which the Trustee has not previously reported; and

(7) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Securities, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 6.2.

(b) The Trustee shall transmit by mail to all Holders, as their names and addresses appear in the Security Register, a brief report with respect to the character and amount of any advances (and if the Trustee elects to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to Subsection (a) of this Section (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge,

prior to that of the Securities, on property or funds held or collected by it as Trustee and which it has not previously reported pursuant to this Subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate 10% or less of the principal amount of the Securities Outstanding at such time, such report to be transmitted within 90 days after such time.

(c) A copy of each such report shall, at the time of such transmission to the Holders, be filed by the Trustee with each stock exchange upon which the Securities are listed, with the Commission and also with the Company. The Company will notify the Trustee when the Securities are listed on any stock exchange.

Section 7.4 Reports by Company.

The Company and any other obligor upon the Securities shall:

(a) file with the Trustee, within 15 days after the Company or any other obligor upon the Securities is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company or any other obligor upon the Securities may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company or any other obligor upon the Securities is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and, to the extent permitted by the Commission, the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company or any other obligor upon the Securities with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(c) transmit by mail to all Holders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company or any other obligor upon the Securities pursuant to Subsections (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.1 Company May Consolidate, etc., Only on Certain Terms.

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(1) in case the Company shall consolidate with or merge into another corporation or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the corporation formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interests on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction and treating any indebtedness that becomes an obligation of the Company or a Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing;

(3) if, as a result of any such consolidation or merger or such conveyance, transfer or lease, any Principal Property of the Company would become subject to a mortgage, pledge, lien, security interest or other encumbrance that would not be permitted by this Indenture, the Company or such successor corporation or Person, as the case may be, shall take such steps as shall be necessary effectively to secure the Securities equally and ratably with (or prior to) all indebtedness secured thereby; and

(4) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such

consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 8.2 Successor Corporation Substituted.

Upon any consolidation by the Company, with or merger by the Company into any other corporation or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 8.1, the successor corporation formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein; and thereafter, except in the case of a lease, the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.

Section 8.3 Officers' Certificate and Opinion of Counsel.

The Trustee, subject to the provisions of Sections 6.1 and 6.2, may receive and rely upon an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption, complies with the provisions of this Article VIII.

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.1 Supplemental Indentures Without Consent of Holders.

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities; or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of

such series) or to surrender any right or power herein conferred upon the Company; or

(3) to add any additional Events of Default with respect to any or all series of Securities (and, if any such Event of Default applies to fewer than all series of Securities, stating each series to which such Event of Default applies); or

(4) to add or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons; or

(5) to change or eliminate any of the provisions of this Indenture, provided that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; or

(6) to establish the form or terms of Securities of any series as permitted by Sections 2.1 and 3.1; or

(7) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.11(b); or

(8) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture; or

(9) to add to the conditions, limitations and restrictions on the authorized amount, form, terms or purposes of issue, authentication and delivery of Securities, as herein set forth, other conditions, limitations and restrictions thereafter to be observed; or

(10) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Section 4.1 or 10.11, provided that any such action shall not adversely affect the interests of the Holders of Securities of such series and any related coupons or any other series of Securities in any material respect; or

(11) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act, as contemplated by Section 9.5 or otherwise; or

(12) to make any change that does not adversely affect the legal rights under this Indenture of any Holder of Securities of any series.

Section 9.2 Supplemental Indentures with Consent of Holders.

With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(a) change the Stated Maturity of the principal of, or any installment of interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of a Discounted Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date); or

(b) reduce the percentage in principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture; or

(c) modify any of the provisions of this Section or Sections 5.13 and 10.10, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in

the references to “the Trustee” and concomitant changes in this Section and Section 10.10, or the deletion of this provision, in accordance with the requirements of Sections 6.11(b) and 9.1(8).

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

Upon the request of the Company, each accompanied by a copy of a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.3 Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel and an Officers' Certificate stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.4 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.5 Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to the Article shall conform to the requirements of the Trust Indenture Act as then in effect and shall be deemed to include any provisions of the Trust Indenture Act necessary to effect such conformity.

Section 9.6 Reference in Securities to Supplemental Indentures.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

ARTICLE X

COVENANTS

Section 10.1 Payment of Principal, Premium and Interest.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on the Securities in accordance with the terms of the Securities and this Indenture.

Section 10.2 Maintenance of Office or Agency.

The Company will maintain in each Place of Payment for any series of Securities, an office or agency where Securities of such series may be presented or surrendered for payment, where Securities of such series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of such series and this Indenture may be served. The office of the Trustee at its Corporate Trust Office or at the offices or agencies of its agent shall be such office or agency of the Company, unless the Company shall designate and maintain some other office or agency for one or more of such purposes. The Company will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes, and may from time to time rescind such designation; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in

each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such office or agency.

Section 10.3 Money for Security Payments to be Held in Trust.

If the Company shall at any time act as its own Paying Agent, it will, on or not more than one Business Day before each due date of the principal of (and premium, if any) or interest on any of the Securities, segregate and hold in trust for the benefit of the Holders entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

If the Company is not acting as Paying Agent, the Company will, on or before each due date of the principal of (and premium, if any), or interest on, any Securities, deposit with a Paying Agent a sum in same day funds sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of such action or any failure so to act.

If the Company is not acting as Paying Agent, the Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(a) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any default by the Company (or any other obligor upon the Securities) in the making of any payment of principal (and premium, if any) or interest;

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent; and

(d) acknowledge, accept and agree to comply in all aspects with the provisions of this Indenture relating to the duties, rights and disabilities of such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order

direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Unless otherwise required by applicable law, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest on any Security and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, or mail to each such Holder or both notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification, publication or mailing, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 10.4 Corporate Existence.

Subject to Article VIII, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect the corporate existence, rights (charter and statutory) and franchises of the Company and each Subsidiary; provided, however, that the Company shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries as a whole and that the loss thereof is not disadvantageous in any material respect to the Holders; and provided, further, however, that the foregoing shall not prohibit a sale, transfer or conveyance of a Subsidiary or any of their respective assets in compliance with the terms of this Indenture.

Section 10.5 Maintenance of Properties.

The Company shall cause all properties owned by the Company or any Subsidiary or used or held for use in the conduct of its business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof,

all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent the Company from discontinuing the maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any Subsidiary and not disadvantageous in any material respect to the Holders.

Section 10.6 Payment of Taxes and Other Claims.

The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, and (ii) all material lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Company or any Subsidiary; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

Section 10.7 Limitations on Liens.

(a) The Company will not, and will not permit any Restricted Subsidiary to, hereafter, create, assume or suffer to exist any mortgage, security interest, pledge or lien (herein referred to as a "Lien") of or upon any Principal Property, or any shares of capital stock or evidences of indebtedness for borrowed money issued by any Restricted Subsidiary and owned by the Company or any Restricted Subsidiary, whether owned at the date of this Indenture or thereafter acquired, without making effective provision, and the Company in such case will make or cause to be made effective provision, whereby the Securities shall be secured by such Lien equally and ratably with any and all other indebtedness or obligations thereby secured, so long as such indebtedness or obligations shall be so secured; provided, however, that the foregoing shall not apply to any of the following:

(1) Liens that exist on the date of this Indenture;

(2) Liens on property of any corporation existing at the time such corporation becomes a Subsidiary;

(3) Liens in favor of the Company or any Subsidiary;

(4) Liens in favor of governmental bodies to secure progress, advance or other payments pursuant to contract or statute or indebtedness incurred to finance all or a part of construction of or improvements to property subject to such Liens;

(5) Liens on property existing at the time of acquisition thereof (including acquisition through merger or consolidation), and construction and improvement Liens that are entered into within 180 days from the date of such construction or improvement, provided that in the case of construction or improvement the Lien shall not apply to any property theretofore owned by the Company or any Restricted Subsidiary except substantially unimproved real property on which the property so constructed or the improvement is located;

(6) mechanics' and similar Liens arising in the ordinary course of business in respect of obligations not due or being contested in good faith;

(7) Liens for taxes, assessments, or governmental charges or levies that are not delinquent or are being contested in good faith;

(8) Liens arising from any legal proceedings that are being contested in good faith;

(9) any Liens that (i) are incidental to the ordinary conduct of its business or the ownership of its properties and assets, (ii) were not incurred in connection with the borrowing of money or the obtaining of advances or credit and (iii) do not in the aggregate materially detract from the value of the property of the Company or any Subsidiary or materially impair the use thereof in the operation of its business;

(10) Liens securing industrial development or pollution control bonds; and

(11) Liens for the sole purpose of extending, renewing or replacing (or successively extending, renewing or replacing) in whole or in part any of the foregoing.

(b) Notwithstanding the provisions of paragraph (a)(5) of this Section 10.7, the Company or any Restricted Subsidiary may, without equally and ratably securing the Securities, create or assume Liens which would otherwise be subject to the foregoing restrictions if at the time of such creation or assumption, and after giving effect thereto, Exempted Indebtedness does not exceed 15% of Consolidated Net Tangible Assets.

Section 10.8 Limitations on Sale and Leaseback.

(a) The Company will not, nor will it permit any Restricted Subsidiary to, enter into any arrangement with any Person providing for the leasing (as lessee) by the Company or any Restricted Subsidiary of any Principal Property (except for temporary leases for a term, including any renewal thereof, of

not more than three years and except for leases between the Company and a Restricted Subsidiary or between Restricted Subsidiaries) which property has been or is to be sold or transferred by the Company or a Restricted Subsidiary to such Person (herein referred to as a "Sale and Leaseback Transaction") unless either (i) the Company or such Restricted Subsidiary would be entitled to incur a Lien on such property without equally and ratably securing the Securities pursuant to clauses (5) and (11) of paragraph (a) of Section 10.7 or (ii) the net proceeds of such sale are at least equal to the fair value (as determined by the Board of Directors) of such property and the Company shall apply an amount equal to the net proceeds of such sale to the retirement (other than any mandatory retirement or payment at maturity) of (x) securities (other than any retirement prohibited by the terms of any Securities pursuant to prohibitions on advance refundings) or (y) Funded Debt of the Company or any Restricted Subsidiary ranking prior to or on a parity with the Securities, within 120 days of the effective date of any such arrangement.

(b) Notwithstanding the provisions of paragraph (a) of this Section 10.8, the Company or any Restricted Subsidiary may enter into Sale and Leaseback Transactions, if at the time of such entering into, and after giving effect thereto, Exempted Indebtedness does not exceed 15% of Consolidated Net Tangible Assets.

Section 10.9 Statement by Officers as to Default.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of Sections 10.1 to 10.8, inclusive, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.10 Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any covenant or condition set forth in Sections 10.1 through 10.8 if, before or after the time for such compliance, the Holders of not less than a majority in aggregate principal amount of the Securities at the time Outstanding shall, by Act of such Holders, waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or effect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

Section 10.11 Defeasance of Certain Obligations.

If specified pursuant to Section 3.1 to be applicable to the Securities of any series, the Company may omit to comply with and shall have no liability in respect of any term, provision, condition or limitation set forth in Section 8.1, Section 10.7 and Section 10.8 (and, if specified pursuant to Section 3.1, the Company's obligations under any other covenant), whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any Section or such other covenant to any other provision herein or in any other document, and any such omission to comply shall not constitute a default or an Event of Default under Section 5.1(c); provided, however, that the following conditions have been satisfied:

(1) with respect to all Outstanding Securities of such series and any coupons appertaining thereto not theretofore delivered to the Trustee for cancellation, the Company shall have deposited or caused to be deposited with the Trustee for such series as trust funds or obligations in trust an amount of

(i) cash in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.1 for the Securities of such series);

(ii) Government Obligations; or

(iii) a combination of such cash and Government Obligations,

in each case in an amount which, together with, as evidenced by a Certificate of a Firm of Independent Public Accountants delivered to such Trustee, the predetermined and certain income to accrue on any Government Obligations when due (without the consideration of any reinvestment thereof) is sufficient to pay and discharge when due the entire indebtedness on all such Outstanding Securities of such series and any related coupons for unpaid principal (and premium, if any) and interest, if any, to the Stated Maturity or any Redemption Date, as the case may be;

(2) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(3) no Event of Default or event which with the giving of notice or lapse of time, or both, would become an Event of Default with respect to the Securities of that Series shall have occurred and be

continuing on the date of such deposit and no Event of Default under Section 5.1(d) or Section 5.1(e) or event of which with the giving of notice or lapse of time, or both, would become an Event of Default under Section 5.1(d) or Section 5.1(e) shall have occurred and be continuing on the 91st day after such date;

(4) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the defeasance contemplated in the Section have been complied with;

(5) if the Securities of such series and any related coupons are not to become due and payable at their Stated Maturity within one year of the date of such deposit or are not to be called for redemption within one year of the date of such deposit under arrangements satisfactory to such Trustee as of the date of such deposit, then the Company shall have given, not later than the date of such deposit, an Opinion of Counsel confirming that the Holders of the Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and defeasance and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred; and

(6) the Company shall have delivered to the Trustee an Opinion of Counsel (which may be subject to the customary exceptions) to the effect that after the 91st day following deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally.

All obligations of the Company under this Indenture with respect to the Securities of such series, other than with respect to Section 8.1, Section 10.7 and Section 10.8 (and, if specified pursuant to Section 3.1, the Company's obligations under any other covenant), shall remain in full force and effect. Anything in this Section 10.11 to the contrary notwithstanding, the Trustee for any series of Securities shall deliver or pay to the Company, from time to time upon Company Request, any money or Government Obligations held by it as provided in this Section 10.11 which, as expressed in a Certificate of a Firm of Independent Public Accountants delivered to such Trustee, are in excess of the amount thereof which would then have been required to be deposited for the purpose of which such money or Government obligations were deposited or received, provided such delivery can be made without liquidating any Government Obligations.

ARTICLE XI

REDEMPTION OF SECURITIES

Section 11.1 Applicability of Article.

Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.1 for Securities of any series) in accordance with this Article.

Section 11.2 Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities pursuant to Section 11.1 shall be evidenced by a Board Resolution and an Officers' Certificate. In case of any redemption at the election of the Company, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice period shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Securities to be redeemed.

Section 11.3 Selection by Trustee of Securities to be Redeemed.

If less than all the Securities are to be redeemed, the particular Securities or portions thereof to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities not previously called for redemption, by such method as the Trustee shall deem to be fair and appropriate, and the amounts to be redeemed shall be equal to $1,000 or any integral multiple thereof.

The Trustee shall promptly notify the Company and each Security Registrar in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

Section 11.4 Notice of Redemption.

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

(a) the Redemption Date;

(b) the Redemption Price;

(c) if less than all Outstanding Securities are to be redeemed, the identification of the particular Securities to be redeemed;

(d) in the case of a Security to be redeemed in part, the principal amount of such Security to be redeemed and that after the Redemption Date upon surrender of such Security, a new Security or Securities in the aggregate principal amount equal to the unredeemed portion thereof will be issued;

(e) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;

(f) that on the Redemption Date the Redemption Price will become due and payable upon each such Security or portion thereof, and that (unless the Company shall default in payment of the Redemption Price) interest thereon shall cease to accrue on and after said date;

(g) the place or places where such Securities are to be surrendered for payment of the Redemption Price; and

(h) the CUSIP Number of the Securities.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

The notice if mailed in the manner herein provided shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

Section 11.5 Deposit of Redemption Price.

On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money in same day funds sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities or portions thereof which are to be redeemed on that date.

Section 11.6 Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the

Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price together with accrued interest to the Redemption Date; provided, however, that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Regular Record Dates according to the terms and the provisions of Section 3.7.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by such Security.

Section 11.7 Securities Redeemed in Part.

Any Security which is to be redeemed only in part shall be surrendered at the office or agency of the Company maintained for such purpose pursuant to Section 10.2 (with, if the Company, the Security Registrar or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company, the Security Registrar or the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge to the Holder, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered; provided, however, that the Depositary need not surrender Global Securities for a partial redemption and may be authorized to make a notation on such Global Security of such partial redemption. In the case of a partial redemption of the Global Securities, the Depositary, and in turn, the participants in the Depositary, shall have the responsibility to select any Securities to be redeemed by random lot.

ARTICLE XII

SINKING FUNDS

Section 12.1 Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 3.1 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment”, and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an “optional sinking fund payment”. If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.2. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

Section 12.2 Satisfaction of Sinking Fund Payments with Securities.

The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series, provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 12.3 Redemption of Securities for Sinking Fund.

Not less than 75 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers’ Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 12.2 and will also deliver to the Trustee any Securities to be so delivered. The Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.6 and 11.7.

This Indenture may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Indenture.

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

McCORMICK & COMPANY, INCORPORATED

By U /Christopher J. Kurtzman/
Name: Christopher J. Kurtzman
Title: Vice President & Treasurer

SUNTRUST BANK,
as Trustee

By /John A. Hebb/
Name: John A. Hebb
Title: Vice President

ASSET PURCHASE AGREEMENT

among

KERR GROUP, INC.,

KERR ACQUISITION SUB I, LLC
as Purchaser,

and

SETCO, INC.,
as Seller

Dated as of June 26, 2003

TABLE OF CONTENTS

* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

EXHIBITS

SCHEDULES

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of June 26, 2003 among KERR GROUP, INC., a Delaware corporation ("Kerr"), Kerr Acquisition Sub I, LLC, a Delaware limited liability company ("Purchaser"), and SETCO, INC., a Delaware corporation ("Seller").

RECITALS

Seller engages in the business of developing, manufacturing, marketing and distributing specialty plastic bottles and other containers and shoe parts primarily for the vitamin, mineral and supplement, food and spice, health care, personal care, health and beauty, pharmaceutical, household chemical,

automotive, industrial and footwear markets (the "Business"). Subject to the terms and conditions set forth herein, Seller desires to sell, convey, transfer, assign and deliver to Purchaser, and Purchaser desires to purchase and acquire from Seller, all of Seller's right, title and interest in and to all of the Purchased Assets, as defined herein (the "Acquisition").

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 **Definitions**. As used herein, the following terms shall have the following meanings:

"Accounts Payable" means normal trade payables associated with the ongoing operations of the business, including liabilities relating to sales allowances, customer rebates, third party royalty payments and commissions, and pro-card accruals; provided that the disputed Manpower International, Inc. payable shall not be deemed to be an "Account Payable".

"Acquisition" has the meaning given to such term in the Recitals.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. The Affiliates of Seller include the Persons listed on Schedule 1.1(a).

"Affiliate Marks" means the service marks, trademarks, trade names and domain names used by Seller in the operation of the Business and owned by or licensed to an Affiliate of Seller, as listed on Schedule 2.2(g).

"Agreement" means this Asset Purchase Agreement.

"Asserted Liability" has the meaning given to such term in Section 9.4.

"Assigned Contracts" has the meaning given to such term in Section 2.1(e).

"Assignment and Assumption Agreement" has the meaning given to such term in Section 2.5(b)(ii).

"Assignment of Lease" has the meaning given to such term in Section 6.2(d)(i).

"Associate" means, as to any Person, (a) any trust or other estate in which such Person has a substantial beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity, and (b) any family member or spouse of such Person, or any family member of such spouse, or any individual who has the same home as such Person or who is a director or officer of such Person or any of its parents or Subsidiaries.

"Assumed Liabilities" has the meaning given to such term in Section 2.3.

"Audited Financials" has the meaning given to such term in Section 3.5.

"Base Purchase Price" has the meaning given to such term in Section 6.2(c)(vii).

"Business" has the meaning given to such term in the Recitals.

"Business Day" means any day other than a Saturday, Sunday or a day on which banks in New York City or San Francisco, California, are authorized or obligated by applicable Law to close.

"Capital Expenditures" means Seller's actual capital expenditures properly classified as property, plant and equipment in accordance with GAAP (using, to the extent permitted by GAAP, the practices, procedures and methods historically used by Seller), accrued during the period beginning on December 1, 2002 and ending on the earlier of August 31, 2003 and the Closing Date; provided, however, that if the Closing does not occur on or prior to August 31, 2003 as a result of (i) postponement of the Closing by Seller pursuant to Section 5.8(b), (ii) a second request under the HSR Act under Section 7.1(b), or (iii) breach by Seller of its obligations hereunder, then Capital Expenditures shall accrue during the period beginning on December 1, 2002 and ending on the Closing Date. For the avoidance of doubt, items set forth on Capital Expenditures Schedule 5.1(m) shall be deemed to be Capital Expenditures for purposes of this Agreement.

"Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f).

"Closing" has the meaning given to such term in Section 2.7.

"Closing Balance Sheet" means a balance sheet of Seller, prepared pursuant to Section 2.5(d) setting forth the Purchased Assets and the Assumed Liabilities as of the Closing Date to the extent such assets and liabilities would be shown on a balance sheet of Seller prepared in accordance with GAAP, using, to the extent permitted by GAAP, the practices,

procedures and methods used by Seller in preparing the Audited Financials, which balance sheet shall be prepared by Purchaser.

"Closing Capital Expenditures" has the meaning given to such term in Section 2.5(f)(ii).

"Closing Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f)(ii).

"Closing Capital Expenditures Objection Notice" has the meaning given to such term in Section 2.5(f)(ii).

"Closing Date" has the meaning given to such term in Section 2.7.

"Closing Proration" has the meaning given to such term in Section 2.5(c).

"Code" means the Internal Revenue Code of 1986, as amended.

"Commitments" has the meaning given to such term in Section 5.8(a).

"Computer Software" means all computer programs other than computer programs designed for use in the preparation of Tax Returns, and all documentation relating to the foregoing.

"Counterpart Plans" has the meaning given to such term in Section 8.2.

"Current Assets" shall mean the current assets of the Business that are among the Purchased Assets set forth in the Closing Balance Sheet.

"Current Liabilities" shall mean the current liabilities of the Business that are among the Assumed Liabilities set forth in the Closing Balance Sheet.

"De Minimis Losses" means a Loss resulting from a single set of facts or circumstances that does not exceed $10,000.

"Environmental Claim" means any claim, action, cause of action, investigation or notice by any person or entity alleging potential liability (including potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, or release into the environment, of any Material of Environmental Concern at any location, whether or not owned or operated by Seller, (b) any violation, or alleged violation, of any Environmental Law, and (c) the presence of fungus or mold in any building owned or operated by Seller.

"Environmental Laws" means all Laws relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata, and natural resources), including laws and regulations relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern.

"Estimated Capital Expenditures" has the meaning given to such term in Section 2.5(f)(i).

"Exceptions" has the meaning given to such term in Section 5.8(a).

"Excluded Assets" has the meaning given to such term in Section 2.2.

"Excluded Contracts" has the meaning given to such term in Section 2.2(g).

"Final Closing Capital Expenditures" has the meaning given to such term in Section 2.5(f)(ii).

"Final Closing Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f)(ii).

"GAAP" means generally accepted accounting principles in the United States in effect from time to time, consistently applied.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity (including a court exercising executive, legislative, judicial, regulatory, administrative functions of, or pertaining to, government).

"Guarantee Obligations" has the meaning given to such term in Section 3.10(a)(vi).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person at any date shall include (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (b) any other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (c) all obligations of such Person under any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee, (d) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (e) all liabilities secured by any Lien on property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, and (f) all Guarantee Obligations of such Person.

"Indemnified Party" has the meaning given to such term in Section 9.4.

"Indemnifying Party" has the meaning given to such term in Section 9.4.

"Independent Accounting Firm" means PricewaterhouseCoopers or such other independent accounting firm of national reputation as is selected by mutual agreement of Seller and Purchaser; provided, that if PricewaterhouseCoopers declines to serve and Seller and Purchaser cannot agree, the Independent

Accounting Firm shall be selected by the American Arbitration Association in accordance with its then-prevailing rules; provided, further, that any services to be performed by PricewaterhouseCoopers or such firm selected by the American

Arbitration Association shall be performed by professionals who (i) have not previously performed any services for any of the Parties, Parent or their respective Affiliates and (ii) are based in an office of such firm that has not previously been the primary office from which services for any of the Parties, Parent or their respective Affiliates have been performed.

"Initial Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f)(i).

"Intellectual Property" means, collectively, the Listed Intellectual Property and the Other Intellectual Property.

"IRS" means the United States Internal Revenue Service.

"ISRA" means the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

"ISRA Approval" means an approval from the NJDEP authorizing the transfer of the Leased Manufacturing Facility pursuant to ISRA.

"ISRA Parties" has the meaning given to such term in Section 5.10.

"Kerr" has the meaning given to such term in the preamble of this Agreement.

"Knowledge of Seller" means the actual knowledge of a particular fact or other matter being possessed as of the pertinent date by any of Robert G. Davey, Paul C. Beard, W. Geoffrey Carpenter, Tony Imbraguglio, Donald E. Parodi, Lois A. Stevens, Thomas J. Dunn, Robert J. Kiely, Jr., Robert C. Rodriguez, Keith Burnett, Jim Dunn and Dave Busby.

"Latest Balance Sheet" has the meaning given to such term in Section 3.6.

"Latest Balance Sheet Date" has the meaning given to such term in Section 3.6.

"Law" means any federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, requirement, specification, determination, decision, opinion or interpretation issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

"Leased Manufacturing Facility" means the Real Property Lease listed as Item 2 on Schedule 2.1(a)(ii).

"Lien" means any mortgage, lien, claim, pledge, charge, equitable interest, right-of-way, easement, encroachment, security interest, preemptive right, right of first refusal or similar restriction or right, option, judgment, title defect or encumbrance of any kind.

"Listed Intellectual Property" has the meaning given to such term in Section 2.1(g).

"Listed Permits" has the meaning given to such term in Section 2.1(f).

"Losses" means any costs, payments, Taxes, losses, claims, damages and expenses whatsoever, including court costs and reasonable counsel and other professional fees and expenses.

"Material Adverse Effect" means any change or effect that, individually or taken together with all other such changes or effects that have occurred prior to the date of determination of the Material Adverse Effect, is materially adverse to the ability of Seller to achieve its projections or to the Business, assets, liabilities, financial condition or results of operations of Seller considered as a whole; provided, however, that in no event shall any of the following, alone or in combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been, or will be, a Material Adverse Effect: (a) changes in general economic conditions or changes generally affecting the industry in which Seller operates (which changes do not affect Seller in a materially disproportionate manner); or (b) changes resulting from the loss, diminution or disruption, whether actual or threatened, of existing or prospective employee, customer, distributor or supplier relationships as to which Seller furnishes reasonable evidence that such changes have resulted from the announcement that Seller entered into this Agreement.

"Material Contracts" has the meaning given to such term in Section 3.10(a).

"Materials of Environmental Concern" means chemicals, pollutants, contaminants, wastes, toxic substances or hazardous substances listed, regulated, defined or included under Environmental Laws, including petroleum and petroleum products, asbestos or asbestos-containing materials or products, polychlorinated biphenyls, lead or lead-based paints or materials, and radon.

"NHDS" has the meaning given to such term in Section 2.9.

"NJDEP" means the New Jersey Department of Environmental Protection.

"Other Intellectual Property" means trade secrets and know-how, if any, owned by Seller and used by Seller in the operation of the Business as currently conducted, including trade secrets and know-how relating to the technology, systems and processes identified as such on Schedule 2.1(g). Other

Intellectual Property does not include patents, copyrights, service marks, service names, trademarks, trade names or domain names (or any applications therefor).

"Other Liens" has the meaning given to such term in Section 5.8(b).

"Parent" means McCormick & Company, Incorporated, a Maryland corporation.

"Party" means Seller, Purchaser or Kerr, as the context requires, and the term "Parties" means, collectively, Seller, Purchaser and Kerr.

"Permitted Exceptions" has the meaning given to such term in Section 5.8(a).

"Permitted Lien" means: (a) any Lien imposed by Law for Taxes, assessments or governmental charges that are not yet delinquent and remain payable without penalty or that are being contested in good faith by appropriate proceedings; (b) any carrier's, warehousemen's,

mechanic's, materialmen's, repairmen's or other like Lien imposed by Law, arising in the ordinary course of business and securing obligations that are not overdue by more than forty-five (45) days or are being contested in good faith by appropriate proceedings; (c) any pledge or deposit made in the ordinary course of business in compliance with workers' compensation, unemployment insurance or other social security Laws or other statutory obligations of Seller; (d) any cash deposit or right of set-off to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds, government contracts and other obligations of a like nature, in each case in the ordinary course of business; (e) any Lien arising by operation of Law; and (f) any Permitted Exception.

"Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, syndicate, person (including a "person" as defined in Section 13(d)(3) of the Securities Exchange Act of 1934), trust, association, entity or government or political subdivision, agency or instrumentality of a government.

"Plan" or "Plans" have the meanings given to such terms in Section 3.16.

"Pro Forma Revenues" has the meaning given to such term in Section 3.5.

"Product" has the meaning given to such term in Section 3.10(a)(ix).

"Purchase Price" has the meaning given to such term in Section 2.5(a).

"Purchase Price Objection Notice" has the meaning given to such term in Section 2.5(d).

"Purchased Assets" has the meaning given to such term in Section 2.1.

"Purchaser" has the meaning given to such term in the preamble of this Agreement.

"Purchaser Indemnitee" has the meaning given to such term in Section 9.2.

"R&T Code" has the meaning given to such term in Section 8.7.

"Real Property" has the meaning given to such term in Section 2.1(a).

"Real Property Leases" has the meaning given to such term in Section 2.1(a).

"Registered Intellectual Property Rights" has the meaning given to such term in Section 3.9(a).

"Remediation Activities" has the meaning given to such term in Section 5.10.

"Representative" means, with respect to either Party, any of such Party's directors, officers, employees, attorneys, accountants or other agents.

"Retained Liabilities" has the meaning given to such term in Section 2.4.

"Security Deposits" means the full amount of any and all deposits made by or on behalf of Seller.

"Seller" has the meaning given to such term in the preamble of this Agreement.

"Seller Indemnitee" has the meaning given to such term in Section 9.3.

"Subsidiary" means, with respect to Seller, any corporation, partnership, limited partnership, limited liability company or other legal entity of which Seller (either alone or through or together with any other subsidiary) owns, directly or indirectly, a majority of the stock or other equity interests.

"Supply Agreement" has the meaning given to such term in Section 6.2(c)(vi).

"Surveys" has the meaning given to such term in Section 5.8(a).

"Tangible Personal Property" has the meaning given to such term in Section 2.1(b).

"Target Capital Expenditures" means * million multiplied by the quotient of (x) the number of days actually elapsed from December 1, 2002 through and including the applicable date provided in the definition of Capital Expenditures in this Section 1.1, divided by (y) 365.

"Target Working Capital" means the difference of (A) the product of (i) the sum of the net sales (which shall be net of discounts, allowances and other, similar adjustments used to calculate the Pro Forma Revenues, consistently applied) of Seller for the three full calendar months immediately preceding the Closing Date multiplied by *, multiplied by (ii) * minus (B) the lower of (i) * and (ii) the sum of accrued sales allowances, the * accrual, pro card accrual and prepaid real property tax as of the Closing Date.

"Tax Return" means any return, report, statement, form or other documentation (including any additional or supporting material and any amendments or supplements) filed or maintained, or required to be filed or maintained, with respect to or in connection with the calculation, determination, assessment or collection of any Taxes.

"Taxes" means: (a) any and all taxes, fees, levies, duties, tariffs, imposts and other charges of any kind, imposed by any Governmental Authority, including: (i) taxes or other charges on, measured by, or with respect to income, franchise, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth; (ii) taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value-added or gains taxes; (iii) license, registration and documentation fees; and (iv) customs duties, tariffs and similar charges; (b) any liability for the payment of any amounts of the type described in (a) as a result of being a member of an affiliated, combined, consolidated or unitary group for any taxable period; (c) any liability for the payment of amounts of the type described in (a) or (b) as a result of being a transferee of, or a successor in interest to, any Person or as a result of an express or implied obligation to indemnify any Person; and (d) any and all interest, penalties, additions to tax and

* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

additional amounts imposed in connection with or with respect to any amounts described in (a), (b) or (c).

"Terminated Employee" has the meaning given to such term in Section 8.2.

"Title Company" has the meaning given to such term in Section 5.8(a).

"Title Documents" has the meaning given to such term in Section 5.8(a).

"Title Objections" has the meaning given to such term in Section 5.8(b).

"Title Policy" has the meaning given to such term in Section 6.3(g).

"Transaction Documents" means, collectively, this Agreement and each of the other agreements and instruments to be executed and delivered by either or both of the Parties in connection with the consummation of the Acquisition.

"Transferred Employee" has the meaning given to such term in Section 8.2.

"Transition Services Agreement" has the meaning given to such term in Section 6.2(c)(v).

"WARN Act" means the Worker Adjustment and Retraining Notification Act.

"Withholding Taxes" has the meaning given to such term in Section 2.5(b).

"Working Capital" shall mean Current Assets minus Current Liabilities, (prepared in accordance with GAAP, using, to the extent permitted by GAAP, the accounting principles, methodologies, procedures and classifications used by Seller in preparing the Audited Financials).

"Working Capital Adjustment" has the meaning given to such term in Section 2.5(d).

1.2 **Rules of Construction**. The definitions in Section 1.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "but not limited to." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. All Exhibits and Schedules attached to this Agreement shall be deemed incorporated herein by reference as if fully set forth herein. Words such as "herein," "hereof," "hereto," "hereby" and "hereunder" refer to this Agreement and to the Schedules and Exhibits, taken as a whole. Except as otherwise expressly provided herein: (a) any reference in this Agreement to any agreement shall mean such agreement as amended, restated, supplemented or otherwise modified from time to time; (b) any reference in this Agreement to any Law shall include corresponding provisions of any successor Law and any regulations and rules promulgated pursuant to such Law or such successor Law; and (c) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time.

Neither the captions to Sections or subdivisions thereof nor the Table of Contents shall be deemed to be a part of this Agreement.

ARTICLE II
PURCHASE AND SALE OF PURCHASED ASSETS

2.1 **Purchased Assets**. Subject to the terms and conditions of this Agreement and in reliance upon the representations, warranties, covenants and agreements of the Parties contained herein, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller, free and clear of all Liens other than Permitted Liens (except with respect to the Real Property, subject only to Permitted Exceptions), all of Seller's right, title and interest in and to the following assets, properties, rights and interests of Seller as of the date hereof and those acquired after the date hereof and on or before the Closing Date, except for those assets, properties, rights and interests that are set forth in Section 2.2 as being Excluded Assets (collectively, the "Purchased Assets"):

(a) all the real property and interests in real property described on Schedule 2.1(a)(i) and such as are required to make the statement in the second sentence of Section 3.8(a) true, together with all buildings, fixtures, facilities and other improvements located on such real property (collectively, the "Real Property"), and the leasehold estates, including any Security Deposits relating thereto, described on Schedule 2.1(a)(ii) and such as are required to make the statement in the first sentence of Section 3.8(b) true, under which Seller is a lessee (collectively, the "Real Property Leases");

(b) all the machinery, equipment, tools, furniture, computer hardware, materials, leasehold improvements, computing and telecommunications equipment and other items of tangible personal property owned by the Seller or (to the extent assignable) leased by Seller or by Affiliates of Seller and used in the operation of the Business on the Closing Date, including those listed or described on Schedule 2.1(b), together with any express or implied warranty by the manufacturer, seller or lessor of any such item or component part thereof, to the extent such warranties may be assigned without consent or any requisite consent is obtained (collectively, the "Tangible Personal Property");

(c) all inventories of Seller, including all finished goods, work in process, supplies and raw materials;

(d) (i) all trade accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment; (ii) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes; and (iii) any claim, remedy or other right related to any of the foregoing;

(e) all the contracts, leases, licenses, purchase orders, commitments and other binding arrangements of Seller, including those listed or described on Schedule 2.1(e) ("Assigned Contracts");

(f) all the permits, licenses, approvals, franchises, certificates, consents and other authorizations of any Governmental Authority issued to or held by Seller, including those

listed or described on Schedule 2.1(f), and such as are required to make the statement in the first sentence of Section 3.11 true (collectively, the "Listed Permits"), to the extent they may be legally transferred by agreement;

(g) all the patents, copyrights, service marks, trademarks, trade names and domain names (and all registrations and applications therefor) owned by or licensed to Seller and used, held for use or planned to be used in connection with products currently under active development, in each case, by Seller in the operation of the Business, including those listed or required to be listed on Schedule 2.1(g), and such as are required to make the statement in the first sentence of Section 3.9(a) true (the "Listed Intellectual Property"), together with the Other Intellectual Property;

(h) all the data, records, files, manuals, blueprints and other documentation of Seller, in each case related to the Purchased Assets and used, held for use or planned to be used in connection with products currently under active development, in each case, by Seller in the operation of the Business, including: (i) service and warranty records; (ii) sales promotion materials, creative materials, art work, photographs, public relations and advertising material, studies, reports, correspondence and other similar documents and records, whether in electronic form or otherwise; (iii) all client, customer and supplier lists, telephone numbers and electronic mail addresses with respect to past, present or prospective clients, customers and suppliers; (iv) copies of accounting and tax books, ledgers and records and other financial records; (v) all sales and credit records, catalogs and brochures, purchasing records and records relating to suppliers; and (vi) subject to applicable Law, original personnel records of all Transferred Employees;

(i) all the payments (or pro rata portions thereof) made by Seller with respect to the Purchased Assets or the Business which constitute, as of the Closing Date, prepaid expenses in accordance with GAAP;

(j) all the vehicles owned or (to the extent assignable) leased by Seller or by Affiliates of Seller and used in the operation of the Business on the Closing Date, in each case as listed on Schedule 2.1(j);

(k) the goodwill related to the conduct of the Business and all rights to continue to use the Purchased Assets as an ongoing business;

(l) all assets included in the calculation of Current Assets on the Closing Balance Sheet; and

(m) all other assets, properties, rights, claims and interests of Seller that are not specifically included in the definition of the term "Excluded Assets" in Section 2.2.

2.2 **Excluded Assets**. Notwithstanding anything to the contrary in Section 2.1, the following assets, properties, rights and interests of Seller (collectively, the "Excluded Assets") are excluded from the Purchased Assets and shall remain the property of Seller after the Closing:

(a) corporate seals, certificates of incorporation, minute books, stock books, Tax Returns, original accounting and tax books, ledgers, records and other financial records or other records relating to the corporate organization of Seller;

(b) all cash on hand, cash equivalents, investments (including stock, debt instruments, options and other instruments and securities) and bank deposits;

(c) all accounts or notes receivable owed to Seller by Parent or any Person listed on Schedule 1.1(a);

(d) all rights of Seller: (i) to use any service marks, service names, trademarks, trade names, domain names, logos or brand names, and related goodwill, of Parent or any other Person listed on Schedule 1.1(a) (including any derivatives thereof), or to use blueprints, drawings, designs, manuals, documentation or other intellectual property rights attributable to or which are used solely in Seller's manufacturing of products for Parent or any other Person listed on Schedule 1.1(a) and (ii) in any tangible personal property (including molds, tooling and other equipment) which are used or usable solely in Seller's manufacturing of products for Parent or any other Person listed on Schedule 1.1(a), in each case to the extent listed on Schedule 2.2(d);

(e) all insurance policies, fidelity or surety bonds or fiduciary liability policies covering the Purchased Assets, the Business or the operations, employees, officers or directors of Seller and all rights of Seller of every nature and description under or arising out of such policies and bonds;

(f) originals of all personnel records and other records that Seller is required by Law to retain in its possession;

(g) the assets listed on Schedule 2.2(g), including the contracts, leases, licenses, permits, plans, purchase orders, commitments and other binding arrangements of Seller, including those between Seller and its Affiliates, listed on Schedule 2.2(g) (the "Excluded Contracts");

(h) any assets, properties, rights or interests of Seller which have been transferred or disposed of in the ordinary course of the Business prior to the Closing Date to the extent permitted by Section 5.1;

(i) except as expressly provided in Section 2.5(c), claims for refunds of Taxes paid by Seller;

(j) all shares of capital stock or other ownership interests held by Seller in any Subsidiary set forth on Schedule 3.1; and

(k) all rights of Seller under this Agreement, including Seller's rights in the consideration paid to Seller pursuant to this Agreement.

2.3 **Assumed Liabilities**. Upon the terms and subject to the conditions of this Agreement, Purchaser shall assume on the Closing Date, upon the consummation of the Closing,

and shall pay, perform and discharge when due, the following obligations and liabilities arising on or after the Closing Date (the "Assumed Liabilities"):

(a) all obligations of Seller under the Assigned Contracts, including the lease relating to the Leased Manufacturing Facility, other than (i) liabilities or obligations arising from any pre-Closing breach or default by Seller of or under any Assigned Contract and (ii) liabilities for Capital Expenditures not yet paid that are included in the calculation of the Capital Expenditures Adjustment; and

(b) Accounts Payable as set forth in the Closing Balance Sheet as of the Closing Date.

2.4 **Retained Liabilities**. Purchaser shall not assume, and Seller shall pay, perform and discharge when due and remain liable for any and all liabilities of Seller (including any liability of Seller under this Agreement) and any liabilities that otherwise encumber the Business or the Purchased Assets, in each case other than the Assumed Liabilities (collectively, the "Retained Liabilities").

2.5 **Purchase Price; Payment of Purchase Price; Adjustments**.

(a) The aggregate consideration payable to Seller for the Purchased Assets (collectively, the "Purchase Price") shall be as follows:

(i) The Base Purchase Price, as adjusted at Closing in accordance with Section 2.5(c) and as adjusted after Closing in accordance with Sections 2.5(d) and 2.5(f);

(ii) the assumption of the Assumed Liabilities; and

(iii) the * Earnout as described in Section 2.5(e).

(b) The Purchase Price shall be paid as follows:

(i) At Closing, Purchaser shall pay Seller cash in the amount equal to the Base Purchase Price, plus or minus the Closing Proration, as determined in accordance with Section 2.5(c), plus or minus the Initial Capital Expenditures Adjustment and minus all applicable withholding Taxes (the "Withholding Taxes"). Purchaser shall make such payment via wire transfer of immediately available funds to an account specified by Seller, which account shall be so specified at least two (2) Business Days prior to the Closing Date.

(ii) At Closing, Purchaser shall execute and deliver an Assignment and Assumption Agreement, in the form attached as Exhibit A (the "Assignment and Assumption Agreement"), evidencing the assignment by Seller of certain of the Purchased Assets and the assumption by Purchaser of the Assumed Liabilities.

(iii) After Closing, any Working Capital Adjustment due shall be paid by the paying Party within five (5) Business Days after the calculation of the Working Capital Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(d). The paying Party shall make such payment via wire transfer of immediately available funds to an

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account specified by the recipient Party, which account shall be so specified at least two (2) Business Days before payment of the Working Capital Adjustment becomes due.

(iv) After Closing, any Final Closing Capital Expenditures Adjustment due shall be paid by the paying Party within five (5) Business Days after the calculation of the Final Closing Capital Expenditures Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(f). The paying Party shall make such payment via wire transfer of immediately available funds to an account specified by the recipient Party, which account shall be so specified at least two (2) Business Days before payment of the Final Capital Expenditures Adjustment becomes due.

(c) Liability for all accrued or prepaid real estate Taxes attributable to the Real Property and the Real Property Leases shall be prorated between Seller and Purchaser as of 12:01 a.m. on the Closing Date based on the most recently ascertainable real estate Tax bill. Such proration between the pre-Closing Date period and the post-Closing Date period shall be made by multiplying such Taxes by a fraction, the numerator of which is the actual number of days in the pre-Closing period and the denominator of which is the number of days in the real property tax year in which the real property taxes are assessed, as the case may be. Any net credit resulting from such proration in favor of Seller shall be paid in cash by Purchaser to Seller at Closing and any resulting net credit in favor of Purchaser shall be credited against the Purchase Price paid by Purchaser at Closing (such amount, as applicable, the "Closing Proration"). Any refunds of such real estate Taxes made after the Closing shall first be applied to the unreimbursed third-party costs incurred by Seller or Purchaser in obtaining the refund, then shall be paid to Seller (for such Taxes accrued through the period prior to the Closing Date) and to Purchaser (for the period commencing on and after the Closing Date). If any proceeding to determine the assessed value of the Real Property or the real estate Taxes payable with respect to the Real Property commenced before the date hereof is continuing as of the Closing Date, Seller shall be authorized to continue to prosecute such proceeding and shall be entitled to any abatement proceeds therefrom allocable to any period before the Closing Date, and Purchaser agrees to cooperate as reasonably requested with Seller and to execute any and all documents reasonably requested by Seller in furtherance of the foregoing.

(d) The Purchase Price shall be: (i) increased on a dollar for dollar basis to the extent that the Working Capital on the Closing Date exceeds the Target Working Capital and (ii) decreased on a dollar for dollar basis to the extent that the Working Capital on the Closing Date is less than the Target Working Capital (the "Working Capital Adjustment"). Within sixty (60) days following the Closing, Purchaser shall prepare and deliver to Seller a Closing Balance Sheet as of the Closing Date, together with a calculation of the Working Capital Adjustment based on such Closing Balance Sheet. Following delivery of the Closing Balance Sheet and Working Capital Adjustment, Purchaser shall provide Seller and its Representatives with reasonable access to the books, records, facilities and employees of Purchaser, and shall cooperate with Seller's Representatives, in connection with Seller's review of the Closing Balance Sheet and Working Capital Adjustment. The Working Capital Adjustment calculated by Purchaser shall be conclusive and binding on the Parties unless Seller, within thirty (30) days after its receipt of the Working Capital Adjustment, gives Purchaser a written notice of objection setting forth in reasonable detail the amount in dispute and the basis for such dispute (a "Purchase Price Objection Notice"); provided, that Seller shall not be required to give details

regarding the amount or basis of any dispute if Purchaser shall have failed to provide Seller the access and cooperation required by this Section. If Seller delivers a Purchase Price Objection Notice, the Parties shall attempt in good faith to resolve such dispute through negotiation, and any agreement reached shall be conclusive and binding on the Parties. If the Parties are unable, despite good faith negotiations, to resolve the disputes described in the Purchase Price Objection Notice within thirty (30) days after delivery of the Purchase Price Objection Notice, then the Parties shall promptly submit any such unresolved dispute to the Independent Accounting Firm. The Parties shall cooperate fully with the Independent Accounting Firm, including providing all work papers and back-up materials relating to the unresolved disputes requested by the Independent Accounting Firm to the extent available to the Parties and their respective Representatives. The determination of the Independent Accounting Firm shall be set forth in a written notice delivered to Purchaser and Seller within thirty (30) days after submission of the disputes to the Independent Accounting Firm and shall be conclusive and binding on the Parties. The fees and expenses of the Independent Accounting Firm shall be shared equally by Seller and Purchaser. The Working Capital Adjustment shall be revised to reflect the resolution of the disputes resolved in accordance with this Section 2.5(d).

(e) Following each anniversary of the first day of the month after the month in which the Closing Date occurs up to and including the fifth such anniversary (each such anniversary, an "Earnout Measurement Date"), Purchaser shall be obligated to pay to Seller an amount equal to one-third of the Contribution Margin (as defined below) generated by Purchaser's aggregate sales of * patented * parts ("* Parts") during the twelve-month period immediately preceding each such Earnout Measurement Date (the "* Earnout"); provided, however, that no such payment shall be required with respect to any Earnout Measurement Date for which the aggregate volume of shipments of * Parts by Purchaser during the twelve-month period immediately preceding such Earnout Measurement Date was below * percent (*) of the base volume of shipments of * Parts by Seller for its fiscal year ended November 30, 2002. Within thirty (30) days following each Earnout Measurement Date, Purchaser shall prepare and deliver to Seller a written notice providing a calculation of the * Earnout for such Earnout Measurement Date (a "* Calculation") together with a check in the amount calculated therein (the "Original Amount"). Following delivery of the * Calculation, Purchaser shall provide Seller and its Representatives reasonable access to the books, records, facilities and employees of Purchaser, and shall cooperate with Seller's Representatives, in connection with Seller's review of the * Calculation. The * Calculation calculated by Purchaser shall be conclusive and binding on the Parties unless Seller, within thirty (30) days after its receipt of the * Calculation, gives Purchaser written notice of its objection setting forth in reasonable detail the amount in dispute and the basis for such dispute (a "* Objection Notice"). If Seller delivers a * Objection Notice, the Parties shall attempt in good faith to resolve such dispute through negotiation, and any agreement reached shall be conclusive and binding on the Parties. If the Parties are unable, despite good faith negotiations, to resolve the disputes described in the * Objection Notice within twenty (20) days after delivery of the * Objection Notice, then the Parties shall promptly submit any such unresolved dispute to the Independent Accounting Firm. The Parties shall cooperate fully with the Independent Accounting Firm, including providing all work papers and back-up materials relating to the unresolved disputes requested by the Independent Accounting Firm to the extent available to the

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Parties and their respective Representatives. The determination of the Independent Accounting Firm shall be set forth in a written notice delivered to Purchaser and Seller within thirty (30) days after submission of the disputes to the Independent Accounting Firm and shall be conclusive and binding on the Parties. The fees and expenses of the Independent Accounting Firm shall be shared equally by Seller and Purchaser. The * Calculation shall be revised as necessary to reflect the resolution of the disputes resolved in accordance with this Section 2.5(e), and within five (5) days after final resolution, if the amount determined by the * Calculation has been revised to be an amount that is greater than or less than the Original Amount, either Purchaser or Seller, as applicable, shall deliver to the other a check in such amount as is necessary such that the total amount paid by Purchaser to Seller pursuant to this Section 2.5(e) shall be equal to the amount provided in such revised * Calculation. For purposes of this section 2.5(e), "Contribution Margin" shall mean gross sales (i) minus discounts, rebates, allowances, chargebacks, shipping charges and the like and (ii) minus costs of variable labor, direct materials and variable overhead expenses.

(f) The Purchase Price shall be adjusted as follows:

(i) Two Business Days before the Closing Date, the Seller shall deliver to Purchaser a certificate containing a calculation of the Capital Expenditures as of such date (the "Estimated Capital Expenditures"). The Estimated Capital Expenditures minus the Target Capital Expenditures shall be the "Initial Capital Expenditures Adjustment"; provided that the Initial Capital Expenditures Adjustment shall be zero if such adjustment would otherwise be less than the product of (A) 0.05 and (B) the Target Capital Expenditures. On the Closing Date, the Purchase Price shall be (i) increased on a dollar for dollar basis to the extent that the Initial Capital Expenditures Adjustment exceeds zero and (ii) decreased on a dollar for dollar basis to the extent that the Initial Capital Expenditures Adjustment is less than zero.

(ii) Within sixty (60) days following the Closing, Purchaser shall prepare and deliver to Seller a calculation of the Capital Expenditures as of the Closing Date (the "Closing Capital Expenditures"). The Closing Capital Expenditures minus the Target Capital Expenditures, if any, shall be the "Closing Capital Expenditures Adjustment"; provided that the Closing Capital Expenditures Adjustment shall be zero if such adjustment would otherwise be less than the product of (A) 0.05 and (B) the Target Capital Expenditures. Following delivery of the calculation of the Closing Capital Expenditures Adjustment, Purchaser shall provide Seller and its Representatives with reasonable access to the books, records, facilities and employees of Purchaser, and shall cooperate with Seller and its Representatives, in connection with Seller's review of the Closing Capital Expenditures Adjustment. The Closing Capital Expenditures Adjustment calculated by Purchaser shall be conclusive and binding on the Parties unless Seller, within thirty (30) days after its receipt of the Closing Capital Expenditures Adjustment, gives Purchaser a written notice of objection setting forth in reasonable detail the amount in dispute and the basis for such dispute (a "Closing Capital Expenditures Objection Notice"); provided, that Seller shall not be required to give details regarding the amount or basis of any dispute if Purchaser shall have failed to provide Seller the access and cooperation required by this Section. If Seller delivers a Closing Capital Expenditures Objection Notice, the Parties shall attempt in good faith to resolve such dispute through negotiation, and any agreement reached shall be conclusive and binding on the Parties. If the Parties are unable, despite good faith negotiations, to resolve the disputes described in the Closing Capital Expenditures Objection Notice within

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thirty (30) days after delivery of the Closing Capital Expenditures Objection Notice, then the Parties shall promptly submit any such unresolved dispute to the Independent Accounting Firm. The Parties shall cooperate fully with the Independent Accounting Firm, including providing all work papers and back-up materials relating to the unresolved disputes requested by the Independent Accounting Firm to the extent available to the Parties and their respective Representatives. The determination of the Independent Accounting Firm shall be set forth in a written notice delivered to Purchaser and Seller within thirty (30) days after submission of the disputes to the Independent Accounting Firm and shall be conclusive and binding on the Parties. The fees and expenses of the Independent Accounting Firm shall be shared equally by Seller and Purchaser. The Closing Capital Expenditures and the Closing Capital Expenditures Adjustment shall be revised to reflect the resolution of the disputes resolved in accordance with this Section 2.5(f) (the "Final Closing Capital Expenditures" and the "Final Closing Capital Expenditures Adjustment", respectively). After the Final Closing Capital Expenditures is determined in accordance with this Section 2.5(f), (x) Purchaser shall pay to Seller in accordance with Section 2.5(b)(iv) any amount by which the Final Closing Capital Expenditures Adjustment exceeds the Initial Capital Expenditures Adjustment and (y) Seller shall pay to Purchaser in accordance with Section 2.5(b)(iv) any amount by which the Final Capital Expenditures Adjustment is less than the Initial Capital Expenditures Adjustment.

2.6 **Allocation of Purchase Price**. Promptly after the date hereof, but in any event within five (5) Business Days after the date hereof, Purchaser shall engage a valuation or appraisal firm and shall instruct it to deliver to Purchaser and Seller within twenty (20) days after engagement a statement of the value of the Real Property, Real Property Leases, and any motor vehicles for which a value must be stated in the applicable transfer documents or related filings to be made on or about the Closing Date. By the later of: (i) February 1, 2004, (ii) 30 Business Days after the calculation of the Working Capital Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(d) or (iii) 30 Business Days after the calculation of the Final Closing Capital Expenditures Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(f), Purchaser shall deliver to Seller a statement (the "Final Allocation Statement"), such Final Allocation Statement to be subject to Seller's consent, which consent shall not be unreasonably withheld allocating the Purchase Price, in accordance with Section 1060 of the Code and (with respect to the Real Property, Real Property Leases and motor vehicles described therein) in conformity with the statement of the valuation or appraisal firm described above, among: (a) the Purchased Assets, (b) the non-competition covenant contained in Section 8.3 of this Agreement, (c) the Assumed Liabilities and (d) the Affiliate Mark required to be transferred pursuant to Section 6.3(e). If the Parties are unable, despite good faith negotiations, to agree on such allocation within twenty (20) days after delivery of the Final Allocation Statement, then the Independent Accounting Firm will be retained to determine such allocation (the fees and expenses of which shall be shared equally by Purchaser and Seller) and shall be instructed to provide its determination to Purchaser and Seller, which determination shall be final and binding upon Purchaser and Seller. The Parties agree that such allocation pursuant to the Final Allocation Statement shall be used in filing IRS Form 8594, Asset Acquisition Statement under Section 1060 of the Code ("Form 8594"), and all Tax Returns (except to the extent such filings are required to be made by Seller prior to receipt of the Final Allocation Statement, in which case the Parties shall agree on the appropriate allocation for such filings). Subject to the requirements of applicable Tax Laws or prior Tax elections, neither Seller nor

Purchaser will take any position inconsistent with such allocations in any Tax Return or in any examination of any Tax Return, in any refund claim or in any Tax litigation. For avoidance of doubt, Seller shall have no liability for inconsistent Tax Returns or other filings made prior to Seller's receipt of the Final Allocation Statement if made in a manner consistent with the procedures provided above if after receipt of the Final Allocation Statement Seller takes such steps as are reasonably available under applicable Law to amend such inconsistent Tax Returns to be consistent with the Final Allocation Statement.

2.7 **Closing**. The consummation of the purchase and sale of the Purchased Assets in accordance with this Agreement (the "Closing") shall take place at 10:00 a.m., local time, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Embarcadero Center, San Francisco, California 94111, on the second Business Day after all of the conditions precedent to Closing hereunder shall have been satisfied or waived, or at such other time and place as the Parties shall agree in writing. Unless the parties otherwise agree in writing, the Closing with respect to the Real Property shall be conducted through a customary escrow arrangement with the Title Company. The date of the Closing is referred to as the "Closing Date." The Parties shall deliver at the Closing such documents, certificates of officers and other instruments as are set forth in Article VI hereof and as may reasonably be required to effect the transfer by Seller of the Purchased Assets pursuant to and as contemplated by this Agreement and to consummate the Acquisition. All events occurring at the Closing shall be deemed to occur simultaneously (with the concurrent delivery of the documents required to be delivered pursuant to Article VI, delivery of the Title Policies and payment of the Purchase Price).

2.8 **Assignment of Contracts**. Seller shall use its best efforts (subject to the limitations below) to obtain the written consent of any third party required in connection with the transfer of any Assigned Contract to Purchaser on or before the Closing Date (including, for the avoidance of doubt, leaving in place any guarantees requested by any such third party as set forth under Section 5.11). Notwithstanding anything in this Agreement to the contrary, to the extent that any Assigned Contract is not assignable without the consent of another party whose consent has not been obtained, this Agreement shall not constitute an assignment or attempted assignment of such Assigned Contract if the assignment or attempted assignment would constitute a breach thereof or materially detract from the rights transferred to Purchaser. If such consent is not obtained, then (A) Seller shall use its best efforts to enter into any arrangement requested by Purchaser that is designed to give Purchaser the full benefit of such Assigned Contract accruing on or after the Closing and that does not violate any applicable Law or presently existing agreement to which Seller is a party, and (B) Purchaser shall use its best efforts to cooperate with Seller to consummate such arrangement. Notwithstanding anything to the contrary in this Section 2.8, (i) Seller shall not be required to make out-of-pocket payments to third parties (excluding payments to Seller's or Parent's employees or other internal costs of Seller or Parent) in excess of * in connection with its obligations under this Section 2.8 and (ii) neither of Purchaser and Kerr shall be required to make any payment to any third party in connection with its obligations under this Section 2.8. Seller shall provide Purchaser with a reasonable opportunity to participate in any discussions or negotiations, written or oral, with each lessor under each Lease in connection with obtaining consent thereunder.

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2.9 **Natural Hazard Disclosure Statement**. Promptly following execution of this Agreement, Seller shall deliver to Purchaser a Natural Hazard Disclosure Statement executed by Seller as and to the extent prescribed by California Law, in the form attached as Exhibit B (the "NHDS"), applicable to the Real Property. Within seven (7) Business Days after Purchaser's receipt of the NHDS, Purchaser shall execute and deliver to Seller one counterpart original of the NHDS. Purchaser's signature on the NHDS shall, among other things, serve to acknowledge Purchaser's receipt from Seller of the NHDS and Purchaser's understanding and acceptance thereof.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Kerr and Purchaser to enter into this Agreement and to consummate the Acquisition, Seller represents and warrants to Kerr and Purchaser as follows:

3.1 **Organization and Qualification**. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its assets and properties and to carry on the Business as it is now being conducted. Seller is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the assets and properties owned, leased or operated by it or the nature of the Business makes such qualification or licensing necessary, except for failures to be so qualified or licensed and in good standing that do not have a Material Adverse Effect. Except as set forth on Schedule 3.1, Seller has no Subsidiaries.

3.2 **Authority Relative to this Agreement**. Seller has all necessary corporate power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and to consummate the Acquisition. The execution and delivery of this Agreement and such other Transaction Documents by Seller and the consummation by Seller of the Acquisition have been duly and validly authorized by all necessary corporate action on the part of Seller, and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the Acquisition. This Agreement and such other Transaction Documents have been or will be duly executed and delivered by Seller and, assuming the due authorization, execution and delivery by Purchaser, each such agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, fraudulent conveyance, reorganization or other similar Law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies (whether in a proceeding at law or in equity).

3.3 **No Conflict**. Except as set forth on Schedule 3.3, the execution and delivery of this Agreement by Seller do not, and the performance by Seller of its obligations hereunder and the consummation of the Acquisition will not: (a) conflict with or violate any provision of the certificate of incorporation or by-laws of Seller; (b) assuming that all filings and notifications described in Section 3.4 have been made, conflict with or violate any Law or order applicable to Seller or by which any of the Purchased Assets or Seller is bound or affected; or (c) result in any material breach of or constitute a material default under, or require notice or consent under, any mortgage, indenture, deed of trust, lease, contract, agreement, license or other instrument to

which Seller is a party or by which any of the Purchased Assets is bound or affected, or result in the creation of a material Lien on any of the Purchased Assets, except in the case of clauses (b) and (c), for any conflict, violation, breach or default that would not reasonably be expected to have a Material Adverse Effect.

3.4 **Required Filings and Consents**. The execution and delivery of this Agreement by Seller do not, and the performance by Seller of its obligations hereunder and the consummation of the Acquisition will not, require any consent, approval, authorization or permit of, or filing by Seller with or notification by Seller to, any Governmental Authority, except for: (a) the consents, approvals, authorizations, declarations or rulings set forth on Schedule 3.4; (b) the filing of a Notification and Report Form pursuant to the HSR Act and the expiration or earlier termination of the applicable waiting period thereunder with respect to the Acquisition; and (c) such consents, approvals, authorizations, permits and filings the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect.

3.5 **Financial Statements**. Set forth on Schedule 3.5 are true and complete copies of (a) Seller's balance sheets at November 30, 2001 and 2002, and its income statements and statements of cash flows for the three (3) years ended November 30, 2002, together with the notes thereto and the report thereon of Ernst & Young LLP (the "Audited Financials"), and (b) Seller's unaudited balance sheet at May 31, 2003 and the related unaudited consolidated income statements and a statement of capital expenditures for the six month period ended at such date (the "Interim Financials") and (c) the pro forma presentation of Seller's revenues for (i) the year ended November 30, 2002, and (ii) the six months ended May 31, 2003, which pro forma presentations are based on the Audited Financials or the Interim Financials, as applicable, and have been adjusted solely to reflect the pricing referred to in subclauses (x) and (y) below (the "Pro Forma Revenues"). The Audited Financials and, subject to normal and recurring quarter-end, year-end and audit adjustments, the Interim Financials have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to the Audited Financials and except for the absence of notes to the Interim Financials), and present fairly the financial position of Seller as of the applicable date and Seller's results of operations and cash flows for the periods then ended. Parent and Seller agree that the Pro Forma Revenues represent in all material respects the revenues of Seller for the periods set forth therein as if sales by Seller to Parent (x) during the year ended November 30, 2002 had occurred at prices set forth on Schedule 3.5 hereto and (y) during the six months ended May 31, 2003 had occurred at prices set forth on Schedules 3.1(a) and 3.1(b) to the Supply Agreement. Parent and Seller agree that Seller's aggregate gross margin on sales to Parent and the other Persons identified on Schedule 1.1(a) for the six months ended May 31, 2003 would not have been materially less than the aggregate gross margin set forth on Schedule 3.5 if the pricing on Schedules 3.1(a) and 3.1(b) to the Supply Agreement had been in effect during such period and such aggregate gross margins had otherwise been calculated in accordance with the practices, procedures and methods used by Seller in preparing the Interim Financials. Parent and Seller acknowledge that Kerr and Purchaser's acceptance of the prices set forth on Schedules 3.1(a) and 3.1(b) to the Supply Agreements is made solely in reliance on this representation.

3.6 **Absence of Undisclosed Liabilities**. As of the date hereof, Seller does not have any liabilities (absolute, contingent, accrued or otherwise) in respect of the Business other than: (a) liabilities reflected in the balance sheet of Seller at May 31, 2003 included in the Interim

Financials (the "Latest Balance Sheet"); (b) liabilities incurred since the date of the Latest Balance Sheet (the "Latest Balance Sheet Date") in the ordinary course of business; (c) obligations of continued performance under contracts and other commitments and arrangements entered into in the ordinary course of the Business to the extent permitted under Section 5.1; (d) the liabilities described on Schedule 3.6; and (e) liabilities under this Agreement.

3.7 **Absence of Certain Changes or Events**. From the Latest Balance Sheet Date to the date hereof, except as contemplated by this Agreement or disclosed on Schedule 3.7, Seller has conducted the Business in the ordinary course of business and:

(a) there has not been any material damage to or destruction or loss of any asset, property, right or interest of Seller used in the Business, whether or not covered by insurance, that has had or would reasonably be expected to have a Material Adverse Effect;

(b) Seller has not sold or transferred any material amount of its assets, properties, rights or interests used in the Business, other than sales of inventory and disposal of obsolete, damaged or defective inventory or other assets in the ordinary course of business;

(c) Seller has not increased the salary, bonus or other compensation payable to any officer or employee of Seller other than in the ordinary course of business consistent with past practice;

(d) Seller has not entered into, modified or terminated any contract or transaction involving a total remaining commitment of at least $250,000 other than in the ordinary course of business, or received written notice of termination of any material contract or transaction;

(e) Seller has not entered into any agreement to take any of the actions set forth in subsections (b) through (d) of this Section 3.7; and

(f) Seller has not taken or failed to take any other action which action or failure would violate Section 5.1 if such action or failure were to occur after the date hereof.

3.8 **Sufficiency and Title to Assets**. Except as set forth on Schedule 3.8:

(a) No proceeding is pending or, to the Knowledge of Seller, threatened for the taking or condemnation of all or any portion of the Real Property. The Real Property is all of the real property owned by Seller. Seller has not entered into any agreements giving any Person any right to lease, sublease or otherwise occupy any portion of the Real Property. To the Knowledge of Seller, true and complete copies of all surveys of the Real Property in Seller's possession have heretofore been furnished to Purchaser. There are no ongoing proceedings (judicial or, to the Knowledge of Seller, legislative), claims or disputes of which Seller has notice affecting any Real Property that might curtail or interfere with the use of such property. To the Knowledge of Seller, each Real Property is in material compliance with all Laws, including (i) the Americans with Disabilities Act, 42 U.S.C. § 12102, et seq., together with all rules, regulations and official interpretations promulgated pursuant thereto, and (ii) all Laws with respect to zoning, building, fire, life safety, health codes and sanitation. Seller has not, since

June 1, 2001, received any notices of existing violations of any Laws applicable to any Real Property. Since January 1, 2001, Seller has not received any notice of, or other writing referring to, any requirements or recommendations by any insurance company that has issued a policy covering any part of the Real Property or by any board of fire underwriters or other body exercising similar functions, requiring or recommending any repairs or work to be done on any part of the Real Property, which repair or work has not been completed. To the Knowledge of Seller, Seller has obtained all appropriate certificates of occupancy required to use and operate the Real Property located in the State of California in the manner in which such Real Property is currently being used and operated. True and complete copies of all such certificates have heretofore been furnished to Purchaser.

(b) The Real Property Leases are the only leasehold estates under which Seller is a lessee (or sublessee) of any real property or interest therein. To the Knowledge of Seller, no proceeding is pending (and Seller has not received notice of any pending proceeding) and, to the Knowledge of Seller, no proceeding is threatened for the taking or condemnation of all or any portion of the property demised under the Real Property Leases. A true and complete copy of each Real Property Lease has heretofore been delivered to Purchaser. Each Real Property Lease is valid, binding and enforceable against Seller and, to the Knowledge of Seller (without inquiry), against the landlord thereunder in accordance with its terms and is in full force and effect with respect to Seller and, to the Knowledge of Seller (without inquiry) the landlord thereunder. Seller has not encumbered the leasehold estate created by each Real Property Lease with any leasehold mortgages or any other Liens. Seller has not received notice of any existing defaults by Seller under any of the Real Property Leases and, to the Knowledge of Seller, there are no existing defaults by Seller under any of the Real Property Leases. To the Knowledge of Seller, no event has occurred that (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a default under any Real Property Lease. To the Knowledge of Seller, Seller has obtained all appropriate certificates of occupancy required to use and operate each Real Property Lease in the manner in which such Real Property Lease is currently being used and operated in New Jersey to the extent that Seller is obligated to obtain such certificate of occupancy pursuant to applicable Laws and the terms of the Real Property Leases. True and complete copies of all such certificates have heretofore been furnished to Purchaser.

(c) The Real Property, the premises demised under the Real Property Leases, the other assets comprising the Purchased Assets and the Affiliate Marks are, taken together, all of the assets used, held for use or planned to be used in connection with products currently under active development, in each case, in the Business, and are adequate and sufficient for the operation of the Business as currently conducted.

(d) To the Knowledge of Seller, except as disclosed in the engineering reports previously made available to Purchaser and listed on Schedule 3.8, each of the buildings, improvements, and equipment owned, leased or used by Seller are structurally sound with no known defects and are in good operating condition and repair and are adequate for the uses to which they are being put. Seller is not in possession of any engineering reports dated June 1, 1993 or later regarding the structural sufficiency of the buildings, improvements, and/or equipment owned, leased or used by Seller except as set forth in Schedule 3.8. To the Knowledge of Seller, except as disclosed in the engineering reports previously made available to

Purchaser and listed on Schedule 3.8, none of such buildings, improvements, or equipment is in need of maintenance or repairs except for ordinary, routine maintenance and repairs which are not material in nature or cost. The roof of each such structure is in good repair and condition.

(e) Seller has good and valid title to the Tangible Personal Property, free and clear of all Liens other than Permitted Liens.

3.9 **Intellectual Property.**

(a) Schedule 3.9(a) is a complete list of the Listed Intellectual Property that is the subject of any application filed with, or any registration issued by, any government agency (collectively, "Registered Intellectual Property Rights"). All Registered Intellectual Property Rights and the Affiliate Marks are, to the Knowledge of Seller, enforceable, and all material fees, payments and filings due in respect of such Registered Intellectual Property Rights and the Affiliate Marks as of the date hereof have been made. Each material item of Intellectual Property is: (i) owned by Seller, free and clear of all Liens, restrictions or encumbrances on Seller's right to transfer to Purchaser the Listed Intellectual Property and Other Intellectual Property (or in the case of the Affiliate Marks, owned by an Affiliate of Seller), or (ii) rightfully used by Seller pursuant to a valid license, sublicense, consent or other similar agreement identified as such in Schedule 3.9(a); and the Intellectual Property (together with any intellectual property included in the Excluded Assets) constitutes all of the intellectual property that is necessary to conduct the Business as currently conducted and in connection with products currently under active development.

(b) Each material item of Intellectual Property transferred to Purchaser pursuant to the Acquisition shall be owned, available for use or enforceable, as the case may be, by Purchaser immediately following the Closing on substantially identical terms and conditions as it was owned by, available to or enforceable by, as the case may be, Seller immediately prior to the Closing.

(c) The consummation of the Acquisition will not result in Kerr or Purchaser being bound by any non-compete or other restriction on the operation of the Business that was previously binding on Seller or the granting by Kerr or Purchaser of any rights or licenses to any intellectual property rights of Kerr or Purchaser to a third party (including a covenant not to sue) that was previously binding on Seller.

(d) Except as disclosed on Schedule 3.9(d), Seller is not aware of any facts which would lead it to reasonably believe that the operation of the Business as currently conducted infringes or will infringe on any intellectual property rights of any other Person.

(e) Except as disclosed on Schedule 3.9(e), no claims have been asserted nor, to the Knowledge of Seller, are threatened by any Person against Seller that: (i) challenge the validity, enforceability, registrability or ownership by Seller of any of the Intellectual Property or (ii) claim that the operation of the Business as currently conducted infringes or will infringe any intellectual property rights of any other Person. To the Knowledge of Seller, no third party is engaged in unauthorized use, infringement or misappropriation of any Intellectual Property.

(f) There are no settlements, forbearances to sue, consents, judgments, or orders or similar obligations (other than license agreements in the ordinary course of business) which (i) restrict Seller's rights to use any Intellectual Property; (ii) restrict Seller's Business in order to accommodate a third party's intellectual property rights; or (iii) permit third parties to use any intellectual property owned by Seller.

(g) Schedule 3.9(g) lists all Computer Software owned or licensed by, or otherwise used in the Business, other than third party software applications that are generally available and have an individual acquisition cost of $5,000 or less, and identifies whether each of the foregoing items of Computer Software are owned, licensed or otherwise used, as the case may be.

(h) Schedule 3.9(h) lists all domain names that are the subject of any application filed by Seller with, or any registration issued to Seller by, a recognized registration authority.

3.10 **Contracts.**

(a) Schedule 3.10 sets forth a list of the following contracts, agreements and instruments pertaining to the Business to which Seller is a party or is bound as of the date hereof (collectively, the "Material Contracts"):

(i) any contract involving more than $100,000 over the life of the contract;

(ii) any contract that expires more than one (1) year after the date of this Agreement or that may be renewed at the option of any Person other than Seller so as to expire more than one (1) year after the date of this Agreement;

(iii) any trust indenture, mortgage, promissory note, loan agreement or other contract for borrowed money (other than trade payables incurred in the ordinary course of business not exceeding $100,000 individually or $200,000 in the aggregate);

(iv) any contract for capital expenditures in excess of $200,000 in the aggregate except as set forth on Schedule 5.1(m);

(v) any contract limiting the freedom of Seller to engage in any line of business or to compete with any other Person, or any confidentiality, secrecy or non-disclosure contract or any contract that may be terminable as a result of Seller's status as a competitor of any party to such contract;

(vi) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the liabilities of any other Person other than customer agreements made in the ordinary course of the Business ("Guarantee Obligations");

(vii) any employment contract, arrangement or policy (including any collective bargaining contract or union agreement) which may not be immediately terminated without notification or penalty (including any augmentation or acceleration of benefits);

(viii) any contract providing for a joint venture, partnership or similar legal relationship with any other Person;

(ix) any contract granting to any Person, on a conditional basis or otherwise, any ownership interest in, or license to manufacture or prepare, any product developed, manufactured or sold by the Business (each, a "Product") utilizing any proprietary recipe or formulation;

(x) any sales agency, distribution or similar agreements with respect to Products or for the distribution by Seller of products of another party involving consideration in excess of $100,000;

(xi) any agreement providing for a rebate, discount, bonus or commission in excess of $100,000 with respect to the sale of any Product;

(xii) any agreement requiring Seller to advance or loan any amount in excess of $100,000 to or on behalf of any of its directors, employees, shareholders, Affiliates or Associates (or their respective Affiliates or Associates);

(xiii) any agreement providing for the acquisition after January 1, 2001 by Seller (or any predecessor in interest) of any real property, operating business or the shares or other equity interests of any Person for consideration in excess of $100,000;

(xiv) any employment, severance, consulting or other agreement of any nature with any current or former shareholder, director, officer or any Affiliate thereof involving consideration in excess of $100,000 per year individually or $100,000 per year in the aggregate;

(xv) any agreement restricting the ability of Seller to incur Indebtedness;

(xvi) any agreement relating to Indebtedness, interest rate swap or hedging agreements, sale and leaseback transactions and other similar financing transactions;

(xvii) any contract existing between Seller and any Governmental Authority;

(xviii) any agreement providing for the provision by Seller to any third party of any confidential information or restricting Seller from providing such information to third parties;

(xix) any agreement restricting Seller's ownership, operation, sale, transfer, pledge or other disposition of any of the Purchased Assets;

(xx) any Real Property Lease;

(xxi) any agreement providing for production by Seller of any Product on an exclusive or requirements basis;

(xxii) any agreement with a consultant or subcontractor involving payment of consideration over the term of such agreement in excess of $100,000; or

(xxiii) any contract, agreement or instrument within the Knowledge of Seller which is otherwise material to the conduct or operation of the Business.

(b) Seller has performed in all material respects the obligations required to be performed by it under the Material Contracts, and, to the Knowledge of Seller, each of the Material Contracts is valid and binding and in full force and effect. True, correct and complete copies of all Material Contracts have been made available to Purchaser. Seller has not made or received any claim of any material default under any Material Contract, and as of the date hereof, to the Knowledge of Seller, there is no material breach or anticipated breach by any other party to any Material Contract.

3.11 **Permits**. The Listed Permits are all material permits, licenses, approvals, franchises, certificates, consents and other authorizations of any Governmental Authority that are required in order for Seller to conduct the Business as it is now being conducted. Each of the Listed Permits is in full force and effect, except for immaterial failures. To the Knowledge of Seller, Seller is not in conflict in any material respect with or in material default or violation of any Listed Permit.

3.12 **Compliance with Laws**. Seller is not in material conflict with or in material default or violation of any Law applicable to the Purchased Assets or the Business.

3.13 **Litigation**. Except as set forth on Schedule 3.13, as of the date hereof, there are no material claims, actions, suits, investigations, arbitrations, inquiries or proceedings pending or, to the Knowledge of Seller, threatened, against Seller before any Governmental Authority.

3.14 **Books and Records**. All books of account and other financial books and records of Seller directly relating to the Business are true, correct and complete in all material respects.

3.15 **Employment Matters.**

(a) Schedule 3.15 sets forth a list of all Persons who were employed by Seller, on a full time or a part time basis, as of February 1, 2003, including all such Persons who at such date were on military leave, disability leave or any other leave approved by the Company or mandated by applicable Law and a description of all compensation and benefits provided by Seller to each such Person, which list is true and complete in all material respects. Except as otherwise required by Law or as set forth on Schedule 3.15, the employment of all such employees is terminable by Seller at will.

(b) Except as set forth on Schedule 3.15: (i) Seller is not a party to any contract with any labor organization or other bargaining representative of its employees; (ii) there is no unfair labor practice charge or complaint pending or, to the Knowledge of Seller,

threatened against Seller; (iii) Seller has not experienced any labor strike, slowdown, work stoppage or similar labor controversy within the past three (3) years; (iv) Seller has paid in full to all of its employees all compensation and benefits due and payable to such employees; and (v) Seller is in material compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety and health and Seller has not received written notice of any investigation, charge or complaint against Seller relating to the Business pending before the Equal Employment Opportunity Commission or any other federal, state or local government agency or court or other tribunal regarding an unlawful employment practice.

(c) Since January 1, 2003, (i) Seller has not effectuated a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility; (ii) there has not occurred a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the Seller; and (iii) Seller has not engaged in layoffs or employment terminations sufficient in number to trigger application of the WARN Act or any similar state, local or foreign law or regulation. Except as set forth on Schedule 3.15(c), no employee of Seller has suffered an "employment loss" (as defined in the WARN Act) during the six-month period prior to the date of this Agreement.

3.16 **Employee Benefits**. Schedule 3.16 sets forth a complete and accurate list as of the date hereof of each employment, consulting, bonus, deferred compensation, incentive compensation, stock purchase, stock option, stock appreciation right or other equity-based incentive, severance or termination pay, change in control, hospitalization or other medical, life, disability or other insurance, supplemental unemployment benefits, savings, profit-sharing, pension or retirement plan, program, policy, agreement or arrangement, and each other employee or fringe benefit plan, program, policy agreement or arrangement, sponsored, maintained or contributed to or required to be contributed to by Seller for the benefit of Seller's employees, whether formal or informal and whether legally binding or not (each, a "Plan;" collectively, the "Plans"). No event has occurred in connection with any Plan that has, will or may result in any fine, penalty, assessment or other liability for which any transferee of assets of Seller may be responsible, whether by operation of Law or by contract. The transactions contemplated by this Agreement, will not, either alone or in combination with any other event or events, cause Kerr or Purchaser to incur any liabilities with respect to any Plan, including (a) any liability under Section 4980B of the Code or (b) any liability with respect to any employee of Seller that was incurred or arose on or prior to the Closing Date.

3.17 **No Finder**. Seller has not incurred any liability to any broker, finder, investment banker or any other Person for any brokerage, finder's or other fee or commission in connection with this Agreement or the Acquisition.

3.18 **Environmental Matters**. (a) Except as set forth on Schedule 3.18, (i) the Business is in material compliance with all applicable Environmental Laws, which compliance includes, but is not limited to, the possession by Seller and its Subsidiaries of all permits and other governmental authorizations required under Environmental Laws for the Business, and compliance with the terms and conditions thereof; (ii) neither Seller nor any of its Subsidiaries has received any written or, to the Knowledge of Seller, oral communication, whether from a

Governmental Authority or any other Person, that alleges that the Business is not in compliance with any Environmental Laws, and, to the Knowledge of Seller, there are no circumstances that would be reasonably expected to prevent or interfere with such compliance in the future. For purposes of this Section 3.18, "Knowledge of Seller" includes the actual knowledge of each plant manager and environmental manager for each facility or property in the Business named in Schedule 3.18.

(b) Except as set forth on Schedule 3.18, there is no Environmental Claim pending or, to the Knowledge of Seller, threatened against Seller and any of its Subsidiaries relating to the Business or, to the Knowledge of Seller, against any Person whose liability for any Environmental Claim relating to the Business Seller or any of its Subsidiaries has retained or assumed either contractually or by operation of law.

(c) Except as set forth on Schedule 3.18, to the Knowledge of Seller, there has been no release, emission, discharge, presence or disposal of any Material of Environmental Concern, and there are no actions, activities, circumstances, conditions, events or incidents that present a material threat of release, emission, discharge, presence or disposal of any Material of Environmental Concern, that would reasonably be expected to form the basis of any material Environmental Claim against Seller or any Subsidiary relating to the Business, or, to the Knowledge of Seller, against any Person whose liability for any Environmental Claim relating to the Business Seller or any of its Subsidiaries has retained or assumed either contractually or by operation of law.

(d) Except as set forth on Schedule 3.18: (i) neither Seller nor any Subsidiary is the subject, either directly or indirectly, of any Environmental Claim with respect to any on-site or off-site locations where Seller or any Subsidiary has stored, disposed or arranged for the disposal of Materials of Environmental Concern for, from or with respect to the Business, (ii) there are no underground storage tanks located on property owned or controlled by Seller or any Subsidiary for the Business, and, to the Knowledge of Seller, there are no underground storage tanks located on property otherwise used for the Business, (iii) there is no damaged asbestos contained in or forming part of any building, building component, structure or office space owned, leased or otherwise used for the Business, (iv) to the Knowledge of the Seller, there is no other asbestos contained in or forming part of any building, building component, structure or office space owned, leased or otherwise used for the Business, and (v) to the Knowledge of Seller, no polychlorinated biphenyls (PCBs) or PCB-containing items are used or stored at any property owned, used or leased for the Business.

(e) Except as set forth on Schedule 3.18, Seller has provided to Purchaser all written assessments, reports, data, results of investigations or audits and similar documents that are in the possession of or reasonably available to Seller or any Subsidiary regarding the environmental condition of the property owned, used or leased for the Business, or the compliance (or noncompliance) by Seller or any Subsidiary with any Environmental Laws relating to the Business.

(f) Except as set forth in Section 5.10 or on Schedule 3.18, Seller is not required by virtue of the transactions set forth herein and contemplated hereby, or as a condition to the effectiveness of any transactions contemplated hereby, (i) to perform a site assessment for

Materials of Environmental Concern, (ii) to remove or remediate Materials of Environmental Concern, (iii) to give notice to or receive approval from any governmental authority, or (iv) to record or deliver to any person or entity any disclosure document or statement pertaining to environmental matters.

(g) With respect to the matters disclosed in the reports listed in Schedule 3.18(g) hereto, there is no individual item or series of related items that would reasonably be expected to cause Losses greater than $200,000, or that, taken in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.19 **Taxes and Tax Returns**. Except as set forth on Schedule 3.19:

(a) Seller has timely filed or will have timely filed on its behalf (taking into account extensions to file) those Tax Returns which are currently due or, if not yet due, will timely file, or will have timely filed on its behalf (taking into account extensions to file) all Tax Returns required to be filed by it or on its behalf for all taxable periods ending on or before the Closing Date, and all such Tax Returns are, or will be when filed, true, correct and complete in all material respects;

(b) Seller has paid, or had paid on its behalf, to the appropriate Governmental Authority, or, if payment is not yet due, will pay, or will have paid, to the appropriate Governmental Authority, all Taxes due and payable for all taxable periods beginning on or before the Closing Date;

(c) except in the case of a Lien for *ad valorem* property taxes or income taxes not yet due and payable or otherwise disclosed on Schedule 3.19, there is no unpaid Tax which constitutes a Lien upon any of the Purchased Assets;

(d) Seller is not a party to any Tax allocation or Tax sharing agreement or has any liability or obligation to any Person as a result of, or pursuant to, any such allocation or agreement, except as set forth in the notes to the Audited Financials; and

(e) Seller is not a Person other than a "United States Person" within the meaning of the Code.

3.20 **Customers and Suppliers.**

(a) Schedule 3.20 lists the ten customers of Seller who, during the period December 1, 2001 to November 30, 2002, purchased the largest amount of Products from Seller, based on net sales. Since December 1, 2002, except as set forth on Schedule 3.20, there has not been any material adverse change in the business relationship of Seller with any such customer or customers. Except as set forth on Schedule 3.20, no such customer has materially reduced its purchases since December 1, 2002, or, to the Knowledge of Seller or to the actual knowledge of the salesperson responsible for the account of such customer, has advised Seller that it is (i) terminating, considering terminating, or planning to terminate its business relationship with Seller, or (ii) considering reducing or planning to reduce (other than oral statements made in the

ordinary course of business in connection with contract renewal negotiations) its future purchases from Seller by 10% or more.

(b) Since December 1, 2002, no Person who supplies resin to Seller has reduced the supply of resin available to Seller or, to the Knowledge of Seller or to the actual knowledge of the purchaser responsible for the account of such supplier, advised Seller that it is (i) terminating or intends to terminate its business relationship with Seller or (ii) reducing or intends to reduce the supply of resin available to Seller by 10% or more. Seller currently maintains sufficient resin inventory to conduct the Business as it is conducted. Seller has access to sufficient amounts of resin supply, purchasable at then prevailing market prices, necessary to conduct the Business as it is conducted.

3.21 **Inventory**. The inventory reflected in the Latest Balance Sheet is good and merchantable material, of a quality and quantity saleable in the ordinary course of Business consistent with Seller's past practice and was acquired by Seller in the ordinary course of business of the Business consistent with Seller's past practice and is carried on the books and records of Seller in accordance with GAAP.

3.22 **Insurance**. Set forth in Schedule 3.22 is a complete and accurate list as of the date hereof of all insurance policies carried by Seller (as a party, named insured or otherwise the beneficiary of coverage). All such insurance policies are in full force and effect and shall remain in full force and effect through the Closing Date. Such policies are sufficient for compliance with all requirements of Law and of all agreements to which Seller is a party, are valid, outstanding and enforceable policies, insure against risks of the kind customarily insured against and in amounts customarily carried by companies similarly situated and by companies engaged in similar businesses and owning similar properties. Neither Seller nor, to the Knowledge of Seller, any other insured party to any insurance policy, is in breach or default (including any breach or default with respect to the payment of premiums or the giving of notices) and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination or modification of any such policy. The Seller has not been denied coverage since January 1, 2000. Seller does not currently owe any deficiency amounts or Taxes for industrial insurance obligations arising under applicable state law.

3.23 **Affiliate Transactions**. Schedule 3.23 lists all agreements and arrangements and contains a summary of all transactions since January 1, 2000 and all currently proposed agreements, arrangements and transactions related to the Business and that are between Seller, on the one hand, and any current or former director, officer, shareholder or other Affiliate or Associate of Seller, or any of their respective Affiliates or Associates, or any entity in which any such Person has a direct or indirect material interest, on the other hand. All Indebtedness that is related to the Business and that is owed by any of the current or former officers, directors, shareholders or other Affiliate or Associate of Seller, or any of their respective Affiliates or Associates, are reflected in the Latest Balance Sheet.

3.24 **Questionable Payments**. Neither Seller nor any employee, officer, director, Affiliate or Associate of Seller or other Person acting on behalf of Seller, has (a) used any corporate or company funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (b) made any direct or indirect unlawful payments to

government officials or employees from corporate funds; (c) established or maintained any unlawful or unrecorded fund of corporate monies or other assets; (d) made any false or fictitious entries on the books or records of any of such corporations; (e) made any bribe, payoff, kickback or other unlawful payment; or (f) made any material favor or gift which is not, in good faith, believed by Seller to be fully deductible by Seller or Seller's consolidated group for any income tax purposes and which was, in fact, so deducted.

3.25 **Products Liability**. Except as set forth on Schedule 3.13, there are no material claims presently pending or, to the Knowledge of Seller, threatened against Seller that are (a) for products liability on account of any express or implied warranty, law, regulation or other theory or (b) for personal injury.

3.26 **No Powers of Attorney**. Seller has not granted any general or special powers of attorney or any other authorizations of third parties to act as agents for Seller except for powers of attorney granted in connection with Seller's Taxes and Tax Returns.

3.27 **Full Disclosure**. No representation or warranty by Seller in this Agreement or statement in any Schedule contains any untrue statements of a material fact or omits to state any material fact necessary, in order to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF KERR AND PURCHASER

As an inducement to Seller to enter into this Agreement and to consummate the Acquisition, each of Kerr and Purchaser jointly and severally represents and warrants to Seller as follows:

4.1 **Organization and Qualification**. Each of Kerr and Purchaser is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Kerr and Purchaser is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for failures to be so qualified or licensed and in good standing that do not have a material adverse effect on the ability of Kerr and Purchaser to consummate the transactions contemplated hereby.

4.2 **Authority Relative to this Agreement**. Each of Kerr and Purchaser has all necessary corporate or limited liability company power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and to consummate the Acquisition. The execution and delivery of this Agreement and the other Transaction Documents to which it is a party by each of Kerr and Purchaser and the consummation by Purchaser of the Acquisition have been duly and validly authorized by all necessary corporate action on the part of each of Kerr and Purchaser, and no other corporate proceedings on the part of Kerr or Purchaser are necessary to authorize this Agreement or to consummate the Acquisition. This Agreement and the other Transaction Documents to which it is a party have been or will be duly executed and delivered by each of Kerr and Purchaser and, assuming the due authorization, execution and delivery by Seller, each such agreement

constitutes a legal, valid and binding obligation of each of Kerr and Purchaser, enforceable against each of Kerr and Purchaser in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, fraudulent conveyance, reorganization or other similar Law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies (whether in a proceeding at law or in equity).

4.3 **No Conflict**. The execution and delivery of this Agreement by each of Kerr and Purchaser do not, and the performance by each of Kerr and Purchaser of its obligations hereunder and the consummation of the Acquisition will not: (a) conflict with or violate any provision of the certificate of incorporation or by-laws of Kerr or the certificate of formation or limited liability company operating agreement of Purchaser; (b) to the knowledge of Kerr and Purchaser, assuming that all filings and notifications described in Section 4.4 have been made, conflict with or violate any Law or order applicable to Kerr or Purchaser or by which Kerr or Purchaser or any of their assets or properties is bound or affected; or (c) to the knowledge of Kerr and Purchaser, result in any material breach of or constitute a material default under, or require notice or consent under, any mortgage, indenture, deed of trust, lease, contract, agreement, license or other instrument to which Kerr or Purchaser is a party or by which Kerr's or Purchaser's assets or properties are bound, or result in the creation of a material Lien on any asset or property of Kerr or Purchaser, except in the case of clauses (b) and (c), for any conflict, violation, breach or default that would not reasonably be expected to have a material adverse effect on the ability of Kerr or Purchaser to consummate the transactions contemplated hereby.

4.4 **Required Filings and Consents**. The execution and delivery of this Agreement by each of Kerr and Purchaser do not, and the performance by Kerr or Purchaser of its obligations hereunder and the consummation of the Acquisition will not, require any consent, approval, authorization or permit of, or filing by Kerr or Purchaser with or notification by Kerr or Purchaser to, any Governmental Authority, except for: (a) the filing of a Notification and Report Form pursuant to the HSR Act and the expiration or earlier termination of the applicable waiting period thereunder with respect to the Acquisition and (b) such consents, approvals, authorizations, permits and filings the failure of which to obtain would not reasonably be expected to have a material adverse effect on the ability of Kerr or Purchaser to consummate the transactions contemplated hereby.

4.5 **No Finder**. Other than an aggregate fee of $1,687,500 payable to Fremont Partners, L.L.C. and Fremont Partners III, L.L.C., which fee shall be the sole responsibility of Kerr and/or Purchaser, neither Kerr nor Purchaser has agreed to pay to any broker, finder, investment banker or any other Person a brokerage, finder's or other fee or commission in connection with this Agreement or the Acquisition.

4.6 **No Litigation.** There is no claim, action, suit or proceeding pending or, to the knowledge of Kerr and Purchaser, threatened, before any Governmental Authority that prohibits or restricts, or seeks to prohibit or restrict, the consummation of the Acquisition.

4.7 **Commitment Letters.** Kerr has provided to Seller a true and complete copy of the commitment letter received by Kerr from Wells Fargo Bank.

ARTICLE V
ADDITIONAL COVENANTS

5.1 **Conduct of Business**. From the date hereof through the Closing Date, except as contemplated by this Agreement or described on Schedule 5.1, Seller agrees to conduct Seller's operations in the ordinary course, consistent with past practice, and agrees to:

(a) use its commercially reasonable efforts to (i) preserve for the benefit of Purchaser the goodwill and the existing relationships of Seller with its customers, suppliers and others with whom Seller deals; (ii) retain the services of its key employees; (iii) perform its obligations under the Material Contracts; (iv) maintain, keep and preserve the Business and the Purchased Assets in the same condition as the date hereof, except that in the case of any Purchased Assets constituting Tangible Personal Property, ordinary wear and tear and casualty is permitted; (v) preserve intact the Business and its organization; (vi) maintain books and records in accordance with past practice; and (vii) maintain in effect the insurance coverage provided under the policies set forth in Schedule 3.22;

(b) not waive, release or cancel any material claims against third parties or material debts owing to Seller, other than customer billing reductions and write-downs made in the ordinary course of business consistent with past practice and other than in respect of claims or debts that would be Excluded Assets;

(c) not (i) grant any general increase in the compensation of officers or employees, except in accordance with pre-existing contracts or consistent with past practice; (ii) enter into any contract with any employee, officer, director, Affiliate or Associate of Seller or any Affiliate or Associate of any such Person, provided, however, that this shall not prevent Seller from hiring employees on an at-will basis to fill an opening vacated by a departing or transferring employee in the ordinary course of business, provided that the compensation being offered to the individual is consistent with other personnel in the same or a similar position; (iii) enter into any collective bargaining agreement or similar contract; (iv) enter into any agreement that requires Seller to pay any severance or termination pay (or that requires that the Seller provide a certain period of notice to an employee in advance of the effective date of termination or pay in lieu of such advance notice) to any employee, director, officer or consultant of Seller, provided that this shall not serve to prohibit Seller from paying any severance or termination pay (or pay in lieu of advance notice) which Seller was obligated to pay pursuant to any agreement, policy or practice entered into prior to the execution of this Agreement, even if the event triggering the actual obligation to pay such amounts occurs after the execution of this Agreement; (v) adopt or materially amend any employee or fringe benefit plans, agreements or arrangements, except as required pursuant to applicable Law; or (vi) engage in any work force reduction or restructuring resulting in employee layoffs triggering the notification requirements under the Worker Adjustment and Retraining Notification Act or similar applicable state or municipal statute or ordinance;

(d) not make any change in any accounting principle, method, estimate or practice, except for any such change required by reason of a concurrent change in GAAP;

(e) not (i) enter into any contract, agreement, commitment or binding understanding or arrangement requiring performance during or following a period in excess of one year or outside of the ordinary course of business consistent with past practice; or (ii) without prior consultation with

Purchaser, renew, fail to renew, or permit or not permit to be automatically renewed any material agreement, including any material customer, supplier, distributor, licensing, employment or other material contracts, to which Seller is a party (other than amendments or terminations of agreements pursuant to or contemplated by this Agreement);

(f) not (i) cancel, materially modify or materially amend any Real Property Lease or Material Contract; (ii) contract for or incur any expense in connection with opening any additional Business facility; (iii) cancel any of the Listed Permits or allow any Listed Permit to expire or not be renewed; (iv) revalue any of its material assets or any material amount of its properties, other than in the ordinary course of business consistent with past practice; or (v) sell or dispose of any of the Purchased Assets (except for the sale of inventory and the disposition of damaged or defective inventory, equipment or other material in the ordinary course of business consistent with past practice), or permit the creation of any Lien, except for Permitted Liens;

(g) not enter into or amend any agreements pursuant to which any other party is granted exclusive marketing, manufacturing or other exclusive rights of any type or scope with respect to any of its products or proprietary technology, other than exclusive rights of Seller's customers in molds, tooling and other design materials of such customers;

(h) not amend the certificate of incorporation, bylaws or similar organizational documents of Seller;

(i) not merge or consolidate with any other Person or acquire a material amount of assets or equity or debt securities from any other Person, except for purchases of supplies and capital expenditures in the ordinary course of business consistent with past practice or otherwise in accordance with Seller's projections;

(j) not commence a lawsuit, claim, action, arbitration or other administrative or judicial proceeding other than (i) for the routine collection of bills, (ii) in such cases where Seller in good faith determines that failure to commence suit would result in a material impairment of a valuable aspect of Seller's business, provided Seller consults with Purchaser prior to filing such suit, or (iii) for a breach of this Agreement;

(k) not (i) pay, discharge, or satisfy any material claim, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than in the ordinary course of business consistent with past practice; or (ii) fail to pay or otherwise satisfy (except if being contested in good faith) any material accounts payable, liabilities or obligations when due and payable;

(l) not take or fail to take any action that would cause any of the representations and warranties of Seller contained in this Agreement to be untrue in any material respect as of the Closing Date (disregarding for these purposes any materiality or Material Adverse Effect qualifier contained therein);

(m) not make any capital expenditure exceeding $200,000 individually or in the aggregate other than those set forth on Schedule 5.1(m) without the prior written consent of Kerr;

(n) not perform or take, or fail to perform or take, any action that has or is reasonably likely to have a Material Adverse Effect; or

(o) not agree or commit to do any of the foregoing provided in subsections (b) through (n).

Notwithstanding any of the foregoing, nothing herein shall be construed to prohibit or restrict any activities or transactions undertaken with respect to any of the Excluded Assets, the Retained Liabilities, or the business of Seller other than the Business, so long as, in each case, such activities or transactions will not have a negative effect on the Purchased Assets or the Business.

5.2 **Intentionally Omitted.**

5.3 **Consents, Filings and Authorizations; Efforts to Consummate**. As promptly as practicable after the date hereof, Purchaser and Seller shall make all filings and submissions under such Laws as are applicable to them or to their respective Affiliates, including the filing of a Notification and Report Form pursuant to the HSR Act and the filing of notices required by ISRA, and as may be required for the consummation of the Acquisition in accordance with the terms of this Agreement. Purchaser and Seller shall consult with each other prior to any such filing, and neither Seller nor Purchaser shall make any such filing or submission to which the other of them reasonably objects in writing. All such filings shall comply in form and content in all material respects with applicable Laws. Subject to the terms and conditions herein, each of Seller and Purchaser, without payment or further consideration, shall use its commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary, proper or advisable: (a) to cause the conditions to the obligations of the other Party to consummate the Acquisition to be satisfied as soon as reasonably practicable (including, in the case of Seller, the removal of all Liens on the Purchased Assets other than Permitted Liens) and (b) under applicable Laws, permits and orders, to consummate and make effective the Acquisition as soon as reasonably practicable, including obtaining all consents required in connection with such Party's consummation of the Acquisition. Seller and Parent (but only to the extent that Parent shall make available its Representatives who are substantially involved in the Business) shall provide Kerr and Purchaser with reasonable assistance to obtain the debt financing needed by Purchaser for the consummation of the transactions contemplated by this Agreement, subject to reimbursement by Kerr and Purchaser for any reasonable documented out-of-pocket expenses incurred by Seller or Parent in connection with the providing of such assistance. Such assistance shall include, to the extent it is commercially reasonable for Seller and Parent to do so, making appropriate Representative of Parent and Seller available to participate in informational meetings, assisting with the preparation of an information package in connection with such financing, including the syndication of any loans to be funded in connection with the transactions contemplated by this Agreement, cooperating with respect to matters relating to bank collateral to take effect as of the Closing in connection with such financing (including the pledge of the Purchased Assets by Purchaser and the obtaining of

authorizations, consents and approvals required under any Real Property Lease in order to subject the leasehold interest represented thereby to Liens in favor of any lenders providing such financing), using its commercially reasonable efforts to obtain customary "comfort" letters and legal opinions and executing and delivering such documents, certificates, agreements and other writings as shall take effect as of the Closing and as are reasonably requested in connection

therewith. Without limiting the generality of the foregoing, Purchaser shall use its commercially reasonable efforts to obtain such debt financing. Nothing herein shall require any Party to take any action that would reasonably be expected to have a material adverse effect on such Party.

5.4 **Notices of Certain Events**. Prior to the Closing Date, each of Seller and Purchaser shall promptly notify the other of:

(a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Acquisition;

(b) any material notice or other material oral or written communication from any Governmental Authority in connection with the Acquisition;

(c) any change that has a Material Adverse Effect, or could delay or impede the ability of either Seller or Purchaser to perform its obligations under this Agreement and to consummate the Acquisition;

(d) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would cause any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect at or prior to the Closing Date; and

(e) any material failure of any Party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied hereunder.

5.5 **Public Announcements**. From and after the date of this Agreement until the Closing Date, Kerr and Purchaser, on the one hand, and Seller, on the other hand, agree not to make any public announcement or other disclosure concerning this Agreement or the transactions contemplated herein without obtaining the prior consent of the other Party as to form, content and timing (such consent not to be unreasonably withheld); provided, however, that the foregoing shall not restrict (a) any Party (or Parent) from making any public announcement or disclosure as may be required by applicable Law (including the rules of any stock exchange or other self-regulated body) on advice of a nationally recognized securities law firm that such Party is reasonably obliged to make public announcements or disclosure or (b) Seller from informing its employees and agents about this Agreement and the transactions contemplated hereby, provided that Kerr and Purchaser shall be permitted reasonable opportunity to comment upon the initial proposed communication to Seller's employees and agents before release.

5.6 **Access to Information; Confidentiality**.

(a) From and after the date of this Agreement until the Closing Date, upon reasonable notice and subject to applicable Law relating to the exchange of information and to

confidentiality obligations of Seller entered into prior to the date hereof, Seller shall afford to Purchaser's Representatives access during normal business hours to the employees of Seller and to such properties, books, computer systems, records, contracts, commitments and other information of Seller relating to the Business as Purchaser may reasonably request, but excluding books, computer systems, records, contracts, commitments and information primarily related to the sale of the Business, the Excluded Assets or the Retained Liabilities. In the event that Purchaser's due diligence reveals any condition of the Real Property or the premises demised under the Real Property Leases that in Purchaser's judgment requires disclosure to any Governmental Authority, Purchaser shall immediately notify Seller thereof. In such event, Seller, and not Purchaser or any Person acting on Purchaser's behalf, shall make such disclosures to the extent Seller reasonably deems appropriate. Notwithstanding the foregoing, Purchaser may disclose matters concerning the Real Property to a Governmental Authority on written advice of a nationally-recognized law firm that Purchaser is reasonably obliged to make such disclosure if Purchaser gives Seller not less than ten (10) days prior written notice of the proposed disclosure, together with a copy of such written advice.

(b) Purchaser acknowledges that the information provided to Purchaser and its Representatives in connection with the Acquisition and this Agreement is subject to, and Purchaser shall, and shall cause its Representatives to, fully comply with the provisions of, that certain Confidentiality Agreement, dated as of February 6, 2003, between Purchaser and Seller (the "Confidentiality Agreement"), the terms of which are incorporated herein by this reference. Notwithstanding the foregoing, following the Closing Date, any information with respect to the Business that is included in the Purchased Assets shall not be subject to the Confidentiality Agreement.

(c) From and after the Closing Date, Parent, Seller and any Representatives of Parent or Seller shall maintain in confidence and not use or disclose to any third party any confidential or proprietary information regarding the business operations, product formulations, ingredients or processes, technical know-how or data, specifications, finances or other business matters of Seller which information constitutes any part of the Purchased Assets; provided, that nothing in this Section 5.6(d) shall apply to information that (i) is in the public domain, (ii) is independently developed by such Person after the Closing, or (iii) is disclosed to the recipient by a third party which has no duty of confidentiality to Purchaser or its Affiliates. Upon discovery by Parent, Seller or any of their respective Representatives that such Person is in possession of any such confidential or proprietary information, such Person shall promptly return all such information to Purchaser, without retaining any copies thereof except for copies that such Person is required to retain by applicable Law. Parent and Seller shall be responsible for ensuring the compliance of their respective Representatives with the obligations in this Section 5.6(d). If Parent, Seller or their respective Representatives receive a request or are required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or any part of such confidential or proprietary information, Parent and Seller, as the case may be, agree to, or will ensure that their respective Representatives, promptly notify Purchaser of the existence, terms and circumstances surrounding such request so that Purchaser may seek a protective order or other appropriate remedy.

(d) Notwithstanding any provision herein to the contrary, each Party and each of the respective employees, representatives and agents of each Party are hereby expressly

authorized to disclose to any and all persons, without limitation of any kind, the tax treatment and any facts that may be relevant to the tax structure of the transactions contemplated by this Agreement and the Transaction Documents, provided that the confidentiality provisions of this Agreement shall continue to

apply to the extent that any information (e.g., names of the Parties) is not relevant to understanding the tax treatment or tax structure of the transactions contemplated hereby.

5.7 **Expenses**. Except as otherwise specifically provided in this Agreement, each Party shall bear its own expenses incurred in connection with the preparation, execution and performance of this Agreement and the Acquisition, including all fees and expenses of such Party's Representatives, provided that:

(a) Purchaser shall pay all fees required in connection with the filing of the Notification and Report Form under the HSR Act; and

(b) Seller shall pay all recording fees, sales taxes, transfer taxes and similar taxes imposed upon transfer of the Purchased Assets pursuant to this Agreement.

5.8 **Title and Survey Matters**.

(a) Seller has delivered to Purchaser, and Purchaser has reviewed and approved the following: (i) the owner's title commitments identified on Schedule 5.8, as the same have been supplemented or updated prior to the dated hereof (collectively, the "Commitments") for the Real Property prepared by First American Title Insurance Company (the "Title Company"); (ii) copies of all documents supporting exceptions ("Exceptions") set forth in the Commitments; and (iii) a copy of the existing surveys for the Real Property identified on Schedule 2.1(a)(i) (collectively, the "Surveys") (such Commitments, Exceptions, and Surveys collectively, the "Title Documents"). The following matters are hereby approved by Purchaser (collectively, the "Permitted Exceptions"): (A) all exceptions to title shown on the Commitments and all matters shown on the Surveys; (B) all of the contracts, leases and other agreements listed as Items 1 through 119 on Schedule 2.1(e); (C) the Lien of non-delinquent Taxes (it being agreed by Purchaser and Seller that if any Tax is levied or assessed with respect to the Real Property for public improvements that will benefit the Real Property subsequent to the date of this Agreement and Seller has the election to pay such Tax either immediately or under a payment plan with interest, Seller may elect to pay under a payment plan, which election shall be binding on Purchaser); (D) all printed exceptions and exclusions contained in the form of the Title Policies to be issued at Closing; and (E) any matters caused or created by, or otherwise approved or consented to in writing by, Purchaser.

(b) Purchaser shall have the right to object in writing to any title matter that is not a Permitted Exception (other than any matter falling within subsection (E) of the definition of Permitted Exceptions) which may appear on supplemental title commitments or updates to the Commitments issued after the date of the respective Commitments (collectively, "Other Liens") within five (5) days after receipt thereof (together with a copy of such new exception) by Purchaser. Unless Purchaser shall timely object to such Other Liens, all such Other Liens which are set forth in any such supplemental commitments or updates shall be deemed to constitute additional Permitted Exceptions. Any exceptions which are timely objected to by Purchaser

shall be herein collectively called the "Title Objections." Seller may elect (but shall not be obligated) to remove, or cause to be removed at its expense, any Title Objections, and shall be entitled to a reasonable adjournment of the Closing (not to exceed a period of thirty (30) days) for the purpose of such removal, which removal will be deemed effected by the issuance of title insurance eliminating the Title Objections or insuring against the effect of the Title Objections; provided, however, Seller shall be obligated to remove or bond over any and all Liens for borrowed money, mechanics' and materialmen's liens, tax liens and any Liens resulting from the failure to satisfy an obligation when due, in each case affecting any Real Property, on or before the Closing Date. Seller shall notify Purchaser in writing within five (5) days after receipt of Purchaser's notice of Title Objections whether Seller elects to remove the same. If Seller fails to remove any Title Objections prior to the Closing, Purchaser may elect either to: (i) terminate this Agreement or (ii) waive such Title Objections, in which event such Title Objections shall be deemed additional "Permitted Exceptions" and the Closing shall occur as herein provided (A) with a reduction of or credit against the Purchase Price as the Parties may agree or (B) subject to Purchaser's right to indemnification pursuant to Section 9.2.

(c) If on the Closing Date there are any Title Objections which Seller has elected to remove, Seller may use any portion of the Purchase Price to satisfy the same; provided Seller shall either deliver to Purchaser at Closing instruments sufficient to cause such Title Objections to be released of record, together with the cost of recording or filing such instruments, or cause the Title Company to omit as an exception, the same, without any additional cost to Purchaser, whether such insurance is made available in consideration of payment, bonding, indemnity of Seller or otherwise.

5.9 **No Recording**. The provisions of this Agreement shall not constitute a Lien on the Real Property. Neither Purchaser nor any of its Representatives shall record or file this Agreement or any notice or memorandum hereof in any public records. If Purchaser breaches the foregoing provision, this Agreement shall, at Seller's election, terminate.

5.10 **Compliance with ISRA.** Seller shall obtain an ISRA Approval and comply with all terms thereof as required to permit the transfer of the Leased Manufacturing Facility, as contemplated herein, including giving all required and timely notices of this Agreement to the NJDEP. Purchaser shall cooperate as necessary and appropriate with Seller and its Representatives and with representatives of NJDEP (collectively, the "ISRA Parties") to facilitate Seller's compliance with the ISRA process, including executing required documents in connection therewith as Seller may reasonably request. If the ISRA Approval requires the ISRA Parties to continue compliance activities at the Leased Manufacturing Facility after the Closing, Purchaser shall accept the transfer of the Leased Manufacturing Facility subject to the right of the ISRA Parties, and any other person who may be ordered to do so by NJDEP, to enter upon the Leased Manufacturing Facility and conduct such engineering, sampling, monitoring and other remediation activities ("Remediation Activities") as may be necessary to complete the ISRA process. Seller shall give prompt notice to Purchaser prior to entering the Leased Manufacturing Facility to conduct Remediation Activities and shall use commercially reasonable efforts to prevent interference with Purchaser's business and operations in performing Remediation Activities. Purchaser shall use commercially reasonable efforts to minimize interference with Remediation Activities. Seller's obligation to perform Remediation Activities shall continue to ensure full compliance with all requirements of ISRA and the NJDEP to obtain

full closure and approval by NJDEP under ISRA and in accordance with any applicable requirements of the Real Property Lease for the Leased Manufacturing Facility.

5.11 **Release of Parent Guaranties**. Purchaser and Kerr shall use their commercially reasonable efforts to assist Parent in its effort to receive a full and unconditional release of its obligations under each guaranty by Parent of any obligations of Seller, including (i) the Guaranty dated September 11,

1986, executed by Parent in favor of Keystone Operating Partnership, L.P., to secure the obligations of Seller in respect of the Leased Manufacturing Facility and (ii) the Guaranty, dated October 31, 1997, executed by Parent in favor of Keystone New Jersey, L.P. (formerly Morris Cranbury Associates, LLC) to secure the obligations of Seller in respect of a leased warehouse located at 1244 Cranbury South River Road, Cranbury, New Jersey; provided that if it is necessary to leave any such guaranty in place in order to obtain the consent of any Lessor under Section 2.8, then such guaranty shall remain in place and shall not be released. In the event that, as of the Closing Date, Parent shall not have received such a release under either or both such Guaranties, Kerr shall (i) indemnify Parent for any amount paid by Parent pursuant to the terms of such Guaranty or Guaranties and (ii) not renew, or permit Purchaser to renew, the relevant lease if such Guaranty would remain outstanding upon such renewal.

5.12 *** Adjustments.**

(a) If (A) the * by Purchaser resulting from * to the * listed in * during the twelve months ending December 31, * is * than (B) the * by Seller resulting from * to the * listed in * during the twelve months ending May 31, *, then Seller shall pay to Purchaser an amount equal to the * of (i) * (ii) the * of the amount described in * the amount described in *. From and after the Closing, Purchaser shall use its reasonable commercial efforts to * with, and * from * to, the * listed in *.

(b) If (A) the * by Purchaser resulting from * to the * listed in * during the twelve months ending December 31, * Seller's * from * to the * listed in * during the twelve months ending May 31, * (adjusted for the * from *) is * than (B) the * by Seller resulting from * to the * listed in * during the twelve months ending May 31, *, then Seller shall pay to Purchaser an amount equal to the * of (i) * (ii) the * of the amount described in * the amount described in *; provided that no payment hereunder shall * the amount described in *. Seller has not and shall not * to, and has not and will not * any * with, the * listed in * that would reasonably be expected to result in * to the * listed in * under such proposal or agreement at a *. From and after the Closing, Purchaser shall use its reasonable commercial efforts to * the * with, and * from * to, the * listed in *.

5.13 **Price Decrease Notification.** Seller shall notify Purchaser within three Business Days after offering any price decrease in excess of 1% to any customer, which notice shall

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* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

include the name of the customer, the products for which the decrease was made and the amount of the decrease.

ARTICLE VI
CONDITIONS TO CLOSING

6.1 **Conditions to the Obligations of Seller and Purchaser**. The obligations of Seller and Purchaser to consummate the Acquisition are subject to the satisfaction or, if permitted by applicable Law, waiver of the following conditions on or prior to the Closing Date:

(a) No Injunction. No provision of any applicable Law shall be in effect and no interlocutory, appealable or final order shall have been issued that prohibits or restricts the consummation of the Acquisition.

(b) HSR. All waiting periods applicable to the consummation of the Acquisition under the HSR Act shall have expired or been terminated, and no action shall have been instituted by the Department of Justice or the Federal Trade Commission challenging or seeking to enjoin the consummation of the Acquisition, which action shall not have been withdrawn or terminated.

(c) ISRA Approval. Seller shall have obtained an ISRA Approval authorizing the transfer of the Leased Manufacturing Facility.

6.2 **Conditions to Obligation of Seller**. The obligation of Seller to consummate the Acquisition is subject to the fulfillment at or prior to the Closing of the following conditions, any one or more of which may be waived in whole or in part by Seller:

(a) Accuracy of Representations and Warranties. Each of the representations and warranties of Purchaser contained in this Agreement shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) when made and on and as of the Closing as if made at and as of the Closing; provided, that representations and warranties which address matters only as of a certain date shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) as of such certain date.

(b) Performance. Purchaser shall have performed and complied in all material respects with all agreements, obligations and covenants required to be performed or complied with by it on or prior to the Closing Date.

(c) Deliveries to Seller. Purchaser shall have delivered to Seller the following:

(i) A certificate, dated the Closing Date, of an executive officer of Purchaser confirming the matters set forth in Section 6.2(a) and (b);

(ii) A certificate, dated the Closing Date, of the Secretary or Assistant Secretary of Purchaser certifying, that attached or appended to such certificate: (A) is a true and

correct copy of the certificate of formation of Purchaser, and all amendments thereto; (B) is a true copy of all limited liability company actions taken by it, including actions of its sole member, authorizing the consummation of the Acquisition and the execution, delivery and performance of this Agreement and

each of the Transaction Documents to be delivered by Purchaser pursuant hereto; and (C) are the names and signatures of its duly elected or appointed officers who are authorized to execute and deliver this Agreement and the other Transaction Documents to which Purchaser is a party;

(iii) A counterpart of the Assignment and Assumption Agreement duly executed by Purchaser;

(iv) A certificate of good standing from the appropriate state agency, dated as of a recent date, certifying that Purchaser is in good standing in the State of Delaware;

(v) A counterpart of a transition services agreement, in the form attached as Exhibit D (the "Transition Services Agreement"), duly executed by Purchaser;

(vi) A counterpart of a supply agreement in the form mutually agreed upon by Kerr and Parent (the "Supply Agreement"), duly executed by Purchaser and Kerr; and

(vii) A certificate setting forth the "Base Purchase Price" (the "Base Purchase Price").

(d) Real Property Deliveries. Purchaser shall have delivered to Seller the following:

(i) A counterpart of an assignment and assumption of each of the Real Property Leases in the form attached as Exhibit F or in the form required by the applicable Real Property Lease (each, an "Assignment of Lease"); and

(ii) If applicable, duly completed and executed real estate transfer tax declarations.

(e) Withholding Tax Estimate. At least three Business Days before the Closing Date, Purchaser shall have delivered to Seller a good faith estimate of the Withholding Taxes.

(f) Consents. Seller shall have obtained the third party consents to the assignment of the contracts listed on Schedule 6.2(f).

6.3 **Conditions to Obligation of Purchaser**. The obligation of Kerr and Purchaser to consummate the Acquisition is subject to the fulfillment at or prior to the Closing of the following conditions, any one or more of which may be waived in whole or in part by Kerr and Purchaser:

(a) Accuracy of Representations and Warranties. Each of the representations and warranties of Seller contained in this Agreement shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers,

which shall be true and correct as stated) when made and on and as of the Closing as if made at and as of the Closing; provided, that representations and warranties which address matters only as of a certain date shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) as of such certain date.

(b) Performance. Seller shall have performed and complied in all material respects with all agreements, obligations and covenants required to be performed or complied with by it on or prior to the Closing Date.

(c) No Material Adverse Effect. During the period from the date hereof to the Closing Date, there shall not have occurred and be continuing any Material Adverse Effect.

(d) Deliveries by Seller. Seller shall have delivered to Purchaser the following:

(i) A certificate, dated the Closing Date, of an executive officer of Seller confirming the matters set forth in Section 6.3(a), (b) and (c);

(ii) A certificate, dated the Closing Date, of the Secretary or Assistant Secretary of Seller certifying, among other things, that attached or appended to such certificate: (A) is a true and correct copy of the charter and by-laws of Seller, and all amendments thereto; (B) is a true copy of all corporate actions taken by it, including resolutions of its board of directors and sole stockholder, authorizing the consummation of the Acquisition and the execution, delivery and performance of this Agreement and each of the Transaction Documents to be delivered by Seller pursuant hereto; and (C) are the names and signatures of its duly elected or appointed officers who are authorized to execute and deliver this Agreement and the other Transaction Documents to which Seller is a party;

(iii) A counterpart of the Assignment and Assumption Agreement duly executed by Seller;

(iv) Certificates of good standing from the appropriate state agencies, dated as of a recent date, certifying that Seller is in good standing in the State of Delaware and in each jurisdiction in which Seller is qualified to do business as a foreign corporation;

(v) An affidavit certifying, under penalties of perjury, Seller's United States taxpayer identification number and that Seller is not a "foreign person" within the meaning of Section 1445(b)(2) of the Code and Section 18662 of the California Revenue and Taxation Code;

(vi) Any certificates, affidavits or forms necessary to comply with or to reduce state withholding Taxes.

(vii) A counterpart of the Transition Services Agreement, duly executed by Seller;

(viii) A counterpart of the Supply Agreement, duly executed by Parent;

(ix) A bill of sale for the Tangible Personal Property, in the form attached as Exhibit G, duly executed by Seller;

(x) Original certificates of title to all vehicles included in the Purchased Assets, executed by Seller to the extent necessary to reflect the assignment by Seller to Purchaser of such assets; and

(xi) Valid and effective assignment documentation, in form and substance reasonably acceptable to Purchaser, of any rights to the Intellectual Property that are included in the Purchased Assets.

(e) Deliveries by Parent. Parent shall have delivered or caused to be delivered by one of its Affiliates to Purchaser valid and effective assignment documentation, in form and substance reasonably acceptable to Purchaser, of such Person's rights in and to the Affiliate Mark listed as Item 49 on Schedule 2.2(g).

(f) Real Property Deliveries. Seller shall have delivered to Purchaser the following:

(i) Special warranty deeds, grant deeds or quitclaim deeds, in the form attached as Exhibit H, duly executed by Seller, in favor of Purchaser, in recordable form, transferring good and valid fee simple title to the Real Property to be conveyed by Seller to Purchaser hereunder, subject only to Permitted Exceptions, and such affidavits or other customary instruments as the Title Company or Purchaser may reasonably request;

(ii) A counterpart of each Assignment of Lease duly executed by Seller; and

(iii) If applicable, duly completed and executed real estate Tax declarations.

(g) Title Company Deliveries. The Title Company shall have delivered to Purchaser (and if applicable, Purchaser's lenders) an owner's (or lender's) form of title insurance policy (or a mark-up commitment therefor) in the form of the Title Commitments (each, a "Title Policy"), in the amount of the Purchase Price applicable to the Real Property insured by such Title Policy, insuring that fee simple title to the Real Property is vested in Purchaser or its nominee subject only to the Permitted Exceptions.

(h) Consents. Seller shall have obtained the third party consents to the assignment of the contracts listed on Schedule 6.3(h) and the pledges of leasehold interests as reasonably requested by Kerr and Purchaser pursuant to Section 5.3.

(i) Financing. Kerr and Purchaser shall have received the financing contemplated by either or both of the commitment letters referred to in Section 4.7.

(j) Liens. Seller shall have removed all Liens on the Purchased Assets other than Permitted Liens.

ARTICLE VII
TERMINATION; EFFECT OF TERMINATION

7.1 **Termination of Agreement**. This Agreement may be terminated and the Acquisition may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Purchaser;

(b) after September 15, 2003, by either Seller or Purchaser, if the Closing has not occurred by that date; provided, however, that Seller shall have the right to extend such date in accordance with Section 5.8(b); provided, further, that such date shall be extended to 120 days after a second request, if any, by the Department of Justice or the Federal Trade Commission in connection with the filing of a Notification and Report Form pursuant to the HSR Act; and provided, further, that the right to terminate this Agreement pursuant to this Section 7.1(b) shall not be available to a Party whose action or failure to act has been a principal cause of or resulted in the failure of the Acquisition to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(c) by Seller, upon written notice, if any representation or warranty of Purchaser shall have become untrue such that the condition set forth in Section 6.2(a) would not be satisfied or if Purchaser shall have materially breached any agreement, obligation or covenant such that the condition set forth in Section 6.2(b) would not be satisfied; provided that if the inaccuracy in Purchaser's representations and warranties or the breach of Purchaser's agreement, obligation or covenant is curable through the exercise of Purchaser's commercially reasonable efforts, then Seller may not terminate this Agreement for thirty (30) days after Seller shall have given written notice of such inaccuracy or breach to Purchaser (so long as Purchaser continues to use commercially reasonable efforts to cure the inaccuracy or breach during such period), it being understood that Seller may not terminate this Agreement if Purchaser cures such inaccuracy or breach within such thirty (30) day period;

(d) by Purchaser, upon written notice if any representation or warranty of Seller shall have become untrue such that the condition set forth in Section 6.3(a) would not be satisfied or if Seller shall have materially breached any agreement, obligation or covenant such that the condition set forth in Section 6.3(b) would not be satisfied; provided that if the inaccuracy in Seller's representations and warranties or the breach of Seller's agreement, obligation or covenant is curable through the exercise of Seller's commercially reasonable efforts, then Purchaser may not terminate this Agreement for thirty (30) days after Purchaser shall have given written notice of such inaccuracy or breach to Seller (so long as Seller continues to use commercially reasonable efforts to cure such inaccuracy or breach during such period), it being understood that Purchaser may not terminate this Agreement if Seller cures such inaccuracy or breach within such thirty (30) day period;

(e) by Purchaser or Seller if there shall be any Law that makes consummation of the Acquisition illegal or otherwise prohibited, or if any order of any Governmental Authority enjoining Purchaser or Seller from consummating the Acquisition is entered and such order shall have become final and nonappealable; or

(f) by Purchaser, to the extent permitted by Section 5.8(b) if Seller fails to remove any Title Objections.

7.2 **Effect of Termination; Right to Proceed**.

(a) In the event that Seller can demonstrate by a preponderance of the evidence that, prior to the execution of this Agreement by the Parties, Richard Hofmann, Lawrence Caldwell, Robert Rathsam, Timothy Guhl, Kathy Kruse or Megan Petry had actual knowledge of any facts and circumstances that would constitute a breach of or inaccuracy in any representation or warranty of Seller contained in Article III hereof, and such facts and circumstances were not within the Knowledge of Seller as of the execution of this Agreement by the Parties, then Purchaser shall not be entitled to seek indemnification for such breach or inaccuracy pursuant to Section 9.2(a).

(b) In the event that this Agreement is terminated pursuant to Section 7.1(a), (b), (e) or (f), all further obligations of the Parties shall terminate without further liability of either Party (except for obligations under this Section 7.2, Sections 5.5, 5.6 and 5.7 and Articles I, IX and X); provided that termination shall not relieve any party of liability for any breach of this agreement occurring before such termination.

(c) Subject to Section 7.2(a), upon termination of this Agreement for breach pursuant to Section 7.1(c) or (d): (i) the breaching Party shall be liable to the non-breaching Party for any breach of any representation, warranty, covenant or agreement of such breaching Party existing at the time of termination and (ii) the non-breaching Party may seek such remedies, including damages against the breaching Party, with respect to any such breach as are provided in this Agreement or as are otherwise available at Law or in equity. The agreements contained in Sections 3.17, 4.5, 5.5, 5.6, 5.7, 10.5 and 10.6 and Articles I, IX and X shall survive the termination hereof.

(d) In the event that a condition precedent to a Party's obligation is not met, nothing contained herein shall be deemed to require any Party to terminate this Agreement, rather than to waive such condition precedent and proceed with the Acquisition.

ARTICLE VIII
POST-CLOSING COVENANTS

8.1 **Certain Transitional Matters**. From and after the Closing Date:

(a) Purchaser shall have the right and authority to collect for Purchaser's own account all accounts or notes receivable which are included in the Purchased Assets;

(b) Purchaser shall have the right and authority to retain and endorse without recourse the name of Seller on any check or any other evidence of indebtedness received by Purchaser on account of any accounts receivable which are included in the Purchased Assets;

(c) Seller shall promptly transfer and deliver to Purchaser any cash or other property, if any, that Seller may receive which constitutes Purchased Assets; and

(d) Purchaser shall promptly transfer and deliver to Seller any cash or other property, if any, that Purchaser may receive which constitutes Excluded Assets.

8.2 **Transfer and Retention of Transferred Employees; Employee Benefits**. On the Closing Date, Seller shall terminate all Persons who are employed by Seller as of such date, excluding only those Persons who are on short- or long-term disability leave as of such date (the "Terminated Employees"). Purchaser shall offer employment, from and after the Closing Date, on an at-will basis (but shall not be restricted from entering into employment agreements with any Terminated Employee) to all Terminated Employees. In addition, if any Person who was on short- or long-term disability leave from Seller returns to work for Seller on a date that is within six months of the Closing Date, and provides the proper medical authorization to resume work, Purchaser shall offer employment to such Person as of the date of such Person's return to work; provided that Purchaser shall not be obligated to offer employment to more than 20 such employees, taking into account all such employees hired by Purchaser from Seller or any Affiliate of Seller. Employees of Seller who are not offered employment with Purchaser as of the Closing Date shall continue as employees of Seller and to be covered under Seller's employee benefit plans and programs in accordance with the terms of such plans and programs. Seller shall cash-out each Terminated Employee with respect to such Terminated Employee's accrued and unused vacation as of the Closing Date. On and after the Closing Date, Purchaser shall arrange for each employee of Seller who becomes an employee of Purchaser or any Affiliate of Purchaser (each, a "Transferred Employee") to participate in such active counterpart employee benefit plans, programs, and arrangements in which similarly situated employees of Purchaser and its Affiliates participate from time to time (the "Counterpart Plans"), in accordance with the eligibility criteria thereof, provided that such Transferred Employees shall: (a) receive full credit for years of service prior to the Closing Date for all purposes for which such service was recognized under the Plans, provided that such crediting of service shall not result in the duplication of benefits (such as pension benefits, accrued vacation, etc.), and (b) to the extent Counterpart Plans are maintained by Purchaser or its Affiliates, participate in such Plans on terms no less favorable, in the aggregate, than those offered to similarly-situated employees of the Purchaser and its Affiliates. Purchaser or its Affiliates shall give credit under those of its Counterpart Plans that are welfare benefit plans for all co-payments, deductibles and out-of-pocket maximums satisfied by Transferred Employees (and their eligible dependents) in respect of the calendar year in which the Closing occurs. Purchase or its Affiliates shall waive all pre-existing conditions (to the extent waived under the applicable Plans of the Seller) that would otherwise be applicable to Transferred Employees under the Counterpart Plans in which Transferred Employees of the Seller or Affiliates become eligible to participate on or following the Closing Date. Purchaser will retain the Transferred Employees for such period as may be necessary, when considered together with any employees discharged by Seller prior to Closing, to avoid, with respect to any facility operated by Seller in the Business: (a) a "plant closing," "mass layoff," "layoff," "relocation" or "termination" of "employees" (as those terms are defined in the Worker Adjustment and Retraining Notification Act of 1988 or California Labor Code Section 1400, et seq., effective January 1, 2003); or (b) any liability to Seller under any Law which would reasonably be expected to arise from any actual or anticipated termination of employees by Purchaser after Closing, provided Seller has provided Purchaser (i) by July 1, 2003 with an accurate list of employees terminated by Seller

within 180 days prior to and including such date and (ii) on the Closing Date with an accurate list of employees terminated by Seller within 180 days prior to and including the Closing Date. No assets, liabilities or reserves relating to any Seller Plan will be transferred in connection with this Agreement from Seller or its Affiliates or any Seller Plan to Purchaser or its Affiliates or any employee benefit plan of Purchaser or its Affiliates; provided, however, that the plan administrator of an applicable Counterpart Plan shall accept rollover contributions from an appropriate Plan to the extent such rollover contributions comply with the terms of such Counterpart Plan and the plan administrator of such Counterpart Plan reasonably concludes that the contribution is a valid rollover contribution.

8.3 **Non-Competition Covenant.** Seller and Parent shall not, directly or indirectly, within North America, South America and Europe, for a period of five (5) years after the Closing Date, engage in the business of manufacturing, marketing or distributing to third parties specialty plastic bottles and other containers and plastic shoe parts primarily for the vitamin, mineral and supplement, food and spice, healthcare, personal care, health and beauty, pharmaceutical, household chemical, automotive, industrial and footwear markets; provided, however, that the foregoing shall not restrict (a) Seller's and Parent's ownership, operation or control of any entity acquired by Seller or Parent after the Closing Date (an "Acquired Entity") if the gross revenues of such entity attributable to products, the production, marketing or sale of which would otherwise violate the terms of this Section 8.3, (i) do not exceed five percent (5%) of the net revenues of the Acquired Entity for the twelve (12) month period ending on the last day of the last fiscal quarter preceding the date of the definitive agreement providing for such acquisition for which such results of operation are available and (ii) do not exceed $25,000,000, or (b) the direct or indirect ownership by Seller of five percent (5%) or less of any entity whose securities have been registered under the Securities Act of 1933 or under the Securities Exchange Act of 1934 or the securities Laws of any other jurisdiction. For the avoidance of doubt, nothing in this Section 8.3 shall restrict Parent or any Affiliate of Parent from developing, purchasing, marketing, distributing or otherwise dealing in any products to be sold to third parties by Parent or such Affiliate which incorporate such plastic bottles and other containers. Further, for a period of five (5) years after the Closing Date, Seller and Parent shall not, directly or indirectly solicit, request, cause or induce Lois A. Stevens, Donald E. Parodi, Robert J. Kiely, Jr. or Thomas J. Dunn to leave the employ of or otherwise terminate his or her relationship with the Purchaser nor shall Seller hire or seek to hire any such person while he or she is employed by the Purchaser. Seller acknowledges that Purchaser shall be entitled to seek equitable relief from a court of competent jurisdiction restraining any breach by Seller of this Section 8.3.

8.4 **Trademarks, Etc.** As promptly as practicable after the Closing, Purchaser shall revise trademarks and product literature, change signage and stationery and otherwise discontinue use of all intellectual property constituting Excluded Assets and all Affiliate Marks (which, for purposes of the limitations set forth in this Section 8.4, shall not include the Affiliate Mark listed as Item 49 on Schedule 2.2(g)) (collectively, "Excluded Intellectual Property"); provided, however, that for a period of forty-five (45) days from the Closing Date, Purchaser may consume stationery and similar supplies and may sell inventory on hand as of the Closing Date which contain such Excluded Intellectual Property so long as such items are, as promptly as practicable after the Closing Date, overstamped or otherwise appropriately indicate that the Business is then owned by Purchaser. Without limiting the foregoing, Purchaser shall, and shall cause each of its Affiliates to, (i) no later than the close of business on the business day

following the Closing Date, discontinue affixing in any manner whatsoever such Excluded Intellectual Property to any Product and (ii) no later than the close of business on the forty-fifth (45^{th}) calendar day after the Closing Date, discontinue selling, shipping and delivering any product having such Excluded Intellectual Property affixed thereto in any manner whatsoever.

8.5 **Tax Covenants**.

(a) From and after the Closing, each of Seller and Purchaser shall cooperate with the other in connection with Tax matters relating to the Business and the Purchased Assets, including: (i) the preparation and filing of Tax Returns; (ii) the determination of a Party's liability for Taxes and the amounts of any Taxes due or of a Party's right to a refund of Taxes and the amount of any such refund; (iii) the examination of Tax Returns; and (iv) the conduct of any administrative or judicial proceedings in respect of Taxes assessed or proposed to be assessed. Subject to Section 5.6(b), such cooperation shall include each Party making all information and documents in its possession relating to the Business and Purchased Assets available to the other Party.

(b) The Parties shall retain all Tax Returns, schedules and work papers, and all material records and other documents relating thereto, until the expiration of the applicable statute of limitations (including, to the extent notified by any Party, any extension thereof) of the Tax period to which such Tax Returns and other documents and information relate. Each Party shall also make available to the other Party, as reasonably requested and available, personnel (including officers, directors, employees and agents) responsible for preparing, maintaining and interpreting information and documents relevant to Taxes, and personnel reasonably required as witnesses or for purposes of providing information or documents in connection with any administrative or judicial proceedings relating to Taxes. Any information or documents provided under this Section 8.5(b) shall be kept confidential by the party receiving such information or documents, except as may otherwise be necessary in connection with the filing of Tax Returns or in connection with administrative or judicial proceedings relating to Taxes.

(c) In the event any Governmental Authority with responsibility for Taxes informs Seller or Purchaser of any notice of proposed audit, claim, assessment or other dispute concerning an amount of Taxes with respect to which the other Party may incur liability hereunder, the Party so informed shall promptly notify the other Party of such matter. Such notice shall contain factual information (to the extent known) describing any asserted Tax liability in reasonable detail and shall be accompanied by copies of any notice or other documents received from such Governmental Authority with respect to such matter. If an Indemnified Party has knowledge of an asserted Tax liability with respect to a matter for which it is to be indemnified hereunder and such Party fails to provide the Indemnifying Party prompt notice of such asserted Tax liability, then (i) if the Indemnifying Party is precluded from contesting the asserted Tax liability in any forum as a result of the failure to give prompt notice, the Indemnifying Party shall have no obligation to indemnify the Indemnified Party for Taxes arising out of such asserted Tax liability, and (ii) if the Indemnifying Party is not precluded from contesting the asserted Tax liability in any forum, but such failure to provide prompt notice results in a monetary detriment to the Indemnifying Party, then any amount which the Indemnifying Party is otherwise required to pay the Indemnified Party pursuant to this Agreement shall be reduced by the amount of such detriment.

(d) Seller and Purchaser agree that Purchaser has purchased substantially all the property used in Seller's trade or business, and in connection therewith, Purchaser shall employ Transferred Employees who immediately before the Closing Date were employed in such trade or business by Seller. Accordingly, Seller shall provide Purchaser with all necessary and accurate payroll records for the calendar year which includes the Closing Date.

Furthermore, pursuant to Rev. Proc. 96-60, 1996-2 C.B. 399, if Purchaser elects, each Party shall comply with the requirements provided in the alternative procedure under Rev. Proc. 96-60, pursuant to which Purchaser shall furnish a Form W-2 to each employee employed by Purchaser who had been employed by Seller disclosing all wages and other compensation paid for such calendar year, and Taxes withheld therefrom, and Seller shall be relieved of the responsibility to do so. If Purchaser does not elect such alternative procedure, each Party shall comply with the requirements provided in the standard procedure under Rev. Proc. 96-60.

8.6 **Records; Retention**. Following the Closing, each of Purchaser and Seller shall afford the other and its Representatives reasonable access during normal business hours to, and (if permitted by law) the right to make copies and extracts from, the books, records and other data in Purchaser's or Seller's possession relating to the Business, the Purchased Assets, the Excluded Assets, the Assumed Liabilities and the Retained Liabilities with respect to periods prior to the Closing Date, at the requesting Party's expense, to the extent that such access may be requested by Purchaser or Seller for any business purpose, including to facilitate the investigation, litigation and final disposition of any claims which may have been or may be made against Purchaser, Seller or their respective Affiliates. Purchaser and Seller agree that for a period of seven (7) years following the Closing Date, such Party shall not destroy or otherwise dispose of any such books, records or data in its possession without (a) giving the other at least sixty (60) days' prior written notice of such intended disposition and (b) offering to deliver to the other, at the other's expense, custody of any or all of the books, records and data that such Party intends to destroy.

8.7 **Designated Reporting Person**. In order to assure compliance with the requirements of Section 6045 of the Code (and any related reporting requirements) and Section 18643 of the California Revenue and Taxation Code (the "R&T Code"), the Parties agree as follows:

(a) If the Title Company executes a statement in writing, in form and substance reasonably acceptable to the Parties, pursuant to which the Title Company agrees to assume all responsibilities for information reporting required under Section 6045(e) of the Code and Section 18643 of the R&T Code, Seller and Purchaser shall designate the Title Company as the person to be responsible for all information reporting under Section 6045(e) of the Code (the "Reporting Person") and Section 18643 of the R&T Code. If the Title Company refuses to execute a statement pursuant to which it agrees to be the Reporting Person, Seller and Purchaser agree to appoint another third party mutually satisfactory to the Parties as the Reporting Person.

(b) Seller and Purchaser hereby agree:

(i) to provide to the Reporting Person all information and certifications regarding such Party, as reasonably requested by the Reporting Person or otherwise required to be provided by a Party under Section 6045 of the Code; and

(ii) to provide to the Reporting Person such Party's taxpayer identification number and a statement (on IRS Form W-9 or an acceptable substitute form, or on any other form the Code might require and/or any form requested by the Reporting Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such Party to the Reporting Person is correct.

(c) Each Party agrees to retain a copy of this Agreement for not less than four (4) years from the end of the calendar year in which the Closing occurs and to produce such copy to the IRS upon a valid request therefor.

8.8 **Further Assurances**. Seller hereby agrees, without further consideration, to execute and deliver following the Closing such other instruments of transfer and take such other action as Purchaser or its counsel may reasonably request in order to put Purchaser in possession of, and to vest in Purchaser, good and valid title to the Purchased Assets in accordance with this Agreement and to consummate the Acquisition. Purchaser hereby agrees, without further consideration, to take such other action following the Closing and execute and deliver such other documents as Seller or its counsel may reasonably request in order to consummate the Acquisition in accordance with this Agreement.

ARTICLE IX
SURVIVAL; INDEMNIFICATION

9.1 **Expiration of Representations and Warranties**. The representations and warranties in this Agreement (other than the representations and warranties contained in Sections 3.1, 3.2, 3.3(a) and (b), 3.8(e), 3.15(b) and (c), 3.16, 3.17, 3.18, 3.19, 3.23, 3.24 and 3.25) shall survive the Closing until the second anniversary of the Closing Date, at which time they shall terminate; provided that (i) the representations and warranties contained in Sections 3.1, 3.2, 3.3(a) and (b), 3.8(e), 3.17 and 3.23 shall survive the Closing indefinitely and (ii) the representations and warranties contained in Sections 3.15(b) and (c), 3.16, 3.18, 3.19, 3.24 and 3.25 shall survive the Closing until ninety (90) days after the expiration of the relevant statute of limitations.

9.2 **Indemnification by Seller**. Subject to the limitations set forth in Section 7.2(a) and this Article IX, Seller shall indemnify, defend, save and hold Kerr, Purchaser, and their respective Affiliates and the Representatives of any of them (collectively, "Purchaser Indemnitees") harmless from and against any and all Losses incurred by any Purchaser Indemnitee (except to the extent included in the Assumed Liabilities) arising out of:

(a) Seller's breach or the failure of any representation or warranty contained in this Agreement (such breach or failure to be determined without giving effect to any qualifications for "Knowledge," "materiality" or "Material Adverse Effect" contained in any representation or warranty) and any action, suit or proceeding arising out of such breach or failure;

(b) Seller's breach of any covenant or agreement made by Seller in or pursuant to this Agreement and any action, suit or proceeding arising out of such breach;

(c) Seller's failure to pay, perform or discharge when due any of the Retained Liabilities and any action, suit or proceeding arising out of such failure;

(d) Seller's operation of the Business or any event relating to or arising out of Seller's assets (including the Purchased Assets), in each case prior to the Closing, except with respect to the Assumed Liabilities;

(e) Taxes assessed on, or expenses attributable to, any of the Real Property or the Real Property Leases after the Closing Date for the period prior to the Closing Date (such that Seller shall have borne all real property Taxes and all expenses attributable thereto allocable to the period prior to the Closing Date), in each case net of any amount previously paid under Section 2.5(c). Notwithstanding the foregoing, an increase in a Real Property Tax assessment as a result of the Acquisition, including the California Supplemental Tax Bill and any similar Taxes, shall not be prorated under this Section 9.2(e) or Section 2.5(c) and shall be the sole liability of Purchaser;

(f) a third party claim that the conduct of the Business as it is currently conducted infringes U.S. Patent No. *, or any other patent claiming priority over U.S. Patent No. *; or

(g) a third-party claim by * or any other Person alleging that the conduct of the Business as it is currently conducted with respect to the items at issue in this lawsuit gives rise to liability under the theories alleged in *.

Without limiting the generality of the foregoing, Seller shall indemnify, defend and hold harmless Purchaser Indemnitees from and against all Losses asserted against, resulting to, imposed on, sustained, incurred or suffered by any of Purchaser Indemnitees, directly or indirectly (except to the extent included in the Assumed Liabilities), by reason of or resulting from (i) any claim, action, suit, investigation, arbitration, inquiry, proceeding or litigation involving the Business, Seller or any of Seller's agents or assets (including the Purchased Assets), in each case arising from events on or prior to the Closing Date but excluding (A) all Assumed Liabilities and (B) Losses to the extent arising from or related to any post-Closing breach or default by Purchaser of or under any Assumed Contract, (ii) any liability of Purchaser Indemnitees arising from the non-compliance with any applicable bulk transfer laws or Article 6 of the Uniform Commercial Code, (iii) any Environmental Claim or pollution or threat to human health or the environment that is related in any way to the management, use, control, ownership or operation of the Business, including all on-site and off-site activities involving Materials of Environmental Concern, and that occurred, existed, arises out of conditions or circumstances that occurred or existed, or was caused, in whole or in part, on or before the Closing Date, whether or not the pollution or threat to human health or the environment is described in Schedule 3.18, (iv) any and all obligations or liabilities under covenants relating to employment, other than those obligations and liabilities expressly undertaken or assumed by Purchaser hereunder, (v) any and all Taxes of Seller for all taxable periods, whether before, on or after the Closing Date (except to the extent allocated to Purchaser with respect to the Real Property or the Real Property Leases pursuant to Sections 2.5(c) and 9.2(e) of this Agreement), (vi) any and all employee benefits or

* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

employment related liabilities relating to any employee benefit plan that is sponsored, maintained or contributed to or required to be contributed to by Seller or any Affiliate of Seller, (vii) arising from any conflict, violation, breach or default by Seller described in Section 3.3(a) or 3.3(b) (without giving effect to any qualifications described in the Schedules or for "Knowledge," "materiality" or "Material Adverse Effect" contained therein), (viii) Seller's failing to obtain any consents, approvals, authorizations, permits and filings pursuant to Section 3.4(c) (without giving effect to any qualifications for "Knowledge," "materiality" or "Material Adverse Effect" contained therein) and (ix) failing to remove any Title Objections pursuant to Section 5.8(b).

9.3 **Indemnification by Kerr and Purchaser**. Subject to the limitations set forth in this Article IX, Kerr and Purchaser shall jointly and severally indemnify, defend, save and hold Seller, Seller's Affiliates and the Representatives of any of them (collectively, "Seller Indemnitees") harmless from and against any and all Losses incurred by any Seller Indemnitee arising out of:

(a) Kerr's or Purchaser's breach of any representation or warranty contained in this Agreement and any action, suit or proceeding arising out of such breach;

(b) Kerr's or Purchaser's breach of any covenant or agreement made by Kerr or Purchaser in or pursuant to this Agreement (such breach or failure to be determined without giving effect to any qualifications for "Knowledge," "materiality" or "Material Adverse Effect" contained in any representation or warranty) and any action, suit or proceeding arising out of such breach;

(c) Kerr's or Purchaser's failure to pay, perform or discharge when due any of the Assumed Liabilities and any action, suit or proceeding arising out of such failure;

(d) any Assumed Liabilities, except for Losses to the extent attributable to a breach by Seller of any Assigned Contract prior to Closing; or

(e) following the Closing, Purchaser's operation of the Business or any event relating to or arising out of Purchaser's assets (including the Purchased Assets).

9.4 **Notice of Claims**. Except as provided in Section 8.5, if any Purchaser Indemnitee or Seller Indemnitee (an "Indemnified Party") believes that it has suffered or incurred any Losses for which it is entitled to indemnification under this Article IX, such Indemnified Party shall so notify the Party from whom indemnification is being claimed (the "Indemnifying Party") with reasonable promptness and reasonable particularity in light of the circumstances then existing. If any claim is instituted by or against a third party with respect to which any Indemnified Party intends to claim indemnification under this Article IX, such Indemnified Party shall promptly notify the Indemnifying Party of such claim. The notice provided by the Indemnified Party to the Indemnifying Party shall describe the claim (the "Asserted Liability") in reasonable detail and shall indicate the amount (or an estimate) of the Losses that have been or may be suffered by the Indemnified Party. The failure of an Indemnified Party to give any notice required by this Section 9.4 shall not affect any of the Indemnified Party's rights under this Article IX or

otherwise except and to the extent that such failure is prejudicial to the rights or obligations of the Indemnifying Party.

9.5 **Opportunity to Defend Third Party Claims**. If any action is brought by a third party against any Indemnified Party, the Indemnifying Party shall be entitled: (a) to participate in such action and (b) to elect, by written notice delivered to the Indemnified Party within thirty (30) days after the Indemnifying Party's receipt of notice of the Asserted Liability, to defend, compromise or settle such action, with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall cooperate with respect to any such participation, defense, settlement or compromise. The Indemnified Party shall have the right to employ its own counsel in any such case, but the fees and expenses of the Indemnified Party's counsel shall be at the sole expense of the Indemnified Party unless: (i) the Indemnifying Party shall have authorized in writing employment of such counsel at the expense of the Indemnifying Party; (ii) the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party to defend such action within thirty (30) days after the Indemnifying Party received notice of the Asserted Liability; (iii) the Indemnified Party shall have reasonably concluded, based upon written advice of counsel, that there are defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Party with respect to such different defenses); or (iv) representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding, in any of which events the fees and expenses of one additional counsel shall be borne by the Indemnifying Party. The Indemnifying Party shall not settle or compromise any action or consent to the entry of a judgment that: (a) does not provide for the claimant to give an unconditional release to the Indemnified Party in respect of the Asserted Liability; (b) involves relief other than monetary damages; (c) places restrictions or conditions on the operation of the business of the Indemnified Party or any of its Affiliates; or (d) involves any finding or admission of liability or of any violation of Law. The Indemnifying Party shall not be liable for any settlement of any claim or action effected without its written consent; provided that such consent is not unreasonably withheld. After payment of any Asserted Liability by the Indemnifying Party, the Indemnified Party, if requested by the Indemnifying Party, shall assign to the Indemnifying Party all rights the Indemnified Party may have against any applicable account debtor or other responsible Person in respect of the Asserted Liability. If the Indemnifying Party chooses to defend any Asserted Liability, the Indemnified Party shall make available to the Indemnifying Party any books, records or other documents within its control that are necessary or appropriate for such defense. Any expenses of any Indemnified Party for which indemnification is available hereunder shall be paid upon written demand therefor.

9.6 **Limitation of Liability**.

(a) Seller shall not be obligated to provide any indemnification under Section 9.2(a) except to the extent the aggregate amount for which it is obligated to provide such indemnification exceeds the sum of $1,000,000, after which Seller shall be obligated to pay the entire amount, beginning with the first dollar of Loss, which is payable pursuant to Section 9.2(a); provided, however, that De Minimis Losses shall not count towards such

$1,000,000 amount unless and until the aggregate amount of all De Minimis Losses exceeds $100,000; provided, further, that in the case of any breach of any representation or warranty under Sections 3.1, 3.2, 3.3, 3.6, 3.8(e), 3.16, 3.17, 3.18, 3.19, 3.23 and 3.24, respectively, Seller shall be obligated to provide indemnification for the entire amount of such Loss, beginning with the first dollar of Loss, without regard to whether such loss is a De Minimis Loss and without regard to whether the aggregate amount for which the obligation to provide indemnification under this Article IX exceeds the sum of $1,000,000; provided, further, that in no event shall the aggregate liability of Seller under this Article IX with respect to Seller's breach of its representations and warranties exceed one-half of the Purchase Price other than for breach of any representation or warranty contained in Sections 3.1, 3.2, 3.3, 3.6, 3.8, 3.16, 3.17, 3.18, 3.19, 3.23 and 3.24, which liability and obligation to indemnify shall be without limitation.

(b) Kerr and Purchaser shall not be obligated to provide any indemnification under Section 9.3(a) except to the extent the aggregate amount for which they are obligated to provide such indemnification exceeds the sum of $1,000,000, after which Kerr and Purchaser shall be obligated to pay the entire amount, beginning with the first dollar of Loss, which is payable pursuant to Section 9.3(a); provided, however, that De Minimis Losses shall not count towards such $1,000,000 amount unless and until the aggregate amount of all De Minimis Losses exceeds $100,000; provided, further, that in the case of any breach of any representation or warranty under Sections 4.1, 4.2, 4.3(a) or (b), and 4.5, respectively, Kerr and Purchaser shall be obligated to provide indemnification for the entire amount of such Loss, beginning with the first dollar of Loss, without regard to whether such loss is a De Minimis Loss and without regard to whether the aggregate amount for which the obligation to provide indemnification under this Article IX exceeds the sum of $1,000,000; provided, further, that in no event shall the aggregate liability of Kerr and Purchaser under this Article IX with respect to Kerr's and Purchaser's breach of their representations and warranties exceed one-half of the Purchase Price other than for breach of any representation or warranty contained in Sections 4.1, 4.2, 4.3(a) or (b), and 4.5, which liability and obligation to indemnify shall be without limitation; provided, further, that the preceding clause shall not limit Purchaser's obligation or liability with respect to the Assumed Liabilities.

(c) The provisions of this Article IX shall be the exclusive remedy available to the Seller Indemnitees and the Purchaser Indemnitees after the Closing in the event any such Person shall have a claim with respect to the matters covered by this Agreement, other than with respect to claims involving intentional misrepresentation, fraud, or willful misconduct.

9.7 **Effect of Taxes and Insurance**. The amount of any Losses for which indemnification is provided under this Article IX (a) shall be reduced to take account of any net Tax benefit realized, in the year of the Tax payment or the next succeeding taxable year and shall be increased to take account of any net Tax detriment realized, in the year of the Tax payment or the next succeeding taxable year arising from the incurrence or payment of any such Losses or from the receipt of any such indemnification payment determined on a with or without basis and (b) shall be reduced by the insurance proceeds received and any other amount, if any, recovered from third parties by the Indemnified Party (or its Affiliates) with respect to any Losses. If any Indemnified Party shall have received any indemnification payment pursuant to this Article IX with respect to any Loss, such Indemnified Party shall, upon written request by the Indemnifying Party, assign to such Indemnifying Party (to the extent of the indemnification payment) any

claim which such Indemnified Party may have under any applicable insurance policy which provides coverage for such Loss. Such Indemnified Party shall reasonably cooperate (at the expense of the Indemnifying Party) to collect under such insurance policy. If any Indemnified Party shall have received any payment pursuant to this Article IX with respect to any Loss and has or shall subsequently have received insurance proceeds or other amounts with respect to such Loss, then such Indemnified Party shall promptly pay over to the Indemnifying Party the amount so recovered (after deducting the amount of the expenses incurred by it in procuring such recovery), but not in excess of the amount previously so paid by the Indemnifying Party.

9.8 **Treatment of Indemnity Payments; No Duplication**. Any indemnification payment made pursuant to this Article IX shall be treated, to the extent permitted or required by law, by all Parties as an adjustment to the Purchase Price. Notwithstanding anything contained in this Article IX to the contrary, Purchaser shall not be entitled to indemnification hereunder to the extent that any Losses were (i) included in the calculation of the Working Capital Adjustment or the Final Closing Capital Expenditures (excluding losses resulting from Seller's breach of any payment or other obligation to any counterparty with respect to any Capital Expenditures) or (ii) offset by an adjustment pursuant to Section 3.3 or 3.4 of the Supply Agreement or Section 5.12 hereof.

ARTICLE X
GENERAL

10.1 **Notices**. All notices, requests, claims, demands or other communications that are required or may be given pursuant to the terms of this Agreement or the other Transaction Documents shall be in writing and shall be deemed to have been duly given: (a) when delivered, if delivered by hand; (b) one (1) Business Day after transmitted, if transmitted by a nationally-recognized overnight courier service; (c) when sent by facsimile transmission, if sent by facsimile transmission which is confirmed; or (d) three (3) Business Days after mailing, if mailed by registered or certified mail (return receipt requested), in each case to the Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 10.1):

(a) If to Seller:

Setco, Inc.
18 Loveton Circle
Sparks, Maryland 21152
Attention: Corporate Secretary
Telephone: (410) 771-7563
Fax: (410) 527-8228

With a simultaneous copy to:

Piper Rudnick LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600
Attention: Theodore Segal, Esq.
Telephone: (410) 580-3000
Fax: (410) 580-3001

(b) If to Purchaser:

Kerr Acquisition Sub I, LLC
c/o Kerr Group Inc.
500 New Holland Avenue
Lancaster, Pennsylvania 17602-2104
Attention: Lawrence C. Caldwell
Telephone: (717) 390-8439

With a simultaneous copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1100
Palo Alto, California 94301
Attention: Kenton J. King, Esq.
Telephone: (650) 470-4500
Fax: (650) 470-4570

(c) If to Kerr:

Kerr Group, Inc.
500 New Holland Avenue
Lancaster, Pennsylvania 17602-2104
Attention: Lawrence C. Caldwell
Telephone: (717) 390-8439

With a simultaneous copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1100
Palo Alto, California 94301
Attention: Kenton J. King, Esq.
Telephone: (650) 470-4500
Fax: (650) 470-4570

10.2 **Severability**. If any provision of this Agreement for any reason shall be held to be illegal, invalid or unenforceable, such illegality shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been

included herein.

10.3 **Assignment; Binding Effect; Benefit**. No assignment by any Party of its rights nor delegation by any Party of its obligations under this Agreement or any Transaction Document shall be permitted unless Kerr and Purchaser, on the one hand, or Seller, on the other hand, consents in writing thereto, except that Purchaser may (a) assign, in its sole discretion, any

of or all of its rights, interests and obligations under this Agreement to Kerr or to any direct or indirect wholly-owned Subsidiary of Kerr, and (b) pledge this Agreement and any of its rights and obligations hereunder in whole or in part to any other Person, in each case without the consent of Seller, provided in each case that no such assignment shall relieve Purchaser of any of its obligations hereunder. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Notwithstanding anything in this Agreement to the contrary, expressed or implied, this Agreement is not intended to confer any rights or remedies on any Person other than the Parties and their respective successors and permitted assigns.

10.4 **Incorporation of Exhibits and Schedules**. All Exhibits and Schedules attached hereto and referred to herein are hereby incorporated herein and made a part of this Agreement for all purposes as if fully set forth herein. The disclosures made by the Parties in any Schedule to this Agreement shall apply with the same force and effect to each other Section hereof to which it is reasonably apparent that such disclosures should apply.

10.5 **Governing Law; Submission to Jurisdiction**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK OTHER THAN CONFLICT OF LAWS PRINCIPLES THEREOF DIRECTING THE APPLICATION OF ANY LAW OTHER THAN THAT OF NEW YORK. COURTS WITHIN THE STATE OF NEW YORK (LOCATED WITHIN NEW YORK CITY) WILL HAVE JURISDICTION OVER ALL DISPUTES BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS. THE PARTIES HEREBY CONSENT TO AND AGREE TO SUBMIT TO THE JURISDICTION OF SUCH COURTS. EACH OF THE PARTIES WAIVES, AND AGREES NOT TO ASSERT IN ANY SUCH DISPUTE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (A) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS; (B) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS; OR (C) ANY LITIGATION COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM.

10.6 **Waiver of Jury Trial**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION OR AGREEMENT CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

10.7 **Interpretation**. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

10.8 **Counterparts**. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different Parties in separate

counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

10.9 **Entire Agreement**. This Agreement (including the Schedules and Exhibits attached hereto) and the other Transaction Documents executed in connection with the consummation of the Acquisition contain the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, written or oral, with respect thereto.

10.10 **Waivers and Amendments**. This Agreement may be amended, superseded, canceled, renewed or extended only by a written instrument signed by all of the Parties. The provisions hereof may be waived only in writing signed by the Party or Parties waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

[*Signatures appear on the next page*]

EXECUTION

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the date first above written.

KERR GROUP, INC.

By: /s/ Richard D. Hofmann
Name: Richard D. Hofmann
Title: President & CEO

KERR ACQUISITION SUB I, LLC

By: /s/ Richard D. Hofmann
Name: Richard D. Hofmann
Title: President & CEO

Signature Page 1 of 3 to
Asset Purchase Agreement, dated as of June 26, 2003, among
Kerr Group, Inc., Purchaser and Setco, Inc.

SETCO, INC.

By: /s/ Robert G. Davey
Name: Robert G. Davey
Title: President

Signature Page 2 of 3 to
Asset Purchase Agreement, dated as of June 26, 2003, among
Kerr Group, Inc., Purchaser and Setco, Inc.

GUARANTY

Parent hereby guarantees the prompt payment by Seller of Seller's indemnification obligations under Section 9.2 of this Agreement. If Seller defaults in the payment of any such indemnification obligation, Parent shall pay to Purchaser or the applicable Purchaser Indemnitee any damages, costs and expenses that such Person is entitled to recover from Seller by reason of Seller's default. Parent acknowledges that the bankruptcy of Seller shall not relieve Parent of its obligations under this Guaranty. Parent further agrees to the provisions of 5.3 (Consents, Filings and Authorizations; Efforts to Consummate), 5.6 (Access to Information; Confidentiality), 8.3 (Non-Competition Covenant) and the last three sentences of Section 3.5 (Financial Statements) of this Agreement.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Robert G. Davey
Name: Robert G. Davey
Title: Executive Vice President

Signature Page 3 of 3 to
Asset Purchase Agreement, dated as of June 26, 2003, among
Kerr Group, Inc., Purchaser and Setco, Inc.

ASSET PURCHASE AGREEMENT

among

KERR GROUP, INC.,

KERR ACQUISITION SUB II, LLC,
as Purchaser,

and

TUBED PRODUCTS, INC.,
as Seller

Dated as of June 26, 2003

TABLE OF CONTENTS

EXHIBITS

SCHEDULES

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of June 26, 2003 among KERR GROUP, INC., a Delaware corporation ("Kerr"), KERR ACQUISITION SUB II, a wholly-owned limited liability company ("Purchaser"), and TUBED PRODUCTS, INC., a Maryland corporation ("Seller").

RECITALS

Seller engages in the business of developing, manufacturing, marketing and distributing specialty molded closures and flexible plastic packaging primarily for the healthcare, personal care, health and beauty, pharmaceutical, household chemical, automotive, industrial and dentifrice industries (the "Business"). Subject to the terms and conditions set forth herein, Seller desires to sell, convey, transfer, assign and deliver to Purchaser, and Purchaser desires to purchase and acquire from Seller, all of Seller's right, title and interest in and to all of the Purchased Assets, as defined herein (the "Acquisition").

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 **Definitions**. As used herein, the following terms shall have the following meanings:

"Accounts Payable" means normal trade payables associated with the ongoing operations of the business, including liabilities relating to sales allowances, customer rebates, third party royalty payments and commissions, and pro-card accruals; provided that the disputed Manpower International, Inc. payable shall not be deemed to be an "Account Payable".

"Acquisition" has the meaning given to such term in the Recitals.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. The Affiliates of Seller include the Persons listed on Schedule 1.1(a).

"Affiliate Marks" means the service marks, trademarks, trade names and domain names used by Seller in the operation of the Business and owned by or licensed to an Affiliate of Seller, as listed on Schedule 2.2(g).

"Agreement" means this Asset Purchase Agreement.

"Asserted Liability" has the meaning given to such term in Section 9.4.

"Assigned Contracts" has the meaning given to such term in Section 2.1(e).

"Assignment and Assumption Agreement" has the meaning given to such term in Section 2.5(b)(ii).

"Assignment of Lease" has the meaning given to such term in Section 6.2(d)(i).

"Associate" means, as to any Person, (a) any trust or other estate in which such Person has a substantial beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity, and (b) any family member or spouse of such Person, or any family member of such spouse, or any individual who has the same home as such Person or who is a director or officer of such Person or any of its parents or Subsidiaries.

"Assumed Liabilities" has the meaning given to such term in Section 2.3.

"Audited Financials" has the meaning given to such term in Section 3.5.

"Base Purchase Price" has the meaning given to such term in Section 6.2(c)(vii).

"Business" has the meaning given to such term in the Recitals.

"Business Day" means any day other than a Saturday, Sunday or a day on which banks in New York City or San Francisco, California, are authorized or obligated by applicable Law to close.

"Capital Expenditures" means Seller's actual capital expenditures properly classified as property, plant and equipment in accordance with GAAP (using, to the extent permitted by GAAP, the practices, procedures and methods historically used by Seller), accrued during the period beginning on December 1, 2002 and ending on the earlier of August 31, 2003 and the Closing Date; provided, however, that if the Closing does not occur on or prior to August 31, 2003 as a result of (i) postponement of the Closing by Seller pursuant to Section 5.8(b), (ii) a second request under the HSR Act under Section 7.1(b), or (iii) breach by Seller of its obligations hereunder, then Capital Expenditures shall accrue during the period beginning on December 1, 2002 and ending on the Closing Date. For the avoidance of doubt, items set forth on Capital Expenditures Schedule 5.1(m) shall be deemed to be Capital Expenditures for purposes of this Agreement.

"Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f).

"Closing" has the meaning given to such term in Section 2.7.

"Closing Balance Sheet" means a balance sheet of Seller, prepared pursuant to Section 2.5(d) setting forth the Purchased Assets and the Assumed Liabilities as of the Closing Date to the extent such assets and liabilities would be shown on a balance sheet of Seller prepared in accordance with GAAP, using, to the extent permitted by GAAP, the practices,

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procedures and methods used by Seller in preparing the Audited Financials, which balance sheet shall be prepared by Purchaser.

"Closing Capital Expenditures" has the meaning given to such term in Section 2.5(f)(ii).

"Closing Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f)(ii).

"Closing Capital Expenditures Objection Notice" has the meaning given to such term in Section 2.5(f)(ii).

"Closing Date" has the meaning given to such term in Section 2.7.

"Closing Proration" has the meaning given to such term in Section 2.5(c).

"Code" means the Internal Revenue Code of 1986, as amended.

"Commitments" has the meaning given to such term in Section 5.8(a).

"Computer Software" means all computer programs other than computer programs designed for use in the preparation of Tax Returns, and all documentation relating to the foregoing.

"Counterpart Plans" has the meaning given to such term in Section 8.2.

"Current Assets" shall mean the current assets of the Business that are among the Purchased Assets set forth in the Closing Balance Sheet.

"Current Liabilities" shall mean the current liabilities of the Business that are among the Assumed Liabilities set forth in the Closing Balance Sheet.

"De Minimis Losses" means a Loss resulting from a single set of facts or circumstances that does not exceed $10,000.

"Environmental Claim" means any claim, action, cause of action, investigation or notice by any person or entity alleging potential liability (including potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, or release into the environment, of any Material of Environmental Concern at any location, whether or not owned or operated by Seller, (b) any violation, or alleged violation, of any Environmental Law, and (c) the presence of fungus or mold in any building owned or operated by Seller.

"Environmental Laws" means all Laws relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata, and natural resources), including laws and regulations relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern.

"Estimated Capital Expenditures" has the meaning given to such term in Section 2.5(f)(i).

"Exceptions" has the meaning given to such term in Section 5.8(a).

"Excluded Assets" has the meaning given to such term in Section 2.2.

"Excluded Contracts" has the meaning given to such term in Section 2.2(g).

"Final Closing Capital Expenditures" has the meaning given to such term in Section 2.5(f)(ii).

"Final Closing Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f)(ii).

"GAAP" means generally accepted accounting principles in the United States in effect from time to time, consistently applied.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity (including a court exercising executive, legislative, judicial, regulatory, administrative functions of, or pertaining to, government).

"Guarantee Obligations" has the meaning given to such term in Section 3.10(a)(vi).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person at any date shall include (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (b) any other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (c) all obligations of such Person under any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee, (d) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (e) all liabilities secured by any Lien on property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, and (f) all Guarantee Obligations of such Person.

"Indemnified Party" has the meaning given to such term in Section 9.4.

"Indemnifying Party" has the meaning given to such term in Section 9.4.

"Independent Accounting Firm" means PricewaterhouseCoopers or such other independent accounting firm of national reputation as is selected by mutual agreement of Seller and Purchaser; provided, that if PricewaterhouseCoopers declines to serve and Seller and Purchaser cannot agree, the Independent Accounting Firm shall be selected by the American Arbitration Association in accordance with its then-prevailing rules; provided, further, that any services to be performed by PricewaterhouseCoopers or such firm selected by the American

Arbitration Association shall be performed by professionals who (i) have not previously performed any services for any of the Parties, Parent or their respective Affiliates and (ii) are based in an office of such firm that has not previously been the primary office from which services for any of the Parties, Parent or their respective Affiliates have been performed.

"Initial Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f)(i).

"Intellectual Property" means, collectively, the Listed Intellectual Property and the Other Intellectual Property.

"IRS" means the United States Internal Revenue Service.

"Kerr" has the meaning given to such term in the preamble of this Agreement.

"Knowledge of Seller" means the actual knowledge of a particular fact or other matter being possessed as of the pertinent date by any of Robert G. Davey, Paul C. Beard, W. Geoffrey Carpenter, Tony Imbraguglio, Jim Dunn, Stephen Rafter, Craig Berger, James Farley, Linda Santos and CJ Nusom.

"Latest Balance Sheet" has the meaning given to such term in Section 3.6.

"Latest Balance Sheet Date" has the meaning given to such term in Section 3.6.

"Law" means any federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, requirement, specification, determination, decision, opinion or interpretation issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

"Lien" means any mortgage, lien, claim, pledge, charge, equitable interest, right-of-way, easement, encroachment, security interest, preemptive right, right of first refusal or similar restriction or right, option, judgment, title defect or encumbrance of any kind.

"Listed Intellectual Property" has the meaning given to such term in Section 2.1(g).

"Listed Permits" has the meaning given to such term in Section 2.1(f).

"Losses" means any costs, payments, Taxes, losses, claims, damages and expenses whatsoever, including court costs and reasonable counsel and other professional fees and expenses.

"Material Adverse Effect" means any change or effect that, individually or taken together with all other such changes or effects that have occurred prior to the date of determination of the Material Adverse Effect, is materially adverse to the ability of Seller to achieve its projections or to the Business, assets, liabilities, financial condition or results of operations of Seller considered as a whole; provided, however, that in no event shall any of the following, alone or in

combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been, or will be, a Material Adverse Effect: (a) changes in general economic conditions or changes generally affecting the industry in which Seller operates (which changes do not affect Seller in a materially disproportionate manner); or (b) changes resulting from the loss, diminution or disruption, whether actual or threatened, of existing or prospective employee, customer, distributor or supplier relationships as to which Seller furnishes reasonable evidence that such changes have resulted from the announcement that Seller entered into this Agreement.

"Material Contracts" has the meaning given to such term in Section 3.10(a).

"Materials of Environmental Concern" means chemicals, pollutants, contaminants, wastes, toxic substances or hazardous substances listed, regulated, defined or included under Environmental Laws, including petroleum and petroleum products, asbestos or asbestos-containing materials or products, polychlorinated biphenyls, lead or lead-based paints or materials, and radon.

"Other Intellectual Property" means trade secrets and know-how, if any, owned by Seller and used by Seller in the operation of the Business as currently conducted, including trade secrets and know-how relating to the technology, systems and processes identified as such on Schedule 2.1(g). Other Intellectual Property does not include patents, copyrights, service marks, service names, trademarks, trade names or domain names (or any applications therefor).

"Other Liens" has the meaning given to such term in Section 5.8(b).

"Parent" means McCormick & Company, Incorporated, a Maryland corporation.

"Party" means Seller, Purchaser or Kerr, as the context requires, and the term "Parties" means, collectively, Seller, Purchaser and Kerr.

"Permitted Exceptions" has the meaning given to such term in Section 5.8(a).

"Permitted Lien" means: (a) any Lien imposed by Law for Taxes, assessments or governmental charges that are not yet delinquent and remain payable without penalty or that are being contested in good faith by appropriate proceedings; (b) any carrier's, warehousemen's, mechanic's, materialmen's, repairmen's or other like Lien imposed by Law, arising in the ordinary course of business and securing obligations that are not overdue by more than forty-five (45) days or are being contested in good faith by appropriate proceedings; (c) any pledge or deposit made in the ordinary course of business in compliance with workers' compensation, unemployment insurance or other social security Laws or other statutory obligations of Seller; (d) any cash deposit or right of set-off to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds, government contracts and other obligations of a like nature, in each case in the ordinary course of business; (e) any Lien arising by operation of Law; and (f) any Permitted Exception.

"Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, syndicate, person (including a "person" as

defined in Section 13(d)(3) of the Securities Exchange Act of 1934), trust, association, entity or government or political subdivision, agency or instrumentality of a government.

"Plan" or "Plans" have the meanings given to such terms in Section 3.16.

"Pro Forma Revenues" has the meaning given to such term in Section 3.5.

"Product" has the meaning given to such term in Section 3.10(a)(ix).

"Purchase Price" has the meaning given to such term in Section 2.5(a).

"Purchase Price Objection Notice" has the meaning given to such term in Section 2.5(d).

"Purchased Assets" has the meaning given to such term in Section 2.1.

"Purchaser" has the meaning given to such term in the preamble of this Agreement.

"Purchaser Indemnitee" has the meaning given to such term in Section 9.2.

"Real Property" has the meaning given to such term in Section 2.1(a).

"Real Property Leases" has the meaning given to such term in Section 2.1(a).

"Registered Intellectual Property Rights" has the meaning given to such term in Section 3.9(a).

"Representative" means, with respect to either Party, any of such Party's directors, officers, employees, attorneys, accountants or other agents.

"Retained Liabilities" has the meaning given to such term in Section 2.4.

"Security Deposits" means the full amount of any and all deposits made by or on behalf of Seller.

"Seller" has the meaning given to such term in the preamble of this Agreement.

"Seller Indemnitee" has the meaning given to such term in Section 9.3.

"Subsidiary" means, with respect to Seller, any corporation, partnership, limited partnership, limited liability company or other legal entity of which Seller (either alone or through or together with any other subsidiary) owns, directly or indirectly, a majority of the stock or other equity interests.

"Supply Agreement" has the meaning given to such term in Section 6.2(c)(vi).

"Surveys" has the meaning given to such term in Section 5.8(a).

"Tangible Personal Property" has the meaning given to such term in Section 2.1(b).

"Target Capital Expenditures" means * million multiplied by the quotient of (x) the number of days actually elapsed from December 1, 2002 through and including the applicable date provided in the definition of Capital Expenditures in this Section 1.1; divided by (y) 365.

"Target Working Capital" means the difference of (A) the product of (i) the sum of the net sales (which shall be net of discounts, allowances and other, similar adjustments used to calculate the Pro Forma Revenues, consistently applied) of Seller for the three full calendar months immediately preceding the Closing Date multiplied by *, multiplied by (ii) * minus (B) the lower of (i) * and (ii) the sum of accrued customer rebates, accrued commissions (third parties) and customer royalties as of the Closing Date.

"Tax Return" means any return, report, statement, form or other documentation (including any additional or supporting material and any amendments or supplements) filed or maintained, or required to be filed or maintained, with respect to or in connection with the calculation, determination, assessment or collection of any Taxes.

"Taxes" means: (a) any and all taxes, fees, levies, duties, tariffs, imposts and other charges of any kind, imposed by any Governmental Authority, including: (i) taxes or other charges on, measured by, or with respect to income, franchise, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth; (ii) taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value-added or gains taxes; (iii) license, registration and documentation fees; and (iv) customs duties, tariffs and similar charges; (b) any liability for the payment of any amounts of the type described in (a) as a result of being a member of an affiliated, combined, consolidated or unitary group for any taxable period; (c) any liability for the payment of amounts of the type described in (a) or (b) as a result of being a transferee of, or a successor in interest to, any Person or as a result of an express or implied obligation to indemnify any Person; and (d) any and all interest, penalties, additions to tax and additional amounts imposed in connection with or with respect to any amounts described in (a), (b) or (c).

"Terminated Employee" has the meaning given to such term in Section 8.2.

"Title Company" has the meaning given to such term in Section 5.8(a).

"Title Documents" has the meaning given to such term in Section 5.8(a).

"Title Objections" has the meaning given to such term in Section 5.8(b).

"Title Policy" has the meaning given to such term in Section 6.3(g).

"Transaction Documents" means, collectively, this Agreement and each of the other agreements and instruments to be executed and delivered by either or both of the Parties in connection with the consummation of the Acquisition.

"Transferred Employee" has the meaning given to such term in Section 8.2.

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* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

"Transition Services Agreement" has the meaning given to such term in Section 6.2(c)(v).

"WARN Act" means the Worker Adjustment and Retraining Notification Act.

"Withholding Taxes" has the meaning given to such term in Section 2.5(b).

"Working Capital" shall mean Current Assets minus Current Liabilities, (prepared in accordance with GAAP, using, to the extent permitted by GAAP, the accounting principles, methodologies, procedures and classifications used by Seller in preparing the Audited Financials).

"Working Capital Adjustment" has the meaning given to such term in Section 2.5(d).

1.2 **Rules of Construction**. The definitions in Section 1.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "but not limited to." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. All Exhibits and Schedules attached to this Agreement shall be deemed incorporated herein by reference as if fully set forth herein. Words such as "herein," "hereof," "hereto," "hereby" and "hereunder" refer to this Agreement and to the Schedules and Exhibits, taken as a whole. Except as otherwise expressly provided herein: (a) any reference in this Agreement to any agreement shall mean such agreement as amended, restated, supplemented or otherwise modified from time to time; (b) any reference in this Agreement to any Law shall include corresponding provisions of any successor Law and any regulations and rules promulgated pursuant to such Law or such successor Law; and (c) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. Neither the captions to Sections or subdivisions thereof nor the Table of Contents shall be deemed to be a part of this Agreement.

ARTICLE II
PURCHASE AND SALE OF PURCHASED ASSETS

2.1 **Purchased Assets**. Subject to the terms and conditions of this Agreement and in reliance upon the representations, warranties, covenants and agreements of the Parties contained herein, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller, free and clear of all Liens other than Permitted Liens (except with respect to the Real Property, subject only to Permitted Exceptions), all of Seller's right, title and interest in and to the following assets, properties, rights and interests of Seller as of the date hereof and those acquired after the date hereof and on or before the Closing Date, except for those assets, properties, rights and interests that are set forth in Section 2.2 as being Excluded Assets (collectively, the "Purchased Assets"):

(a) all the real property and interests in real property described on Schedule 2.1(a)(i) and such as are required to make the statement in the second sentence of Section 3.8(a) true, together with all buildings, fixtures, facilities and other improvements

located on such real property (collectively, the "Real Property"), and the leasehold estates, including any Security Deposits relating thereto, described on Schedule 2.1(a)(ii) and such as are required to make the statement in the first sentence of Section 3.8(b) true, under which Seller is a lessee (collectively, the "Real Property Leases");

(b) all the machinery, equipment, tools, furniture, computer hardware, materials, leasehold improvements, computing and telecommunications equipment and other items of tangible personal property owned by the Seller or (to the extent assignable) leased by Seller or by Affiliates of Seller and used in the operation of the Business on the Closing Date, including those listed or described on Schedule 2.1(b), together with any express or implied warranty by the manufacturer, seller or lessor of any such item or component part thereof, to the extent such warranties may be assigned without consent or any requisite consent is obtained (collectively, the "Tangible Personal Property");

(c) all inventories of Seller, including all finished goods, work in process, supplies and raw materials;

(d) (i) all trade accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment; (ii) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes; and (iii) any claim, remedy or other right related to any of the foregoing;

(e) all the contracts, leases, licenses, purchase orders, commitments and other binding arrangements of Seller, including those listed or described on Schedule 2.1(e) ("Assigned Contracts");

(f) all the permits, licenses, approvals, franchises, certificates, consents and other authorizations of any Governmental Authority issued to or held by Seller, including those listed or described on Schedule 2.1(f), and such as are required to make the statement in the first sentence of Section 3.11 true (collectively, the "Listed Permits"), to the extent they may be legally transferred by agreement;

(g) all the patents, copyrights, service marks, trademarks, trade names and domain names (and all registrations and applications therefor) owned by or licensed to Seller and used, held for use or planned to be used in connection with products currently under active development, in each case, by Seller in the operation of the Business, including those listed or required to be listed on Schedule 2.1(g), and such as are required to make the statement in the first sentence of Section 3.9(a) true (the "Listed Intellectual Property"), together with the Other Intellectual Property;

(h) all the data, records, files, manuals, blueprints and other documentation of Seller, in each case related to the Purchased Assets and used, held for use or planned to be used in connection with products currently under active development, in each case, by Seller in the operation of the Business, including: (i) service and warranty records; (ii) sales promotion materials, creative materials, art work, photographs, public relations and advertising material, studies, reports, correspondence and other similar documents and records, whether in electronic form or otherwise; (iii) all client, customer and supplier lists, telephone numbers and electronic

mail addresses with respect to past, present or prospective clients, customers and suppliers; (iv) copies of accounting and tax books, ledgers and records and other financial records; (v) all sales and credit records, catalogs and brochures, purchasing records and records relating to suppliers; and (vi) subject to applicable Law, original personnel records of all Transferred Employees;

(i) all the payments (or pro rata portions thereof) made by Seller with respect to the Purchased Assets or the Business which constitute, as of the Closing Date, prepaid expenses in accordance with GAAP;

(j) all the vehicles owned or (to the extent assignable) leased by Seller or by Affiliates of Seller and used in the operation of the Business on the Closing Date, in each case as listed on Schedule 2.1(j);

(k) the goodwill related to the conduct of the Business and all rights to continue to use the Purchased Assets as an ongoing business;

(l) all assets included in the calculation of Current Assets on the Closing Balance Sheet; and

(m) all other assets, properties, rights, claims and interests of Seller that are not specifically included in the definition of the term "Excluded Assets" in Section 2.2.

2.2 **Excluded Assets**. Notwithstanding anything to the contrary in Section 2.1, the following assets, properties, rights and interests of Seller (collectively, the "Excluded Assets") are excluded from the Purchased Assets and shall remain the property of Seller after the Closing:

(a) corporate seals, articles of incorporation, minute books, stock books, Tax Returns, original accounting and tax books, ledgers, records and other financial records or other records relating to the corporate organization of Seller;

(b) all cash on hand, cash equivalents, investments (including stock, debt instruments, options and other instruments and securities) and bank deposits;

(c) all accounts or notes receivable owed to Seller by Parent or any Person listed on Schedule 1.1(a) other than accounts owed by O.G. Dehydrated, a California corporation;

(d) all rights of Seller: (i) to use any service marks, service names, trademarks, trade names, domain names, logos or brand names, and related goodwill, of Parent or any other Person listed on Schedule 1.1(a) (including any derivatives thereof), or to use blueprints, drawings, designs, manuals, documentation or other intellectual property rights attributable to or which are used solely in Seller's manufacturing of products for Parent or any other Person listed on Schedule 1.1(a) and (ii) in any tangible personal property (including molds, tooling and other equipment) which are used or usable solely in Seller's manufacturing of products for Parent or any other Person listed on Schedule 1.1(a), in each case to the extent listed on Schedule 2.2(d);

(e) all insurance policies, fidelity or surety bonds or fiduciary liability policies covering the Purchased Assets, the Business or the operations, employees, officers or directors of Seller and all rights of Seller of every nature and description under or arising out of such policies and bonds;

(f) originals of all personnel records and other records that Seller is required by Law to retain in its possession;

(g) the assets listed on Schedule 2.2(g), including the contracts, leases, licenses, permits, plans, purchase orders, commitments and other binding arrangements of Seller, including those between Seller and its Affiliates, listed on Schedule 2.2(g) (the "Excluded Contracts");

(h) any assets, properties, rights or interests of Seller which have been transferred or disposed of in the ordinary course of the Business prior to the Closing Date to the extent permitted by Section 5.1;

(i) except as expressly provided in Section 2.5(c), claims for refunds of Taxes paid by Seller;

(j) all shares of capital stock or other ownership interests held by Seller in any Subsidiary set forth on Schedule 3.1; and

(k) all rights of Seller under this Agreement, including Seller's rights in the consideration paid to Seller pursuant to this Agreement.

2.3 **Assumed Liabilities**. Upon the terms and subject to the conditions of this Agreement, Purchaser shall assume on the Closing Date, upon the consummation of the Closing, and shall pay, perform and discharge when due, the following obligations and liabilities arising on or after the Closing Date (the "Assumed Liabilities"):

(a) all obligations of Seller under the Assigned Contracts other than (i) liabilities or obligations arising from any pre-Closing breach or default by Seller of or under any Assigned Contract and (ii) liabilities for Capital Expenditures not yet paid that are included in the calculation of the Capital Expenditures Adjustment; and

(b) Accounts Payable as set forth in the Closing Balance Sheet as of the Closing Date.

2.4 **Retained Liabilities**. Purchaser shall not assume, and Seller shall pay, perform and discharge when due and remain liable for any and all liabilities of Seller (including any liability of Seller under this Agreement) and any liabilities that otherwise encumber the Business or the Purchased Assets, in each case other than the Assumed Liabilities (collectively, the "Retained Liabilities").

2.5 **Purchase Price; Payment of Purchase Price; Adjustments**.

(a) The aggregate consideration payable to Seller for the Purchased Assets (collectively, the "Purchase Price") shall be as follows:

(i) The Base Purchase Price, as adjusted at Closing in accordance with Section 2.5(c) and as adjusted after Closing in accordance with Sections 2.5(d) and 2.5(f);

(ii) the assumption of the Assumed Liabilities; and

(b) The Purchase Price shall be paid as follows:

(i) At Closing, Purchaser shall pay Seller cash in the amount equal to the Base Purchase Price, plus or minus the Closing Proration, as determined in accordance with Section 2.5(c), plus or minus the Initial Capital Expenditures Adjustment and minus all applicable withholding Taxes (the "Withholding Taxes"). Purchaser shall make such payment via wire transfer of immediately available funds to an account specified by Seller, which account shall be so specified at least two (2) Business Days prior to the Closing Date.

(ii) At Closing, Purchaser shall execute and deliver an Assignment and Assumption Agreement, in the form attached as Exhibit A (the "Assignment and Assumption Agreement"), evidencing the assignment by Seller of certain of the Purchased Assets and the assumption by Purchaser of the Assumed Liabilities.

(iii) After Closing, any Working Capital Adjustment due shall be paid by the paying Party within five (5) Business Days after the calculation of the Working Capital Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(d). The paying Party shall make such payment via wire transfer of immediately available funds to an account specified by the recipient Party, which account shall be so specified at least two (2) Business Days before payment of the Working Capital Adjustment becomes due.

(iv) After Closing, any Final Closing Capital Expenditures Adjustment due shall be paid by the paying Party within five (5) Business Days after the calculation of the Final Closing Capital Expenditures Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(f). The paying Party shall make such payment via wire transfer of immediately available funds to an account specified by the recipient Party, which account shall be so specified at least two (2) Business Days before payment of the Final Capital Expenditure Adjustment becomes due.

(c) Liability for all accrued or prepaid real estate Taxes attributable to the Real Property and the Real Property Leases shall be prorated between Seller and Purchaser as of 12:01 a.m. on the Closing Date based on the most recently ascertainable real estate Tax bill. Such proration between the pre-Closing Date period and the post-Closing Date period shall be made by multiplying such Taxes by a fraction, the numerator of which is the actual number of days in the pre-Closing period and the denominator of which is the number of days in the real property tax year in which the real property taxes are assessed, as the case may be. Any net credit resulting from such proration in favor of Seller shall be paid in cash by Purchaser to Seller at Closing and any resulting net credit in favor of Purchaser shall be credited against the

Purchase Price paid by Purchaser at Closing (such amount, as applicable, the "Closing Proration"). Any refunds of such real estate Taxes made after the Closing shall first be applied to the unreimbursed third-party costs incurred by Seller or Purchaser in obtaining the refund, then shall be paid to Seller (for such Taxes accrued through the period prior to the Closing Date) and to Purchaser (for the period commencing on and after the Closing Date). If any proceeding to determine the assessed value of the Real Property or the real estate Taxes payable with respect to the Real Property commenced before the date hereof is continuing as of the Closing Date, Seller shall be authorized to continue to prosecute such proceeding and shall be entitled to any abatement proceeds therefrom allocable to any period before the Closing Date, and Purchaser agrees to cooperate as reasonably requested with Seller and to execute any and all documents reasonably requested by Seller in furtherance of the foregoing.

(d) The Purchase Price shall be: (i) increased on a dollar for dollar basis to the extent that the Working Capital on the Closing Date exceeds the Target Working Capital and (ii) decreased on a dollar for dollar basis to the extent that the Working Capital on the Closing Date is less than the Target Working Capital (the "Working Capital Adjustment"). Within sixty (60) days following the Closing, Purchaser shall prepare and deliver to Seller a

Closing Balance Sheet as of the Closing Date, together with a calculation of the Working Capital Adjustment based on such Closing Balance Sheet. Following delivery of the Closing Balance Sheet and Working Capital Adjustment, Purchaser shall provide Seller and its Representatives with reasonable access to the books, records, facilities and employees of Purchaser, and shall cooperate with Seller's Representatives, in connection with Seller's review of the Closing Balance Sheet and Working Capital Adjustment. The Working Capital Adjustment calculated by Purchaser shall be conclusive and binding on the Parties unless Seller, within thirty (30) days after its receipt of the Working Capital Adjustment, gives Purchaser a written notice of objection setting forth in reasonable detail the amount in dispute and the basis for such dispute (a "Purchase Price Objection Notice"); provided, that Seller shall not be required to give details regarding the amount or basis of any dispute if Purchaser shall have failed to provide Seller the access and cooperation required by this Section. If Seller delivers a Purchase Price Objection Notice, the Parties shall attempt in good faith to resolve such dispute through negotiation, and any agreement reached shall be conclusive and binding on the Parties. If the Parties are unable, despite good faith negotiations, to resolve the disputes described in the Purchase Price Objection Notice within thirty (30) days after delivery of the Purchase Price Objection Notice, then the Parties shall promptly submit any such unresolved dispute to the Independent Accounting Firm. The Parties shall cooperate fully with the Independent Accounting Firm, including providing all work papers and back-up materials relating to the unresolved disputes requested by the Independent Accounting Firm to the extent available to the Parties and their respective Representatives. The determination of the Independent Accounting Firm shall be set forth in a written notice delivered to Purchaser and Seller within thirty (30) days after submission of the disputes to the Independent Accounting Firm and shall be conclusive and binding on the Parties. The fees and expenses of the Independent Accounting Firm shall be shared equally by Seller and Purchaser. The Working Capital Adjustment shall be revised to reflect the resolution of the disputes resolved in accordance with this Section 2.5(d).

(e) Intentionally Omitted.

(f) The Purchase Price shall be adjusted as follows:

(i) Two Business Days before the Closing Date, the Seller shall deliver to Purchaser a certificate containing a calculation of the Capital Expenditures as of such date (the "Estimated Capital Expenditures"). The Estimated Capital Expenditures minus the Target Capital Expenditures shall be the "Initial Capital Expenditures Adjustment"; provided that the Initial Capital Expenditures Adjustment shall be zero if such adjustment would otherwise be less than the product of (A) 0.05 and (B) the Target Capital Expenditures. On the Closing Date, the Purchase Price shall be (i) increased on a dollar for dollar basis to the extent that the Initial Capital Expenditures Adjustment exceeds zero and (ii) decreased on a dollar for dollar basis to the extent that the Initial Capital Expenditures Adjustment is less than the zero.

(ii) Within sixty (60) days following the Closing, Purchaser shall prepare and deliver to Seller a calculation of the Capital Expenditures as of the Closing Date (the "Closing Capital Expenditures"). The Closing Capital Expenditures minus the Target Capital Expenditures, if any, shall be the "Closing Captial Expenditures Adjustment"; provided that the Closing Capital Expenditures Adjustment shall be zero if such adjustment would otherwise be less than the product of (A) 0.05 and (B) the Target Capital Expenditures. Following delivery of the calculation of the Closing Capital Expenditures Adjustment, Purchaser shall provide Seller and its Representatives with reasonable access to the books, records, facilities and employees of Purchaser, and shall cooperate with Seller and its Representatives, in connection with Seller's review of the Closing Capital Expenditures Adjustment. The Closing Capital Expenditures Adjustment calculated by Purchaser shall be conclusive and binding on the Parties unless Seller, within thirty (30) days after its receipt of the Closing Capital Expenditures Adjustment, gives Purchaser a written notice of objection setting forth in reasonable detail the amount in dispute and the basis for such dispute (a "Closing Captial Expenditures Objection Notice"); provided, that Seller shall not be required to give details regarding the amount or basis of any dispute if Purchaser shall have failed to provide Seller the access and cooperation required by this Section. If Seller delivers a Closing Capital Expenditures Objection Notice, the Parties shall attempt in good faith to resolve such dispute through negotiation, and any agreement reached shall be conclusive and binding on the Parties. If the Parties are unable, despite good faith negotiations, to resolve the disputes described in the Closing Capital Expenditures Objection Notice within thirty (30) days after delivery of the Closing Capital Expenditures Objection Notice, then the Parties shall promptly submit any such unresolved dispute to the Independent Accounting Firm. The Parties shall cooperate fully with the Independent Accounting Firm, including providing all work papers and back-up materials relating to the unresolved disputes requested by the Independent Accounting Firm to the extent available to the Parties and their respective Representatives. The determination of the Independent Accounting Firm shall be set forth in a written notice delivered to Purchaser and Seller within thirty (30) days after submission of the disputes to the Independent Accounting Firm and shall be conclusive and binding on the Parties. The fees and expenses of the Independent Accounting Firm shall be shared equally by Seller and Purchaser. The Closing Capital Expenditures and the Closing Capital Expenditures Adjustment shall be revised to reflect the resolution of the disputes resolved in accordance with this Section 2.5(f) (the "Final Closing Capital Expenditures" and the "Final Closing Capital Expenditures Adjustment", respectively). After the Final Closing Capital Expenditures is determined in accordance with this Section 2.5(f), (x) Purchaser shall pay to Seller in accordance with Section 2.5(b)(iv) any amount by which the Final Closing Capital Expenditures Adjustment exceeds the Initial Capital Expenditures Adjustment and (y) Seller shall pay to Purchaser in

accordance with Section 2.5(b)(iv) any amount by which the Final Capital Expenditures Adjustment is less than the Initial Capital Expenditures Adjustment.

2.6 **Allocation of Purchase Price**. Promptly after the date hereof, but in any event within five (5) Business Days after the date hereof, Purchaser shall engage a valuation or appraisal firm and shall instruct it to deliver to Purchaser and Seller within twenty (20) days after engagement a statement of the value of the Real Property, Real Property Leases, and any motor vehicles for which a value must be stated in the applicable transfer documents or related filings to be made on or about the Closing Date. By the later of: (i) February 1, 2004, (ii) 30 Business Days after the calculation of the Working Capital Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(d) or (iii) 30 Business Days after the calculation of the Final Closing Capital Expenditures Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(f), Purchaser shall deliver to Seller a statement (the "Final Allocation Statement"), such Final Allocation Statement to be subject to Seller's consent, which consent shall not be unreasonably withheld allocating the Purchase Price, in accordance with Section 1060 of the Code and (with respect to the Real Property, Real Property Leases and motor vehicles described therein) in conformity with the statement of the valuation or appraisal firm described above, among: (a) the Purchased Assets, (b) the non-competition covenant contained in Section 8.3 of this Agreement and (c) the Assumed Liabilities required to be transferred pursuant to Section 6.3(e). If the Parties are unable, despite good faith negotiations, to agree on such allocation within twenty (20) days after delivery of the Final Allocation Statement, then the Independent Accounting Firm will be retained to determine such allocation (the fees and expenses of which shall be shared equally by Purchaser and Seller) and shall be instructed to provide its determination to Purchaser and Seller, which determination shall be final and binding upon Purchaser and Seller. The Parties agree that such allocation pursuant to the Final Allocation Statement shall be used in filing IRS Form 8594, Asset Acquisition Statement under Section 1060 of the Code ("Form 8594"), and all Tax Returns (except to the extent such filings are required to be made by Seller

prior to receipt of the Final Allocation Statement, in which case the Parties shall agree on the appropriate allocation for such filings). Subject to the requirements of applicable Tax Laws or prior Tax elections, neither Seller nor Purchaser will take any position inconsistent with such allocations in any Tax Return or in any examination of any Tax Return, in any refund claim or in any Tax litigation. For avoidance of doubt, Seller shall have no liability for inconsistent Tax Returns or other filings made prior to Seller's receipt of the Final Allocation Statement if made in a manner consistent with the procedures provided above if after receipt of the Final Allocation Statement Seller takes such steps as are reasonably available under applicable Law to amend such inconsistent Tax Returns to be consistent with the Final Allocation Statement.

2.7 **Closing**. The consummation of the purchase and sale of the Purchased Assets in accordance with this Agreement (the "Closing") shall take place at 10:00 a.m., local time, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Embarcadero Center, San Francisco, California 94111, on the second Business Day after all of the conditions precedent to Closing hereunder shall have been satisfied or waived, or at such other time and place as the Parties shall agree in writing. Unless the parties otherwise agree in writing, the Closing with respect to the Real Property shall be conducted through a customary escrow arrangement with

the Title Company. The date of the Closing is referred to as the "Closing Date." The Parties shall deliver at the Closing such documents, certificates of officers and other instruments as are set forth in Article VI hereof and as may reasonably be required to effect the transfer by Seller of the Purchased Assets pursuant to and as contemplated by this Agreement and to consummate the Acquisition. All events occurring at the Closing shall be deemed to occur simultaneously (with the concurrent delivery of the documents required to be delivered pursuant to Article VI, delivery of the Title Policies and payment of the Purchase Price).

2.8 **Assignment of Contracts**. Seller shall use its best efforts (subject to the limitations below) to obtain the written consent of any third party required in connection with the transfer of any Assigned Contract to Purchaser on or before the Closing Date (including, for the avoidance of doubt, leaving in place any guarantees requested by any such third party as set forth under Section 5.11). Notwithstanding anything in this Agreement to the contrary, to the extent that any Assigned Contract is not assignable without the consent of another party whose consent has not been obtained, this Agreement shall not constitute an assignment or attempted assignment of such Assigned Contract if the assignment or attempted assignment would constitute a breach thereof or materially detract from the rights transferred to Purchaser. If such consent is not obtained, then (A) Seller shall use its best efforts to enter into any arrangement requested by Purchaser that is designed to give Purchaser the full benefit of such Assigned Contract accruing on or after the Closing and that does not violate any applicable Law or presently existing agreement to which Seller is a party, and (B) Purchaser shall use its best efforts to cooperate with Seller to consummate such arrangement. Notwithstanding anything to the contrary in this Section 2.8, (i) Seller shall not be required to make out-of-pocket payments to third parties (excluding payments to Seller's or Parent's employees or other internal costs of Seller or Parent) in excess of * in connection with its obligations under this Section 2.8 and (ii) neither of Purchaser and Kerr shall be required to make any payment to any third party in connection with its obligations under this Section 2.8. Seller shall provide Purchaser with a reasonable opportunity to participate in any discussions or negotiations, written or oral, with each lessor under each Lease in connection with obtaining consent thereunder.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Kerr and Purchaser to enter into this Agreement and to consummate the Acquisition, Seller represents and warrants to Kerr and Purchaser as follows:

3.1 **Organization and Qualification**. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Maryland and has all requisite corporate power and authority to own, lease and operate its assets and properties and to carry on the Business as it is now being conducted. Seller is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the assets and properties owned, leased or operated by it or the nature of the Business makes such qualification or licensing necessary, except for failures to be so qualified or licensed and in good standing that do not have a Material Adverse Effect. Except as set forth on Schedule 3.1, Seller has no Subsidiaries.

3.2 **Authority Relative to this Agreement**. Seller has all necessary corporate power and authority to execute and deliver this Agreement and the other Transaction Documents to

* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

which it is a party, to perform its obligations hereunder and to consummate the Acquisition. The execution and delivery of this Agreement and such other Transaction Documents by Seller and the consummation by Seller of the Acquisition have been duly and validly authorized by all necessary corporate action on the part of Seller, and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the Acquisition other than filing and recordation of Articles of Transfer as required by Maryland law. This Agreement and such other Transaction Documents have been or will be duly executed and delivered by Seller and, assuming the due authorization, execution and delivery by Purchaser, each such agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, fraudulent conveyance, reorganization or other similar Law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies (whether in a proceeding at law or in equity).

3.3 **No Conflict**. Except as set forth on Schedule 3.3, the execution and delivery of this Agreement by Seller do not, and the performance by Seller of its obligations hereunder and the consummation of the Acquisition will not: (a) conflict with or violate any provision of the articles of incorporation or by-laws of Seller; (b) assuming that all filings and notifications described in Section 3.4 have been made, conflict with or violate any Law or order applicable to Seller or by which any of the Purchased Assets or Seller is bound or affected; or (c) result in any material breach of or constitute a material default under, or require notice or consent under, any mortgage, indenture, deed of trust, lease, contract, agreement, license or other instrument to which Seller is a party or by which any of the Purchased Assets is bound or affected, or result in the creation of a material Lien on any of the Purchased Assets, except in the case of clauses (b) and (c), for any conflict, violation, breach or default that would not reasonably be expected to have a Material Adverse Effect.

3.4 **Required Filings and Consents**. The execution and delivery of this Agreement by Seller do not, and the performance by Seller of its obligations hereunder and the consummation of the Acquisition will not, require any consent, approval, authorization or permit of, or filing by Seller with or notification by Seller to, any Governmental Authority, except for: (a) the consents, approvals, authorizations, declarations or rulings set forth on Schedule 3.4; (b) the filing of a Notification and Report Form pursuant to the HSR Act and the expiration or earlier termination of the applicable waiting period thereunder with respect to the Acquisition; and (c) such consents, approvals, authorizations, permits and filings the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect.

3.5 **Financial Statements**. Set forth on Schedule 3.5 are true and complete copies of (a) Seller's balance sheets at November 30, 2001 and 2002, and its income statements and statements of cash flows for the three (3) years ended November 30, 2002, together with the notes thereto and the report thereon of Ernst & Young LLP (the "Audited Financials"), and (b) Seller's unaudited balance sheet at May 31, 2003 and the related unaudited consolidated income statements and a statement of capital expenditures for the six month period ended at such date (the "Interim Financials") and (c) the pro forma presentation of Seller's revenues for (i) the year ended November 30, 2002, and (ii) the six months ended May 31, 2003, which pro forma presentations are based on the Audited Financials or the Interim Financials, as applicable, and have been adjusted solely to reflect the pricing referred to in subclauses (x) and (y) below (the

"Pro Forma Revenues"). The Audited Financials and, subject to normal and recurring quarter-end, year-end and audit adjustments, the Interim Financials have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to the Audited Financials and except for the absence of notes to the Interim Financials), and present fairly the financial position of Seller as of the applicable date and Seller's results of operations and cash flows for the periods then ended. Parent and Seller agree that the Pro Forma Revenues represent in all material respects the revenues of Seller for the periods set forth therein as if sales by Seller to Parent (x) during the year ended November 30, 2002 had occurred at prices set forth on Schedule 3.5 hereto and (y) during the six months ended May 31, 2003 had occurred at prices set forth on Schedules 3.1(a) and 3.1(b) to the Supply Agreement. Parent and Seller agree that Seller's aggregate gross margin on sales to Parent and the other Persons identified on Schedule 1.1(a) for the six months ended May 31, 2003 would not have been materially less than the aggregate gross margin set forth on Schedule 3.5 if the pricing on Schedules 3.1(a) and 3.1(b) to the Supply Agreement had been in effect during such period and such aggregate gross margins had otherwise been calculated in accordance with the practices, procedures and methods used by Seller in preparing the Interim Financials. Parent and Seller acknowledge that Kerr and Purchaser's acceptance of the prices set forth on Schedules 3.1(a) and 3.1(b) to the Supply Agreements is made solely in reliance on this representation.

3.6 **Absence of Undisclosed Liabilities**. As of the date hereof, Seller does not have any liabilities (absolute, contingent, accrued or otherwise) in respect of the Business other than: (a) liabilities reflected in the balance sheet of Seller at May 31, 2003 included in the Interim Financials (the "Latest Balance Sheet"); (b) liabilities incurred since the date of the Latest Balance Sheet (the "Latest Balance Sheet Date") in the ordinary course of business; (c) obligations of continued performance under contracts and other commitments and arrangements entered into in the ordinary course of the Business to the extent permitted under Section 5.1; (d) the liabilities described on Schedule 3.6; and (e) liabilities under this Agreement.

3.7 **Absence of Certain Changes or Events**. From the Latest Balance Sheet Date to the date hereof, except as contemplated by this Agreement or disclosed on Schedule 3.7, Seller has conducted the Business in the ordinary course of business and:

(a) there has not been any material damage to or destruction or loss of any asset, property, right or interest of Seller used in the Business, whether or not covered by insurance, that has had or would reasonably be expected to have a Material Adverse Effect;

(b) Seller has not sold or transferred any material amount of its assets, properties, rights or interests used in the Business, other than sales of inventory and disposal of obsolete, damaged or defective inventory or other assets in the ordinary course of business;

(c) Seller has not increased the salary, bonus or other compensation payable to any officer or employee of Seller other than in the ordinary course of business consistent with past practice;

(d) Seller has not entered into, modified or terminated any contract or transaction involving a total remaining commitment of at least $250,000 other than in the

ordinary course of business, or received written notice of termination of any material contract or transaction;

(e) Seller has not entered into any agreement to take any of the actions set forth in subsections (b) through (d) of this Section 3.7; and

(f) Seller has not taken or failed to take any other action which action or failure would violate Section 5.1 if such action or failure were to occur after the date hereof.

3.8 **Sufficiency and Title to Assets**. Except as set forth on Schedule 3.8:

(a) No proceeding is pending or, to the Knowledge of Seller, threatened for the taking or condemnation of all or any portion of the Real Property. The Real Property is all of the real property owned by Seller. Seller has not entered into any agreements giving any Person any right to lease, sublease or otherwise occupy any portion of the Real Property. To the Knowledge of Seller, true and complete copies of all surveys of the Real Property in Seller's possession have heretofore been furnished to Purchaser. There are no ongoing proceedings (judicial or, to the Knowledge of Seller, legislative), claims or disputes of which Seller has notice affecting any Real Property that might curtail or interfere with the use of such property. To the Knowledge of Seller, each Real Property is in material compliance with all Laws, including (i) the Americans with Disabilities Act, 42 U.S.C. § 12102, et seq., together with all rules, regulations and official interpretations promulgated pursuant thereto, and (ii) all Laws with respect to zoning, building, fire, life safety, health codes and sanitation. Seller has not, since June 1, 2001, received any notices of existing violations of any Laws applicable to any Real Property. Since January 1, 2001, Seller has not received any notice of, or other writing referring to, any requirements or recommendations by any insurance company that has issued a policy covering any part of the Real Property or by any board of fire underwriters or other body exercising similar functions, requiring or recommending any

repairs or work to be done on any part of the Real Property, which repair or work has not been completed. To the Knowledge of Seller, Seller has obtained all appropriate certificates of occupancy required to use and operate the Real Property located in the State of California in the manner in which such Real Property is currently being used and operated. True and complete copies of all such certificates have heretofore been furnished to Purchaser.

(b) The Real Property Leases are the only leasehold estates under which Seller is a lessee (or sublessee) of any real property or interest therein. To the Knowledge of Seller, no proceeding is pending (and Seller has not received notice of any pending proceeding) and, to the Knowledge of Seller, no proceeding is threatened for the taking or condemnation of all or any portion of the property demised under the Real Property Leases. A true and complete copy of each Real Property Lease has heretofore been delivered to Purchaser. Each Real Property Lease is valid, binding and enforceable against Seller and, to the Knowledge of Seller (without inquiry), against the landlord thereunder in accordance with its terms and is in full force and effect with respect to Seller and, to the Knowledge of Seller (without inquiry) the landlord thereunder. Seller has not encumbered the leasehold estate created by each Real Property Lease with any leasehold mortgages or any other Liens. Seller has not received notice of any existing defaults by Seller under any of the Real Property Leases and, to the Knowledge of Seller, there are no existing defaults by Seller under any of the Real Property Leases. To the Knowledge of

Seller, no event has occurred that (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a default under any Real Property Lease. To the Knowledge of Seller, Seller has obtained all appropriate certificates of occupancy required to use and operate each Real Property Lease in the manner in which such Real Property Lease is currently being used and operated in California and Massachusetts to the extent that Seller is obligated to obtain such certificate of occupancy pursuant to applicable Laws and the terms of the Real Property Leases. True and complete copies of all such certificates have heretofore been furnished to Purchaser.

(c) The Real Property, the premises demised under the Real Property Leases, the other assets comprising the Purchased Assets and the Affiliate Marks are, taken together, all of the assets used, held for use or planned to be used in connection with products currently under active development, in each case, in the Business, and are adequate and sufficient for the operation of the Business as currently conducted.

(d) To the Knowledge of Seller, except as disclosed in the engineering reports previously made available to Purchaser and listed on Schedule 3.8, each of the buildings, improvements, and equipment owned, leased or used by Seller are structurally sound with no known defects and are in good operating condition and repair and are adequate for the uses to which they are being put. Seller is not in possession of any engineering reports dated June 1, 1993 or later regarding the structural sufficiency of the buildings, improvements, and/or equipment owned, leased or used by Seller except as set forth in Schedule 3.8. To the Knowledge of Seller, except as disclosed in the engineering reports previously made available to Purchaser and listed on Schedule 3.8, none of such buildings, improvements, or equipment is in need of maintenance or repairs except for ordinary, routine maintenance and repairs which are not material in nature or cost. The roof of each such structure is in good repair and condition.

(e) Seller has good and valid title to the Tangible Personal Property, free and clear of all Liens other than Permitted Liens.

3.9 **Intellectual Property.**

(a) Schedule 3.9(a) is a complete list of the Listed Intellectual Property that is the subject of any application filed with, or any registration issued by, any government agency (collectively, "Registered Intellectual Property Rights"). All Registered Intellectual Property Rights and the Affiliate Marks are, to the Knowledge of Seller, enforceable, and all material fees, payments and filings due in respect of such Registered Intellectual Property Rights and the Affiliate Marks as of the date hereof have been made. Each material item of Intellectual Property is: (i) owned by Seller, free and clear of all Liens, restrictions or encumbrances on Seller's right to transfer to Purchaser the Listed Intellectual Property and Other Intellectual Property (or in the case of the Affiliate Marks, owned by an Affiliate of Seller), or (ii) rightfully used by Seller pursuant to a valid license, sublicense, consent or other similar agreement identified as such in Schedule 3.9(a); and the Intellectual Property (together with any intellectual property included in the Excluded Assets) constitutes all of the intellectual property that is necessary to conduct the Business as currently conducted and in connection with products currently under active development.

(b) Each material item of Intellectual Property transferred to Purchaser pursuant to the Acquisition shall be owned, available for use or enforceable, as the case may be, by Purchaser immediately following the Closing on substantially identical terms and conditions as it was owned by, available to or enforceable by, as the case may be, Seller immediately prior to the Closing.

(c) The consummation of the Acquisition will not result in Kerr or Purchaser being bound by any non-compete or other restriction on the operation of the Business that was previously binding on Seller or the granting by Kerr or Purchaser of any rights or licenses to any intellectual property rights of Kerr or Purchaser to a third party (including a covenant not to sue) that was previously binding on Seller.

(d) Except as disclosed on Schedule 3.9(d), Seller is not aware of any facts which would lead it to reasonably believe that the operation of the Business as currently conducted infringes or will infringe on any intellectual property rights of any other Person.

(e) Except as disclosed on Schedule 3.9(e), no claims have been asserted nor, to the Knowledge of Seller, are threatened by any Person against Seller that: (i) challenge the validity, enforceability, registrability or ownership by Seller of any of the Intellectual Property or (ii) claim that the operation of the Business as currently conducted infringes or will infringe any intellectual property rights of any other Person. To the Knowledge of Seller, no third party is engaged in unauthorized use, infringement or misappropriation of any Intellectual Property.

(f) There are no settlements, forbearances to sue, consents, judgments, or orders or similar obligations (other than license agreements in the ordinary course of business) which (i) restrict Seller's rights to use any Intellectual Property; (ii) restrict Seller's Business in order to accommodate a third party's intellectual property rights; or (iii) permit third parties to use any intellectual property owned by Seller.

(g) Schedule 3.9(g) lists all Computer Software owned or licensed by, or otherwise used in the Business, other than third party software applications that are generally available and have an individual acquisition cost of $5,000 or less, and identifies whether each of the foregoing items of Computer Software are owned, licensed or otherwise used, as the case may be.

(h) Schedule 3.9(h) lists all domain names that are the subject of any application filed by Seller with, or any registration issued to Seller by, a recognized registration authority.

3.10 **Contracts.**

(a) Schedule 3.10 sets forth a list of the following contracts, agreements and instruments pertaining to the Business to which Seller is a party or is bound as of the date hereof (collectively, the "Material Contracts"):

(i) any contract involving more than $100,000 over the life of the contract;

(ii) any contract that expires more than one (1) year after the date of this Agreement or that may be renewed at the option of any Person other than Seller so as to expire more than one (1) year after the date of this Agreement;

(iii) any trust indenture, mortgage, promissory note, loan agreement or other contract for borrowed money (other than trade payables incurred in the ordinary course of business not exceeding $100,000 individually or $200,000 in the aggregate);

(iv) any contract for capital expenditures in excess of $200,000 in the aggregate except as set forth on Schedule 5.1(m);

(v) any contract limiting the freedom of Seller to engage in any line of business or to compete with any other Person, or any confidentiality, secrecy or non-disclosure contract or any contract that may be terminable as a result of Seller's status as a competitor of any party to such contract;

(vi) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the liabilities of any other Person other than customer agreements made in the ordinary course of the Business ("Guarantee Obligations");

(vii) any employment contract, arrangement or policy (including any collective bargaining contract or union agreement) which may not be immediately terminated without notification or penalty (including any augmentation or acceleration of benefits);

(viii) any contract providing for a joint venture, partnership or similar legal relationship with any other Person;

(ix) any contract granting to any Person, on a conditional basis or otherwise, any ownership interest in, or license to manufacture or prepare, any product developed, manufactured or sold by the Business (each, a "Product") utilizing any proprietary recipe or formulation;

(x) any sales agency, distribution or similar agreements with respect to Products or for the distribution by Seller of products of another party involving consideration in excess of $100,000;

(xi) any agreement providing for a rebate, discount, bonus or commission in excess of $100,000 with respect to the sale of any Product;

(xii) any agreement requiring Seller to advance or loan any amount in excess of $100,000 to or on behalf of any of its directors, employees, shareholders, Affiliates or Associates (or their respective Affiliates or Associates);

(xiii) any agreement providing for the acquisition after January 1, 2001 by Seller (or any predecessor in interest) of any real property, operating business or the shares or other equity interests of any Person for consideration in excess of $100,000;

(xiv) any employment, severance, consulting or other agreement of any nature with any current or former shareholder, director, officer or any Affiliate thereof involving consideration in excess of $100,000 per year individually or $100,000 per year in the aggregate;

(xv) any agreement restricting the ability of Seller to incur Indebtedness;

(xvi) any agreement relating to Indebtedness, interest rate swap or hedging agreements, sale and leaseback transactions and other similar financing transactions;

(xvii) any contract existing between Seller and any Governmental Authority;

(xviii) any agreement providing for the provision by Seller to any third party of any confidential information or restricting Seller from providing such information to third parties;

(xix) any agreement restricting Seller's ownership, operation, sale, transfer, pledge or other disposition of any of the Purchased Assets;

(xx) any Real Property Lease;

(xxi) any agreement providing for production by Seller of any Product on an exclusive or requirements basis;

(xxii) any agreement with a consultant or subcontractor involving payment of consideration over the term of such agreement in excess of $100,000; or

(xxiii) any contract, agreement or instrument within the Knowledge of Seller which is otherwise material to the conduct or operation of the Business.

(b) Seller has performed in all material respects the obligations required to be performed by it under the Material Contracts, and, to the Knowledge of Seller, each of the Material Contracts is valid and binding and in full force and effect. True, correct and complete copies of all Material Contracts have been made available to Purchaser. Seller has not made or received any claim of any material default under any Material Contract, and as of the date hereof, to the Knowledge of Seller, there is no material breach or anticipated breach by any other party to any Material Contract.

3.11 **Permits**. The Listed Permits are all material permits, licenses, approvals, franchises, certificates, consents and other authorizations of any Governmental Authority that are required in order for Seller to conduct the Business as it is now being conducted. Each of the Listed Permits is in full force and effect, except for immaterial failures. To the Knowledge of Seller, Seller is not in conflict in any material respect with or in material default or violation of any Listed Permit.

3.12 **Compliance with Laws**. Seller is not in material conflict with or in material default or violation of any Law applicable to the Purchased Assets or the Business.

3.13 **Litigation**. Except as set forth on Schedule 3.13, as of the date hereof, there are no material claims, actions, suits, investigations, arbitrations, inquiries or proceedings pending or, to the Knowledge of Seller, threatened, against Seller before any Governmental Authority.

3.14 **Books and Records**. All books of account and other financial books and records of Seller directly relating to the Business are true, correct and complete in all material respects.

3.15 **Employment Matters.**

(a) Schedule 3.15 sets forth a list of all Persons who were employed by Seller, on a full time or a part time basis, as of February 1, 2003, including all such Persons who at such date were on military leave, disability leave or any other leave approved by the Company or mandated by applicable Law and a description of all compensation and benefits provided by Seller to each such Person, which list is true and complete in all material respects. Except as otherwise required by Law or as set forth on Schedule 3.15, the employment of all such employees is terminable by Seller at will.

(b) Except as set forth on Schedule 3.15: (i) Seller is not a party to any contract with any labor organization or other bargaining representative of its employees; (ii) there is no unfair labor practice charge or complaint pending or, to the Knowledge of Seller, threatened against Seller; (iii) Seller has not experienced any labor strike, slowdown, work stoppage or similar labor controversy within the past three (3) years; (iv) Seller has paid in full to all of its employees all compensation and benefits due and payable to such employees; and (v) Seller is in material compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety and health and Seller has not received written notice of any investigation, charge or complaint against Seller relating to the Business pending before the Equal Employment Opportunity Commission or any other federal, state or local government agency or court or other tribunal regarding an unlawful employment practice.

(c) Since January 1, 2003, (i) Seller has not effectuated a “plant closing” (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility; (ii) there has not occurred a “mass layoff” (as defined in the WARN Act) affecting any site of employment or facility of the Seller; and (iii) Seller has not engaged in layoffs or employment terminations sufficient in number to trigger application of the WARN Act or any similar state, local or foreign law or regulation. Except as set forth on Schedule 3.15(c), no employee of Seller has suffered an “employment loss” (as defined in the WARN Act) during the six-month period prior to the date of this Agreement.

3.16 **Employee Benefits**. Schedule 3.16 sets forth a complete and accurate list as of the date hereof of each employment, consulting, bonus, deferred compensation, incentive compensation, stock purchase, stock option, stock appreciation right or other equity-based incentive, severance or termination pay, change in control, hospitalization or other medical, life, disability or other insurance, supplemental unemployment benefits, savings, profit-sharing, pension or retirement plan, program, policy, agreement or arrangement, and each other employee or fringe benefit plan, program, policy agreement or arrangement, sponsored, maintained or

contributed to or required to be contributed to by Seller for the benefit of Seller’s employees, whether formal or informal and whether legally binding or not (each, a “Plan;” collectively, the “Plans”). No event has occurred in connection with any Plan that has, will or may result in any fine, penalty, assessment or other liability for which any transferee of assets of Seller may be responsible, whether by operation of Law or by contract. The transactions contemplated by this Agreement, will not, either alone or in combination with any other event or events, cause Kerr or Purchaser to incur any liabilities with respect to any Plan, including (a) any liability under Section 4980B of the Code or (b) any liability with respect to any employee of Seller that was incurred or arose on or prior to the Closing Date.

3.17 **No Finder**. Seller has not incurred any liability to any broker, finder, investment banker or any other Person for any brokerage, finder’s or other fee or commission in connection with this Agreement or the Acquisition.

3.18 **Environmental Matters**.

(a) Except as set forth on Schedule 3.18, (i) the Business is in material compliance with all applicable Environmental Laws, which compliance includes, but is not limited to, the possession by Seller and its Subsidiaries of all permits and other governmental authorizations required under Environmental Laws for the Business, and compliance with the terms and conditions thereof; (ii) neither Seller nor any of its Subsidiaries has received any written or, to the Knowledge of Seller, oral communication, whether from a Governmental Authority or any other Person, that alleges that the Business is not in compliance with any Environmental Laws, and, to the Knowledge of Seller, there are no circumstances that would be reasonably expected to prevent or interfere with such compliance in the future. For purposes of this Section 3.18, “Knowledge of Seller” includes the actual knowledge of each plant Manager and environmental manager for each facility or property in the Business named in Schedule 3.18.

(b) Except as set forth on Schedule 3.18, there is no Environmental Claim pending or, to the Knowledge of Seller, threatened against Seller and any of its Subsidiaries relating to the Business or, to the Knowledge of Seller, against any Person whose liability for any Environmental Claim relating to the Business Seller or any of its Subsidiaries has retained or assumed either contractually or by operation of law.

(c) Except as set forth on Schedule 3.18, to the Knowledge of Seller, there has been no release, emission, discharge, presence or disposal of any Material of Environmental Concern, and there are no actions, activities, circumstances, conditions, events or incidents that present a material threat of release, emission, discharge, presence or disposal of any Material of Environmental Concern, that would reasonably be expected to form the basis of any material Environmental Claim against Seller or any Subsidiary relating to the Business, or, to the Knowledge of Seller, against any Person whose liability for any Environmental Claim relating to the Business Seller or any of its Subsidiaries has retained or assumed either contractually or by operation of law.

(d) Except as set forth on Schedule 3.18: (i) neither Seller nor any Subsidiary is the subject, either directly or indirectly, of any Environmental Claim with respect to any on-site or off-site locations where Seller or any Subsidiary has stored, disposed or arranged for the disposal of Materials of Environmental Concern for, from or with respect to the Business, (ii)

there are no underground storage tanks located on property owned or controlled by Seller or any Subsidiary for the Business, and, to the Knowledge of Seller, there are no underground storage tanks located on property otherwise used for the Business, (iii) there is no damaged asbestos contained in or forming part of any building, building component, structure or office space owned, leased or otherwise used for the Business, (iv) to the Knowledge of the Seller, there is no other asbestos contained in or forming part of any building, building component, structure or office space owned, leased or otherwise used for the Business, and (v) to the Knowledge of Seller, no polychlorinated biphenyls (PCBs) or PCB-containing items are used or stored at any property owned, used or leased for the Business.

(e) Except as set forth on Schedule 3.18, Seller has provided to Purchaser all written assessments, reports, data, results of investigations or audits and similar documents that are in the possession of or reasonably available to Seller or any Subsidiary regarding the environmental condition of the property owned, used or leased for the Business, or the compliance (or noncompliance) by Seller or any Subsidiary with any Environmental Laws relating to the Business.

(f) Except as set forth in Section 5.10 or on Schedule 3.18, Seller is not required by virtue of the transactions set forth herein and contemplated hereby, or as a condition to the effectiveness of any transactions contemplated hereby, (i) to perform a site assessment for Materials of Environmental Concern, (ii) to remove or remediate Materials of Environmental Concern, (iii) to give notice to or receive approval from any governmental authority, or (iv) to record or deliver to any person or entity any disclosure document or statement pertaining to environmental matters.

(g) With respect to the matters disclosed in the reports listed in Schedule 3.18(g) hereto, there is no individual item or series of related items that would reasonably be expected to cause Losses greater than $200,000, or that, taken in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.19 **Taxes and Tax Returns**. Except as set forth on Schedule 3.19:

(a) Seller has timely filed or will have timely filed on its behalf (taking into account extensions to file) those Tax Returns which are currently due or, if not yet due, will timely file, or will have timely filed on its behalf (taking into account extensions to file) all Tax Returns required to be filed by it or on its behalf for all taxable periods ending on or before the Closing Date, and all such Tax Returns are, or will be when filed, true, correct and complete in all material respects;

(b) Seller has paid, or had paid on its behalf, to the appropriate Governmental Authority, or, if payment is not yet due, will pay, or will have paid, to the appropriate Governmental Authority, all Taxes due and payable for all taxable periods beginning on or before the Closing Date;

(c) except in the case of a Lien for *ad valorem* property taxes or income taxes not yet due and payable or otherwise disclosed on Schedule 3.19, there is no unpaid Tax which constitutes a Lien upon any of the Purchased Assets;

(d) Seller is not a party to any Tax allocation or Tax sharing agreement or has any liability or obligation to any Person as a result of, or pursuant to, any such allocation or agreement, except as set forth in the notes to the Audited Financials; and

(e) Seller is not a Person other than a “United States Person” within the meaning of the Code.

3.20 **Customers and Suppliers.**

(a) Schedule 3.20 lists the ten customers of Seller who, during the period December 1, 2001 to November 30, 2002, purchased the largest amount of Products from Seller, based on net sales. Since December 1, 2002, except as set forth on Schedule 3.20, there has not been any material adverse change in the business relationship of Seller with any such customer or customers. Except as set forth on Schedule 3.20, no such customer has materially reduced its purchases since December 1, 2002, or, to the Knowledge of Seller or to the actual knowledge of the salesperson responsible for the account of such customer, has advised Seller that it is (i) terminating, considering terminating, or planning to terminate its business relationship with Seller, or (ii) considering reducing or planning to reduce (other than oral statements made in the ordinary course of business in connection with contract renewal negotiations) its future purchases from Seller by 10% or more.

(b) Since December 1, 2002, no Person who supplies resin to Seller has reduced the supply of resin available to Seller or, to the Knowledge of Seller or to the actual knowledge of the purchaser responsible for the account of such supplier, advised Seller that it is (i) terminating or intends to terminate its business relationship with Seller or (ii) reducing or intends to reduce the supply of resin available to Seller by 10% or more. Seller currently

maintains sufficient resin inventory to conduct the Business as it is conducted. Seller has access to sufficient amounts of resin supply, purchasable at then prevailing market prices, necessary to conduct the Business as it is conducted.

3.21 **Inventory**. The inventory reflected in the Latest Balance Sheet is good and merchantable material, of a quality and quantity saleable in the ordinary course of Business consistent with Seller's past practice and was acquired by Seller in the ordinary course of business of the Business consistent with Seller's past practice and is carried on the books and records of Seller in accordance with GAAP.

3.22 **Insurance**. Set forth in Schedule 3.22 is a complete and accurate list as of the date hereof of all insurance policies carried by Seller (as a party, named insured or otherwise the beneficiary of coverage). All such insurance policies are in full force and effect and shall remain in full force and effect through the Closing Date. Such policies are sufficient for compliance with all requirements of Law and of all agreements to which Seller is a party, are valid, outstanding and enforceable policies, insure against risks of the kind customarily insured against and in amounts customarily carried by companies similarly situated and by companies engaged in similar businesses and owning similar properties. Neither Seller nor, to the Knowledge of Seller, any other insured party to any insurance policy, is in breach or default (including any breach or default with respect to the payment of premiums or the giving of notices) and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default

or permit termination or modification of any such policy. The Seller has not been denied coverage since January 1, 2000. Seller does not currently owe any deficiency amounts or Taxes for industrial insurance obligations arising under applicable state law.

3.23 **Affiliate Transactions**. Schedule 3.23 lists all agreements and arrangements and contains a summary of all transactions since January 1, 2000 and all currently proposed agreements, arrangements and transactions related to the Business and that are between Seller, on the one hand, and any current or former director, officer, shareholder or other Affiliate or Associate of Seller, or any of their respective Affiliates or Associates, or any entity in which any such Person has a direct or indirect material interest, on the other hand. All Indebtedness that is related to the Business and that is owed by any of the current or former officers, directors, shareholders or other Affiliate or Associate of Seller, or any of their respective Affiliates or Associates, are reflected in the Latest Balance Sheet.

3.24 **Questionable Payments**. Neither Seller nor any employee, officer, director, Affiliate or Associate of Seller or other Person acting on behalf of Seller, has (a) used any corporate or company funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (b) made any direct or indirect unlawful payments to government officials or employees from corporate funds; (c) established or maintained any unlawful or unrecorded fund of corporate monies or other assets; (d) made any false or fictitious entries on the books or records of any of such corporations; (e) made any bribe, payoff, kickback or other unlawful payment; or (f) made any material favor or gift which is not, in good faith, believed by Seller to be fully deductible by Seller or Seller's consolidated group for any income tax purposes and which was, in fact, so deducted.

3.25 **Products Liability**. Except as set forth on Schedule 3.13, there are no material claims presently pending or, to the Knowledge of Seller, threatened against Seller that are (a) for products liability on account of any express or implied warranty, law, regulation or other theory or (b) for personal injury.

3.26 **No Powers of Attorney**. Seller has not granted any general or special powers of attorney or any other authorizations of third parties to act as agents for Seller except for powers of attorney granted in connection with Seller's Taxes and Tax Returns.

3.27 **Full Disclosure**. No representation or warranty by Seller in this Agreement or statement in any Schedule contains any untrue statements of a material fact or omits to state any material fact necessary, in order to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF KERR AND PURCHASER

As an inducement to Seller to enter into this Agreement and to consummate the Acquisition, each of Kerr and Purchaser jointly and severally represents and warrants to Seller as follows:

4.1 **Organization and Qualification**. Purchaser is a limited liability company and Kerr is a corporation, each duly organized, validly existing and in good standing under the laws

of the State of Delaware. Each of Kerr and Purchaser is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for failures to be so qualified or licensed and in good standing that do not have a material adverse effect on the ability of Kerr and Purchaser to consummate the transactions contemplated hereby.

4.2 **Authority Relative to this Agreement**. Each of Kerr and Purchaser has all necessary corporate or limited liability company power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and to consummate the Acquisition. The execution and delivery of this Agreement and the other Transaction Documents to which it is a party by each of Kerr and Purchaser and the consummation by Purchaser of the Acquisition have been duly and validly authorized by all necessary corporate action on the part of each of Kerr and Purchaser, and no other corporate proceedings on the part of Kerr or Purchaser are necessary to authorize this Agreement or to consummate the Acquisition other than the filing and recordation of Articles of Transfer as required by Maryland law. This Agreement and the other Transaction Documents to which it is a party have been or will be duly executed and delivered by each of Kerr and Purchaser and, assuming the due authorization, execution and delivery by Seller, each such agreement constitutes a legal, valid and binding obligation of each of Kerr and Purchaser, enforceable against each of Kerr and Purchaser in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, fraudulent conveyance, reorganization or other similar Law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies (whether in a proceeding at law or in equity).

4.3 **No Conflict**. The execution and delivery of this Agreement by each of Kerr and Purchaser do not, and the performance by each of Kerr and Purchaser of its obligations hereunder and the consummation of the Acquisition will not: (a) conflict with or violate any provision of the certificate of incorporation or by-laws of Kerr or the certificate of formation or limited liability company operating agreement for Purchaser; (b) to the knowledge of Kerr and Purchaser, assuming that all filings and notifications described in Section 4.4 have been made, conflict with or violate any Law or order applicable to Kerr or Purchaser or by which Kerr or Purchaser or any of their assets or properties is bound or affected; or (c) to the knowledge of Kerr and Purchaser, result in any material breach of or constitute a material default under, or require notice or consent under, any mortgage, indenture, deed of trust, lease, contract, agreement, license or other instrument to which Kerr or Purchaser is a party or by which Kerr's or Purchaser's assets or properties are bound, or result in the creation of a material Lien on any asset or property of Kerr or Purchaser, except in the case of clauses (b) and (c), for any conflict, violation, breach or default that would not reasonably be expected to have a material adverse effect on the ability of Kerr or Purchaser to consummate the transactions contemplated hereby.

4.4 **Required Filings and Consents**. The execution and delivery of this Agreement by each of Kerr and Purchaser do not, and the performance by Kerr or Purchaser of its obligations hereunder and the consummation of the Acquisition will not, require any consent, approval, authorization or permit of, or filing by Kerr or Purchaser with or notification by Kerr or Purchaser to, any Governmental Authority, except for: (a) the filing of a Notification and

Report Form pursuant to the HSR Act and the expiration or earlier termination of the applicable waiting period thereunder with respect to the Acquisition and (b) such consents, approvals, authorizations, permits and filings the failure of which to obtain would not reasonably be expected to have a material adverse effect on the ability of Kerr or Purchaser to consummate the transactions contemplated hereby.

4.5 **No Finder**. Other than an aggregate fee of $1,687,500 payable to Fremont Partners, L.L.C. and Fremont Partners III, L.L.C., which fee shall be the sole responsibility of Kerr and/or Purchaser, neither Kerr nor Purchaser has agreed to pay to any broker, finder, investment banker or any other Person a brokerage, finder's or other fee or commission in connection with this Agreement or the Acquisition.

4.6 **No Litigation.** There is no claim, action, suit or proceeding pending or, to the knowledge of Kerr and Purchaser, threatened, before any Governmental Authority that prohibits or restricts, or seeks to prohibit or restrict, the consummation of the Acquisition.

4.7 **Commitment Letters.** Kerr has provided to Seller a true and complete copy of the commitment letter received by Kerr from Wells Fargo Bank.

ARTICLE V
ADDITIONAL COVENANTS

5.1 **Conduct of Business**. From the date hereof through the Closing Date, except as contemplated by this Agreement or described on Schedule 5.1, Seller agrees to conduct Seller's operations in the ordinary course, consistent with past practice, and agrees to:

(a) use its commercially reasonable efforts to (i) preserve for the benefit of Purchaser the goodwill and the existing relationships of Seller with its customers, suppliers and others with whom Seller deals; (ii) retain the services of its key employees; (iii) perform its obligations under the Material Contracts; (iv) maintain, keep and preserve the Business and the Purchased Assets in the same condition as the date hereof, except that in the case of any Purchased Assets constituting Tangible Personal Property, ordinary wear and tear and casualty is permitted; (v) preserve intact the Business and its organization; (vi) maintain books and records in accordance with past practice; and (vii) maintain in effect the insurance coverage provided under the policies set forth in Schedule 3.22;

(b) not waive, release or cancel any material claims against third parties or material debts owing to Seller, other than customer billing reductions and write-downs made in the ordinary course of business consistent with past practice and other than in respect of claims or debts that would be Excluded Assets;

(c) not (i) grant any general increase in the compensation of officers or employees, except in accordance with pre-existing contracts or consistent with past practice; (ii) enter into any contract with any employee, officer, director, Affiliate or Associate of Seller or any Affiliate or Associate of any such Person, provided, however, that this shall not prevent Seller from hiring employees on an at-will basis to fill an opening vacated by a departing or transferring employee in the ordinary course of business, provided that the compensation being offered to the individual is consistent with other personnel in the same or a similar position; (iii)

enter into any collective bargaining agreement or similar contract; (iv) enter into any agreement that requires Seller to pay any severance or termination pay (or that requires that the Seller provide a certain period of notice to an employee in advance of the effective date of termination or pay in lieu of such advance notice) to any employee, director, officer or consultant of Seller, provided that this shall not serve to prohibit Seller from paying any severance or termination pay (or pay in lieu of advance notice) which Seller was obligated to pay pursuant to any agreement, policy or practice entered into prior to the execution of this Agreement, even if the event triggering the actual obligation to pay such amounts occurs after the execution of this Agreement; (v) adopt or materially amend any employee or fringe benefit plans, agreements or arrangements, except as required pursuant to applicable Law; or (vi) engage in any work force reduction or restructuring resulting in employee layoffs triggering the notification requirements under the Worker Adjustment and Retraining Notification Act or similar applicable state or municipal statute or ordinance;

(d) not make any change in any accounting principle, method, estimate or practice, except for any such change required by reason of a concurrent change in GAAP;

(e) not (i) enter into any contract, agreement, commitment or binding understanding or arrangement requiring performance during or following a period in excess of one year or outside of the ordinary course of business consistent with past practice; or (ii) without prior consultation with Purchaser, renew, fail to renew, or permit or not permit to be automatically renewed any material agreement, including any material customer, supplier,

distributor, licensing, employment or other material contracts, to which Seller is a party (other than amendments or terminations of agreements pursuant to or contemplated by this Agreement);

(f) not (i) cancel, materially modify or materially amend any Real Property Lease or Material Contract; (ii) contract for or incur any expense in connection with opening any additional Business facility; (iii) cancel any of the Listed Permits or allow any Listed Permit to expire or not be renewed; (iv) revalue any of its material assets or any material amount of its properties, other than in the ordinary course of business consistent with past practice; or (v) sell or dispose of any of the Purchased Assets (except for the sale of inventory and the disposition of damaged or defective inventory, equipment or other material in the ordinary course of business consistent with past practice), or permit the creation of any Lien, except for Permitted Liens;

(g) not enter into or amend any agreements pursuant to which any other party is granted exclusive marketing, manufacturing or other exclusive rights of any type or scope with respect to any of its products or proprietary technology, other than exclusive rights of Seller's customers in molds, tooling and other design materials of such customers;

(h) not amend the certificate of incorporation, bylaws or similar organizational documents of Seller;

(i) not merge or consolidate with any other Person or acquire a material amount of assets or equity or debt securities from any other Person, except for purchases of supplies and capital expenditures in the ordinary course of business consistent with past practice or otherwise in accordance with Seller's projections;

(j) not commence a lawsuit, claim, action, arbitration or other administrative or judicial proceeding other than (i) for the routine collection of bills, (ii) in such cases where Seller in good faith determines that failure to commence suit would result in a material impairment of a valuable aspect of Seller's business, provided Seller consults with Purchaser prior to filing such suit, or (iii) for a breach of this Agreement;

(k) not (i) pay, discharge, or satisfy any material claim, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than in the ordinary course of business consistent with past practice; or (ii) fail to pay or otherwise satisfy (except if being contested in good faith) any material accounts payable, liabilities or obligations when due and payable;

(l) not take or fail to take any action that would cause any of the representations and warranties of Seller contained in this Agreement to be untrue in any material respect as of the Closing Date (disregarding for these purposes any materiality or Material Adverse Effect qualifier contained therein);

(m) not make any capital expenditure exceeding $200,000 individually or in the aggregate other than those set forth on Schedule 5.1(m) without the prior written consent of Kerr;

(n) not perform or take, or fail to perform or take, any action that has or is reasonably likely to have a Material Adverse Effect; or

(o) not agree or commit to do any of the foregoing provided in subsections (b) through (n).

Notwithstanding any of the foregoing, nothing herein shall be construed to prohibit or restrict any activities or transactions undertaken with respect to any of the Excluded Assets, the Retained Liabilities, or the business of Seller other than the Business, so long as, in each case, such activities or transactions will not have a negative effect on the Purchased Assets or the Business.

5.2 **Intentionally Omitted**

5.3 **Consents, Filings and Authorizations; Efforts to Consummate**. As promptly as practicable after the date hereof, Purchaser and Seller shall make all filings and submissions under such Laws as are applicable to them or to their respective Affiliates, including the filing of a Notification and Report Form pursuant to the HSR Act, and as may be required for the consummation of the Acquisition in accordance with the terms of this Agreement. Purchaser and Seller shall consult with each other prior to any such filing, and neither Seller nor Purchaser shall make any such filing or submission to which the other of them reasonably objects in writing. All such filings shall comply in form and content in all material respects with applicable Laws. Subject to the terms and conditions herein, each of Seller and Purchaser, without payment or further consideration, shall use its commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary, proper or advisable: (a) to cause the conditions to the obligations of the other Party to consummate the Acquisition to be satisfied as soon as reasonably practicable (including, in the case of Seller, the removal of all Liens on the

Purchased Assets other than Permitted Liens) and (b) under applicable Laws, permits and orders, to consummate and make effective the Acquisition as soon as reasonably practicable, including obtaining all consents required in connection with such Party's consummation of the Acquisition. Seller and Parent (but only to the extent that Parent shall make available its Representatives who are substantially involved in the Business) shall provide Kerr and Purchaser with reasonable assistance to obtain the debt financing needed by Purchaser for the consummation of the transactions contemplated by this Agreement, subject to reimbursement by Kerr and Purchaser for any reasonable documented out-of-pocket expenses incurred by Seller or Parent in connection with the providing of such assistance. Such assistance shall include, to the extent it is commercially reasonable for Seller and Parent to do so, making appropriate Representative of Parent and Seller available to participate in informational meetings, assisting with the preparation of an information package in connection with such financing, including the syndication of any loans to be funded in connection with the transactions contemplated by this Agreement, cooperating with respect to matters relating to bank collateral to take effect as of the Closing in connection with such financing (including the pledge of the Purchased Assets by Purchaser and the obtaining of authorizations, consents and approvals required under any Real Property Lease in order to subject the leasehold interest represented thereby to Liens in favor of any lenders providing such financing), using its commercially reasonable efforts to obtain customary "comfort" letters and legal opinions and executing and delivering such documents, certificates, agreements and other writings as shall take effect as of the Closing and as are reasonably requested in connection therewith. Without limiting the generality of the foregoing, Purchaser shall use its commercially reasonable efforts to obtain such debt financing. Nothing herein shall require any Party to take any action that would reasonably be expected to have a material adverse effect on such Party.

5.4 **Notices of Certain Events**. Prior to the Closing Date, each of Seller and Purchaser shall promptly notify the other of:

(a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Acquisition;

(b) any material notice or other material oral or written communication from any Governmental Authority in connection with the Acquisition;

(c) any change that has a Material Adverse Effect, or could delay or impede the ability of either Seller or Purchaser to perform its obligations under this Agreement and to consummate the Acquisition;

(d) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would cause any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect at or prior to the Closing Date; and

(e) any material failure of any Party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied hereunder.

5.5 **Public Announcements**. From and after the date of this Agreement until the Closing Date, Kerr and Purchaser, on the one hand, and Seller, on the other hand, agree not to

make any public announcement or other disclosure concerning this Agreement or the transactions contemplated herein without obtaining the prior consent of the other Party as to form, content and timing (such consent not to be unreasonably withheld); provided, however, that the foregoing shall not restrict (a) any Party (or Parent) from making any public announcement or disclosure as may be required by applicable Law (including the rules of any stock exchange or other self-regulated body) on advice of a nationally recognized securities law firm that such Party is reasonably obliged to make public announcements or disclosure or (b) Seller from informing its employees and agents about this Agreement and the transactions contemplated hereby, provided that Kerr and Purchaser shall be permitted reasonable opportunity to comment upon the initial proposed communication to Seller's employees and agents before release.

5.6 **Access to Information; Confidentiality**.

(a) From and after the date of this Agreement until the Closing Date, upon reasonable notice and subject to applicable Law relating to the exchange of information and to confidentiality obligations of Seller entered into prior to the date hereof, Seller shall afford to Purchaser's Representatives access during normal business hours to the employees of Seller and to such properties, books, computer systems, records, contracts, commitments and other information of Seller relating to the Business as Purchaser may reasonably request, but excluding books, computer systems, records, contracts, commitments and information primarily related to the sale of the Business, the Excluded Assets or the Retained Liabilities. In the event that Purchaser's due diligence reveals any condition of the Real Property or the premises demised under the Real Property Leases that in Purchaser's judgment requires disclosure to any Governmental Authority, Purchaser shall immediately notify Seller thereof. In such event, Seller, and not Purchaser or any Person acting on Purchaser's behalf, shall make such disclosures to the extent Seller reasonably deems appropriate. Notwithstanding the foregoing, Purchaser may disclose matters concerning the Real Property to a Governmental Authority on written advice of a nationally-recognized law firm that Purchaser is reasonably obliged to make such disclosure if Purchaser gives Seller not less than ten (10) days prior written notice of the proposed disclosure, together with a copy of such written advice.

(b) Purchaser acknowledges that the information provided to Purchaser and its Representatives in connection with the Acquisition and this Agreement is subject to, and Purchaser shall, and shall cause its Representatives to, fully comply with the provisions of, that certain Confidentiality Agreement, dated as of February 6, 2003, between Purchaser and Seller (the "Confidentiality Agreement"), the terms of which are incorporated herein by this reference. Notwithstanding the foregoing, following the Closing Date, any information with respect to the Business that is included in the Purchased Assets shall not be subject to the Confidentiality Agreement.

(c) From and after the Closing Date, Parent, Seller and any Representatives of Parent or Seller shall maintain in confidence and not use or disclose to any third party any confidential or proprietary information regarding the business operations, product formulations, ingredients or processes, technical know-how or data, specifications, finances or other business matters of Seller which information constitutes any part of the Purchased Assets; provided, that nothing in this Section 5.6(d) shall apply to information that (i) is in the public domain, (ii) is

independently developed by such Person after the Closing, or (iii) is disclosed to the recipient by a third party which has no duty of confidentiality to Purchaser or its Affiliates. Upon discovery by Parent, Seller or any of their respective Representatives that such Person is in possession of any such confidential or proprietary information, such Person shall promptly return all such information to Purchaser, without retaining any copies thereof except for copies that such Person is required to retain by applicable Law. Parent and Seller shall be responsible for ensuring the compliance of their respective Representatives with the obligations in this Section 5.6(d). If Parent, Seller or their respective Representatives receive a request or are required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or any part of such confidential or proprietary information, Parent and Seller, as the case may be, agree to, or will ensure that their respective Representatives, promptly notify Purchaser of the existence, terms and circumstances surrounding such request so that Purchaser may seek a protective order or other appropriate remedy.

(d) Notwithstanding any provision herein to the contrary, each Party and each of the respective employees, representatives and agents of each Party are hereby expressly authorized to disclose to any and all persons, without limitation of any kind, the tax treatment and any facts that may be relevant to the tax structure of the transactions contemplated by this Agreement and the Transaction Documents, provided that the confidentiality provisions of this Agreement shall continue to apply to the extent that any information (e.g., names of the Parties) is not relevant to understanding the tax treatment or tax structure of the transactions contemplated hereby.

5.7 **Expenses**. Except as otherwise specifically provided in this Agreement, each Party shall bear its own expenses incurred in connection with the preparation, execution and performance of this Agreement and the Acquisition, including all fees and expenses of such Party's Representatives, provided that:

(a) Purchaser shall pay all fees required in connection with the filing of the Notification and Report Form under the HSR Act; and

(b) Seller shall pay all recording fees, sales taxes, transfer taxes and similar taxes imposed upon transfer of the Purchased Assets pursuant to this Agreement.

5.8 **Title and Survey Matters**.

(a) Seller has delivered to Purchaser, and Purchaser has reviewed and approved the following: (i) the owner's title commitments identified on Schedule 5.8, as the same have been supplemented or updated prior to the dated hereof (collectively, the "Commitments") for the Real Property prepared by First American Title Insurance Company (the "Title Company"); (ii) copies of all documents supporting exceptions ("Exceptions") set forth in the Commitments; and (iii) a copy of the existing surveys for the Real Property identified on Schedule 2.1(a)(i) (collectively, the "Surveys") (such Commitments, Exceptions, and Surveys collectively, the "Title Documents"). The following matters are hereby approved by Purchaser (collectively, the "Permitted Exceptions"): (A) all exceptions to title shown on the Commitments and all matters shown on the Surveys; (B) all of the contracts, leases and other agreements listed as Items 1 through 106 on Schedule 2.1(e); (C) the Lien of non-delinquent

Taxes (it being agreed by Purchaser and Seller that if any Tax is levied or assessed with respect to the Real Property for public improvements that will benefit the Real Property subsequent to the date of this Agreement and Seller has the election to pay such Tax either immediately or under a payment plan with interest, Seller may elect to pay under a payment plan, which election shall be binding on Purchaser); (D) all printed exceptions and exclusions contained in the form of the Title Policies to be issued at Closing; and (E) any matters caused or created by, or otherwise approved or consented to in writing by, Purchaser.

(b) Purchaser shall have the right to object in writing to any title matter that is not a Permitted Exception (other than any matter falling within subsection (E) of the definition of Permitted Exceptions) which may appear on supplemental title commitments or updates to the Commitments issued after the date of the respective Commitments (collectively, "Other Liens") within five (5) days after receipt thereof (together with a copy of such new exception) by Purchaser. Unless Purchaser shall timely object to such Other Liens, all such Other Liens which are set forth in any such supplemental commitments or updates shall be deemed to constitute additional Permitted Exceptions. Any exceptions which are timely objected to by Purchaser shall be herein collectively called the "Title Objections." Seller may elect (but shall not be obligated) to remove, or cause to be removed at its expense, any Title Objections, and shall be entitled to a reasonable adjournment of the Closing (not to exceed a period of thirty (30) days) for the purpose of such removal, which removal will be deemed effected by the issuance of title insurance eliminating the Title Objections or insuring against the effect of the Title Objections; provided, however, Seller shall be obligated to remove or bond over any and all Liens for borrowed money, mechanics' and materialmen's liens, tax liens and any Liens resulting from the failure to satisfy an obligation when due, in each case affecting any Real Property, on or before the Closing Date. Seller shall notify Purchaser in writing within five (5) days after receipt of Purchaser's notice of Title Objections whether Seller elects to remove the same. If Seller fails to remove any Title Objections prior to the Closing, Purchaser may elect either to: (i) terminate this Agreement or (ii) waive such Title Objections, in which event such Title Objections shall be deemed additional "Permitted Exceptions" and the Closing shall occur as herein provided (A) with a reduction of or credit against the Purchase Price as the Parties may agree or (B) subject to Purchaser's right to indemnification pursuant to Section 9.2.

(c) If on the Closing Date there are any Title Objections which Seller has elected to remove, Seller may use any portion of the Purchase Price to satisfy the same; provided Seller shall either deliver to Purchaser at Closing instruments sufficient to cause such Title Objections to be released of record, together with the cost of recording or filing such instruments, or cause the Title Company to omit as an exception, the same, without any additional cost to Purchaser, whether such insurance is made available in consideration of payment, bonding, indemnity of Seller or otherwise.

5.9 **No Recording**. The provisions of this Agreement shall not constitute a Lien on the Real Property. Neither Purchaser nor any of its Representatives shall record or file this Agreement or any notice or memorandum hereof in any public records. If Purchaser breaches the foregoing provision, this Agreement shall, at Seller's election, terminate.

5.11 **Intentionally Omitted**

5.12 **Intentionally Omitted**

5.13 **Patent Transfer**. Prior to the Closing, Parent shall assign to Seller all of Parent's rights in and to the patents identified as Items 3, 5, 6, and 7 on Schedule 2.1(g) pursuant to valid and effective assignment documentation in form and substance reasonably acceptable to Purchaser.

5.14 **Price Decrease Notification**. Seller shall notify Purchaser within three Business Days after offering any price decrease in excess of 1% to any customer, which notice shall include the name of the customer, the products for which the decrease was made and the amount of the decrease.

ARTICLE VI
CONDITIONS TO CLOSING

6.1 **Conditions to the Obligations of Seller and Purchaser**. The obligations of Seller and Purchaser to consummate the Acquisition are subject to the satisfaction or, if permitted by applicable Law, waiver of the following conditions on or prior to the Closing Date:

(a) No Injunction. No provision of any applicable Law shall be in effect and no interlocutory, appealable or final order shall have been issued that prohibits or restricts the consummation of the Acquisition.

(b) HSR. All waiting periods applicable to the consummation of the Acquisition under the HSR Act shall have expired or been terminated, and no action shall have been instituted by the Department of Justice or the Federal Trade Commission challenging or seeking to enjoin the consummation of the Acquisition, which action shall not have been withdrawn or terminated.

6.2 **Conditions to Obligation of Seller**. The obligation of Seller to consummate the Acquisition is subject to the fulfillment at or prior to the Closing of the following conditions, any one or more of which may be waived in whole or in part by Seller:

(a) Accuracy of Representations and Warranties. Each of the representations and warranties of Purchaser contained in this Agreement shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) when made and on and as of the Closing as if made at and as of the Closing; provided, that representations and warranties which address matters only as of a certain date shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) as of such certain date.

(b) Performance. Purchaser shall have performed and complied in all material respects with all agreements, obligations and covenants required to be performed or complied with by it on or prior to the Closing Date.

(c) Deliveries to Seller. Purchaser shall have delivered to Seller the following:

(i) A certificate, dated the Closing Date, of an executive officer of Purchaser confirming the matters set forth in Section 6.2(a) and (b);

(ii) A certificate, dated the Closing Date, of the Secretary or Assistant Secretary of Purchaser certifying, that attached or appended to such certificate: (A) is a true and correct copy of the certificate of formation of Purchaser, and all amendments thereto; (B) is a true copy of all limited liability company actions taken by it, including actions of its sole member, authorizing the consummation of the Acquisition and the execution, delivery and performance of this Agreement and each of the Transaction Documents to be delivered by Purchaser pursuant hereto; and (C) are the names and signatures of its duly elected or appointed officers who are authorized to execute and deliver this Agreement and the other Transaction Documents to which Purchaser is a party;

(iii) A counterpart of the Assignment and Assumption Agreement duly executed by Purchaser;

(iv) A certificate of good standing from the appropriate state agency, dated as of a recent date, certifying that Purchaser is in good standing in the State of Delaware;

(v) A counterpart of a transition services agreement, in the form attached as Exhibit D (the "Transition Services Agreement"), duly executed by Purchaser;

(vi) A counterpart of a supply agreement in the form agreed upon by Kerr and Parent (the "Supply Agreement"), duly executed by Kerr; and

(vii) A certificate setting forth the "Base Purchase Price" (the "Base Purchase Price").

(d) Real Property Deliveries. Purchaser shall have delivered to Seller the following:

(i) A counterpart of an assignment and assumption of each of the Real Property Leases in the form attached as Exhibit F or in the form required by the applicable Real Property Lease (each, an "Assignment of Lease"); and

(ii) If applicable, duly completed and executed real estate transfer tax declarations.

(e) Withholding Tax Estimate. At least three Business Days before the Closing Date, Purchaser shall have delivered to Seller a good faith estimate of the Withholding Taxes.

(f) Consents. Seller shall have obtained the third party consents to the assignment of the contracts listed on Schedule 6.2(f).

6.3 **Conditions to Obligation of Purchaser**. The obligations of Kerr and Purchaser to consummate the Acquisition is subject to the fulfillment at or prior to the Closing of the

following conditions, any one or more of which may be waived in whole or in part by Kerr and Purchaser:

(a) Accuracy of Representations and Warranties. Each of the representations and warranties of Seller contained in this Agreement shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) when made and on and as of the Closing as if made at and as of the Closing; provided, that representations and warranties which address matters only as of a certain date shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) as of such certain date.

(b) Performance. Seller shall have performed and complied in all material respects with all agreements, obligations and covenants required to be performed or complied with by it on or prior to the Closing Date.

(c) No Material Adverse Effect. During the period from the date hereof to the Closing Date, there shall not have occurred and be continuing any Material Adverse Effect.

(d) Deliveries by Seller. Seller shall have delivered to Purchaser the following:

(i) A certificate, dated the Closing Date, of an executive officer of Seller confirming the matters set forth in Section 6.3(a), (b) and (c);

(ii) A certificate, dated the Closing Date, of the Secretary or Assistant Secretary of Seller certifying, among other things, that attached or appended to such certificate: (A) is a true and correct copy of the charter and by-laws of Seller, and all amendments thereto; (B) is a true copy of all corporate actions taken by it, including resolutions of its board of directors and sole stockholder, authorizing the consummation of the Acquisition and the execution, delivery and performance of this Agreement and each of the Transaction Documents to be delivered by Seller pursuant hereto; and (C) are the names and signatures of its duly elected or appointed officers who are authorized to execute and deliver this Agreement and the other Transaction Documents to which Seller is a party;

(iii) A counterpart of the Assignment and Assumption Agreement duly executed by Seller;

(iv) Certificates of good standing from the appropriate state agencies, dated as of a recent date, certifying that Seller is in good standing in the State of Maryland and in each jurisdiction in which Seller is qualified to do business as a foreign corporation;

(v) An affidavit certifying, under penalties of perjury, Seller's United States taxpayer identification number and that Seller is not a "foreign person" within the meaning of Section 1445(b)(2) of the Code;

(vi) Any certificates, affidavits or forms necessary to comply with or to reduce state withholding Taxes.

(vii) A counterpart of the Transition Services Agreement, duly executed by Seller;

(viii) A counterpart of the Supply Agreement, duly executed by Seller;

(ix) A bill of sale for the Tangible Personal Property, in the form attached as Exhibit G, duly executed by Seller;

(x) Original certificates of title to all vehicles included in the Purchased Assets, executed by Seller to the extent necessary to reflect the assignment by Seller to Purchaser of such assets;

(xi) Articles of Transfer or other transfer document executed by Seller to the extent such transfer document is required to be filed with any Governmental Authority upon consummation of the Acquisition; and

(xii) Valid and effective assignment documentation, in form and substance reasonably acceptable to Purchaser, of any rights to the Intellectual Property that are included in the Purchased Assets.

(e) [Intentionally Omitted]

(f) Real Property Deliveries. Seller shall have delivered to Purchaser the following:

(i) Special warranty deeds, grant deeds or quitclaim deeds, in the form attached as Exhibit H, duly executed by Seller, in favor of Purchaser, in recordable form, transferring good and valid fee simple title to the Real Property to be conveyed by Seller to Purchaser hereunder, subject only to Permitted Exceptions, and such affidavits or other customary instruments as the Title Company or Purchaser may reasonably request;

(ii) A counterpart of each Assignment of Lease duly executed by Seller; and

(iii) If applicable, duly completed and executed real estate Tax declarations.

(g) Title Company Deliveries. The Title Company shall have delivered to Purchaser (and if applicable, Purchaser's lenders) an owner's (or lender's) form of title insurance policy (or a mark-up commitment therefor) in the form of the Title Commitments (each, a "Title Policy"), in the amount of the Purchase Price applicable to the Real Property insured by such Title Policy, insuring that fee simple title to the Real Property is vested in Purchaser or its nominee subject only to the Permitted Exceptions.

(h) Consents. Seller shall have obtained the third party consents to the assignment of the contracts listed on Schedule 6.3(h) and the pledges of leasehold interests as reasonably requested by Kerr and Purchaser pursuant to Section 5.3.

(i) Financing. Kerr and Purchaser shall have received the financing contemplated by either or both of the commitment letters referred to in Section 4.7.

(j) Liens. Seller shall have removed all Liens on the Purchased Assets other than Permitted Liens.

(k) Evidence of Patent Transfer. Seller shall have provided evidence in a form reasonably satisfactory to Purchaser that all patents referred to in Section 5.12 have been transferred to Seller pursuant to Section 5.12.

ARTICLE VII
TERMINATION; EFFECT OF TERMINATION

7.1 **Termination of Agreement**. This Agreement may be terminated and the Acquisition may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Purchaser;

(b) after September 15, 2003, by either Seller or Purchaser, if the Closing has not occurred by that date; provided, however, that Seller shall have the right to extend such date in accordance with Section 5.8(b); provided, further, that such date shall be extended to 120 days after a second request, if any, by the Department of Justice or the Federal Trade Commission in connection with the filing of a Notification and Report Form pursuant to the HSR Act; and provided, further, that the right to terminate this Agreement pursuant to this Section 7.1(b) shall not be available to a Party whose action or failure to act has been a principal cause of or resulted in the failure of the Acquisition to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(c) by Seller, upon written notice, if any representation or warranty of Purchaser shall have become untrue such that the condition set forth in Section 6.2(a) would not be satisfied or if Purchaser shall have materially breached any agreement, obligation or covenant such that the condition set forth in Section 6.2(b) would not be satisfied; provided that if the inaccuracy in Purchaser's representations and warranties or the breach of Purchaser's agreement, obligation or covenant is curable through the exercise of Purchaser's commercially reasonable efforts, then Seller may not terminate this Agreement for thirty (30) days after Seller shall have given written notice of such inaccuracy or breach to Purchaser (so long as Purchaser continues to use commercially reasonable efforts to cure the inaccuracy or breach during such period), it being understood that Seller may not terminate this Agreement if Purchaser cures such inaccuracy or breach within such thirty (30) day period;

(d) by Purchaser, upon written notice if any representation or warranty of Seller shall have become untrue such that the condition set forth in Section 6.3(a) would not be satisfied or if Seller shall have materially breached any agreement, obligation or covenant such that the condition set forth in Section 6.3(b) would not be satisfied; provided that if the inaccuracy in Seller's representations and warranties or the breach of Seller's agreement, obligation or covenant is curable through the exercise of Seller's commercially reasonable efforts, then Purchaser may not terminate this Agreement for thirty (30) days after Purchaser shall have given written notice of such inaccuracy or breach to Seller (so long as Seller continues

to use commercially reasonable efforts to cure such inaccuracy or breach during such period), it being understood that Purchaser may not terminate this Agreement if Seller cures such inaccuracy or breach within such thirty (30) day period;

(e) by Purchaser or Seller if there shall be any Law that makes consummation of the Acquisition illegal or otherwise prohibited, or if any order of any Governmental Authority enjoining Purchaser or Seller from consummating the Acquisition is entered and such order shall have become final and nonappealable; or

(f) by Purchaser, to the extent permitted by Section 5.8(b) if Seller fails to remove any Title Objections.

7.2 **Effect of Termination; Right to Proceed**.

(a) In the event that Seller can demonstrate by a preponderance of the evidence that, prior to the execution of this Agreement by the Parties, Richard Hofmann, Lawrence Caldwell, Robert Rathsam, Timothy Guhl, Kathy Kruse or Megan Petry had actual knowledge of any facts and circumstances that would constitute a breach of or inaccuracy in any representation or warranty of Seller contained in Article III hereof, and such facts and circumstances were not within the Knowledge of Seller as of the execution of this Agreement by the Parties, then Purchaser shall not be entitled to seek indemnification for such breach or inaccuracy pursuant to Section 9.2(a).

(b) In the event that this Agreement is terminated pursuant to Section 7.1(a), (b), (e) or (f), all further obligations of the Parties shall terminate without further liability of either Party (except for obligations under this Section 7.2, Sections 5.5, 5.6 and 5.7 and Articles I, IX and X); provided that termination shall not relieve any party of liability for any breach of this agreement occurring before such termination.

(c) Subject to Section 7.2(a), upon termination of this Agreement for breach pursuant to Section 7.1(c) or (d): (i) the breaching Party shall be liable to the non-breaching Party for any breach of any representation, warranty, covenant or agreement of such breaching Party existing at the time of termination and (ii) the non-breaching Party may seek such remedies, including damages against the breaching Party, with respect to any such breach as are provided in this Agreement or as are otherwise available at Law or in equity. The agreements contained in Sections 3.17, 4.5, 5.5, 5.6, 5.7, 10.5 and 10.6 and Articles I, IX and X shall survive the termination hereof.

(d) In the event that a condition precedent to a Party's obligation is not met, nothing contained herein shall be deemed to require any Party to terminate this Agreement, rather than to waive such condition precedent and proceed with the Acquisition.

ARTICLE VIII
POST-CLOSING COVENANTS

8.1 **Certain Transitional Matters**. From and after the Closing Date:

(a) Purchaser shall have the right and authority to collect for Purchaser's own account all accounts or notes receivable which are included in the Purchased Assets;

(b) Purchaser shall have the right and authority to retain and endorse without recourse the name of Seller on any check or any other evidence of indebtedness received by Purchaser on account of any accounts receivable which are included in the Purchased Assets;

(c) Seller shall promptly transfer and deliver to Purchaser any cash or other property, if any, that Seller may receive which constitutes Purchased Assets; and

(d) Purchaser shall promptly transfer and deliver to Seller any cash or other property, if any, that Purchaser may receive which constitutes Excluded Assets.

8.2 **Transfer and Retention of Transferred Employees; Employee Benefits**. On the Closing Date, Seller shall terminate all Persons who are employed by Seller as of such date, excluding only those Persons who are on short- or long-term disability leave as of such date (the "Terminated Employees"). Purchaser shall offer employment, from and after the Closing Date, on an at-will basis (but shall not be restricted from entering into employment agreements with any Terminated Employee) to all Terminated Employees. In addition, if any Person who was on short- or long-term disability leave from Seller returns to work for Seller on a date that is within six months of the Closing Date, and provides the proper medical authorization to resume work, Purchaser shall offer employment to such Person as of the date of such Person's return to work; provided that Purchaser shall not be obligated to offer employment to more than 20 such employees, taking into account all such employees hired by Purchaser from Seller or any Affiliate of Seller. Employees of Seller who are not offered employment with Purchaser as of the Closing Date shall continue as employees of Seller and to be covered under Seller's employee benefit plans and programs in accordance with the terms of such plans and programs. Seller shall cash-out each Terminated Employee with respect to such Terminated Employee's accrued and unused vacation as of the Closing Date. On and after the Closing Date, Purchaser shall arrange for each employee of Seller who becomes an employee of Purchaser or any Affiliate of Purchaser (each, a "Transferred Employee") to participate in such active counterpart employee benefit plans, programs, and arrangements in which similarly situated employees of Purchaser and its Affiliates participate from time to time (the "Counterpart Plans"), in accordance with the eligibility criteria thereof, provided that such Transferred Employees shall: (a) receive full credit for years of service prior to the Closing Date for all purposes for which such service was recognized under the Plans, provided that such crediting of service shall not result in the duplication of benefits (such as pension benefits, accrued vacation, etc.), and (b) to the extent Counterpart Plans are maintained by Purchaser or its Affiliates, participate in such Plans on terms no less favorable, in the aggregate, than those offered to similarly-situated employees of the Purchaser and its Affiliates. Purchaser or its Affiliates shall give credit under those of its Counterpart Plans that are welfare benefit plans for all co-payments, deductibles and out-of-pocket maximums satisfied by Transferred Employees (and their eligible dependents) in respect of the calendar year in which the Closing occurs. Purchase or its Affiliates shall waive all pre-existing conditions (to the extent waived under the applicable Plans of the Seller) that would otherwise be applicable to Transferred Employees under the Counterpart Plans in which Transferred Employees of the Seller or Affiliates become eligible to participate on or following the Closing Date. Purchaser will retain the Transferred Employees for such period as may be

necessary, when considered together with any employees discharged by Seller prior to Closing, to avoid, with respect to any facility operated by Seller in the Business: (a) a "plant closing," "mass layoff," "layoff," "relocation" or "termination" of "employees" (as those terms are defined in the Worker Adjustment and Retraining Notification Act of 1988 or California Labor Code Section 1400, et seq., effective January 1, 2003); or (b) any liability to Seller under any Law which would reasonably be expected to arise from any actual or anticipated termination of employees by Purchaser after Closing, provided Seller has provided Purchaser (i) by July 1, 2003 with an accurate list of employees terminated by Seller within 180 days prior to and including such date and (ii) on the Closing Date with an accurate list of employees terminated by Seller within 180 days prior to and including the Closing Date. No assets, liabilities or reserves relating to any Seller Plan will be transferred in connection with this Agreement from Seller or its Affiliates or any Seller Plan to Purchaser or its Affiliates or any employee benefit plan of Purchaser or its Affiliates; provided, however, that the plan administrator of an applicable Counterpart Plan shall accept rollover contributions from an appropriate Plan to the extent such rollover contributions comply with the terms of such Counterpart Plan and the plan administrator of such Counterpart Plan reasonably concludes that the contribution is a valid rollover contribution.

8.3 **Non-Competition Covenant.** Seller and Parent shall not, directly or indirectly, within North America, South America and Europe, for a period of five (5) years after the Closing Date, engage in the business of manufacturing, marketing or distributing to third parties molded closures and flexible plastic packaging for the healthcare, personal care, health and beauty, pharmaceutical, household chemical, automotive, industrial and dentifrice industries; provided, however, that the foregoing shall not restrict (a) Seller's and Parent's ownership, operation or control of any entity acquired by Seller or Parent after the Closing Date (an "Acquired Entity") if the gross revenues of such entity attributable to products, the production, marketing or sale of which would otherwise violate the terms of this Section 8.3, (i) do not exceed five percent (5%) of the net revenues of the Acquired Entity for the twelve (12) month period ending on the last day of the last fiscal quarter preceding the date of the definitive agreement providing for such acquisition for which such results of operation are available and (ii) do not exceed $25,000,000, or (b) the direct or indirect ownership by Seller of five percent (5%) or less of any entity whose securities have been registered under the Securities Act of 1933 or under the Securities Exchange Act of 1934 or the securities Laws of any other jurisdiction. For the avoidance of doubt, nothing in this Section 8.3 shall restrict Parent or any Affiliate of Parent from developing, purchasing, marketing, distributing or otherwise dealing in any products to be sold to third parties by Parent or such Affiliate which incorporate such molded closures or flexible plastic packaging. Further, for a period of five (5) years after the Closing Date, Seller and Parent shall not, directly or indirectly solicit, request, cause or induce Steven Rafter or James Farley to leave the employ of or otherwise terminate his relationship with the Purchaser nor shall Seller hire or seek to hire any such person while he is employed by the Purchaser. Seller acknowledges that Purchaser shall be entitled to seek equitable relief from a court of competent jurisdiction restraining any breach by Seller of this Section 8.3.

8.4 **Trademarks, Etc..** As promptly as practicable after the Closing, Purchaser shall revise trademarks and product literature, change signage and stationery and otherwise discontinue use of all intellectual property constituting Excluded Assets and all Affiliate Marks (collectively, "Excluded Intellectual Property"); provided, however, that for a period of forty-

five (45) days from the Closing Date, Purchaser may consume stationery and similar supplies and may sell inventory on hand as of the Closing Date which contain such Excluded Intellectual Property so long as such items are, as promptly as practicable after the Closing Date, overstamped or otherwise appropriately indicate that the Business is then owned by Purchaser. Without limiting the foregoing, Purchaser shall, and shall cause each of its Affiliates to, (i) no later than the close of business on the business day following the Closing Date, discontinue affixing in any manner whatsoever such Excluded Intellectual Property to any Product and (ii) no later than the close of business on the forty-fifth (45^{th}) calendar day after the Closing Date, discontinue selling, shipping and delivering any product having such Excluded Intellectual Property affixed thereto in any manner whatsoever.

8.5 **Tax Covenants**.

(a) From and after the Closing, each of Seller and Purchaser shall cooperate with the other in connection with Tax matters relating to the Business and the Purchased Assets, including: (i) the preparation and filing of Tax Returns; (ii) the determination of a Party's liability for Taxes and the amounts of any Taxes due or of a Party's right to a refund of Taxes and the amount of any such refund; (iii) the examination of Tax Returns; and (iv) the conduct of any administrative or judicial proceedings in respect of Taxes assessed or proposed to be assessed. Subject to Section 5.6(b), such cooperation shall include each Party making all information and documents in its possession relating to the Business and Purchased Assets available to the other Party.

(b) The Parties shall retain all Tax Returns, schedules and work papers, and all material records and other documents relating thereto, until the expiration of the applicable statute of limitations (including, to the extent notified by any Party, any extension thereof) of the Tax period to which such Tax Returns and other documents and information relate. Each Party shall also make available to the other Party, as reasonably requested and available, personnel (including officers, directors, employees and agents) responsible for preparing, maintaining and interpreting information and documents relevant to Taxes, and personnel reasonably required as witnesses or for purposes of providing information or documents in connection with any administrative or judicial proceedings relating to Taxes. Any information or documents provided under this Section 8.5(b) shall be kept confidential by the party receiving such information or documents, except as may otherwise be necessary in connection with the filing of Tax Returns or in connection with administrative or judicial proceedings relating to Taxes.

(c) In the event any Governmental Authority with responsibility for Taxes informs Seller or Purchaser of any notice of proposed audit, claim, assessment or other dispute concerning an amount of Taxes with respect to which the other Party may incur liability hereunder, the Party so informed shall promptly notify the other Party of such matter. Such notice shall contain factual information (to the extent known) describing any asserted Tax liability in reasonable detail and shall be accompanied by copies of any notice or other documents received from such Governmental Authority with respect to such matter. If an Indemnified Party has knowledge of an asserted Tax liability with respect to a matter for which it is to be indemnified hereunder and such Party fails to provide the Indemnifying Party prompt notice of such asserted Tax liability, then (i) if the Indemnifying Party is precluded from contesting the asserted Tax liability in any forum as a result of the failure to give prompt notice,

the Indemnifying Party shall have no obligation to indemnify the Indemnified Party for Taxes arising out of such asserted Tax liability, and (ii) if the Indemnifying Party is not precluded from contesting the asserted Tax liability in any forum, but such failure to provide prompt notice results in a monetary detriment to the Indemnifying Party, then any amount which the Indemnifying Party is otherwise required to pay the Indemnified Party pursuant to this Agreement shall be reduced by the amount of such detriment.

(d) Seller and Purchaser agree that Purchaser has purchased substantially all the property used in Seller's trade or business, and in connection therewith, Purchaser shall employ Transferred Employees who immediately before the Closing Date were employed in such trade or business by Seller. Accordingly, Seller shall provide Purchaser with all necessary and accurate payroll records for the calendar year which includes the Closing Date. Furthermore, pursuant to Rev. Proc. 96-60, 1996-2 C.B. 399, if Purchaser elects, each Party shall comply with the requirements provided in the alternative procedure under Rev. Proc. 96-60, pursuant to which Purchaser shall furnish a Form W-2 to each employee employed by Purchaser who had been employed by Seller disclosing all wages and other compensation paid for such calendar year, and Taxes withheld therefrom, and Seller shall be relieved of the responsibility to do so. If Purchaser does not elect such alternative procedure, each Party shall comply with the requirements provided in the standard procedure under Rev. Proc. 96-60.

8.6 **Records; Retention**. Following the Closing, each of Purchaser and Seller shall afford the other and its Representatives reasonable access during normal business hours to, and (if permitted by law) the right to make copies and extracts from, the books, records and other data in Purchaser's or Seller's possession relating to the Business, the Purchased Assets, the Excluded Assets, the Assumed Liabilities and the Retained Liabilities with respect to periods prior to the Closing Date, at the requesting Party's expense, to the extent that such access may be requested by Purchaser or Seller for any business purpose, including to facilitate the investigation, litigation and final disposition of any claims which may have been or may be made against Purchaser, Seller or their respective Affiliates. Purchaser and Seller agree that for a period of seven (7) years following the Closing Date, such Party shall not destroy or otherwise dispose of any such books, records or data in its possession without (a) giving the other at least sixty (60) days' prior written notice of such intended disposition and (b) offering to deliver to the other, at the other's expense, custody of any or all of the books, records and data that such Party intends to destroy.

8.7 **Designated Reporting Person**. In order to assure compliance with the requirements of Section 6045 of the Code (and any related reporting requirements), the Parties agree as follows:

(a) If the Title Company executes a statement in writing, in form and substance reasonably acceptable to the Parties, pursuant to which the Title Company agrees to assume all responsibilities for information reporting required under Section 6045(e) of the Code, Seller and Purchaser shall designate the Title Company as the person to be responsible for all information reporting under Section 6045(e) of the Code (the "Reporting Person"). If the Title Company refuses to execute a statement pursuant to which it agrees to be the Reporting Person, Seller and Purchaser agree to appoint another third party mutually satisfactory to the Parties as the Reporting Person.

(b) Seller and Purchaser hereby agree:

(i) to provide to the Reporting Person all information and certifications regarding such Party, as reasonably requested by the Reporting Person or otherwise required to be provided by a Party under Section 6045 of the Code; and

(ii) to provide to the Reporting Person such Party's taxpayer identification number and a statement (on IRS Form W-9 or an acceptable substitute form, or on any other form the Code might require and/or any form requested by the Reporting Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such Party to the Reporting Person is correct.

(c) Each Party agrees to retain a copy of this Agreement for not less than four (4) years from the end of the calendar year in which the Closing occurs and to produce such copy to the IRS upon a valid request therefor.

8.8 **Further Assurances**. Seller hereby agrees, without further consideration, to execute and deliver following the Closing such other instruments of transfer and take such other action as Purchaser or its counsel may reasonably request in order to put Purchaser in possession of, and to vest in Purchaser, good and valid title to the Purchased Assets in accordance with this Agreement and to consummate the Acquisition. Purchaser hereby agrees, without further consideration, to take such other action following the Closing and execute and deliver such other documents as Seller or its counsel may reasonably request in order to consummate the Acquisition in accordance with this Agreement.

ARTICLE IX
SURVIVAL; INDEMNIFICATION

9.1 **Expiration of Representations and Warranties**. The representations and warranties in this Agreement (other than the representations and warranties contained in Sections 3.1, 3.2, 3.3(a) and (b), 3.8(e), 3.15(b) and (c), 3.16, 3.17, 3.18, 3.19, 3.23, 3.24 and 3.25) shall survive the Closing until the second anniversary of the Closing Date, at which time they shall terminate; provided that (i) the representations and warranties contained in Sections 3.1, 3.2, 3.3(a) and (b), 3.8(e), 3.17 and 3.23 shall survive the Closing indefinitely and (ii) the representations and warranties contained in Sections 3.15(b) and (c), 3.16, 3.18, 3.19, 3.24 and 3.25 shall survive the Closing until ninety (90) days after the expiration of the relevant statute of limitations.

9.2 **Indemnification by Seller**. Subject to the limitations set forth in Section 7.2(a) and this Article IX, Seller shall indemnify, defend, save and hold Kerr, Purchaser, and their respective Affiliates and the Representatives of any of them (collectively, "Purchaser Indemnitees") harmless from and against any and all Losses incurred by any Purchaser Indemnitee (except to the extent included in the Assumed Liabilities) arising out of:

(a) Seller's breach or the failure of any representation or warranty contained in this Agreement (such breach or failure to be determined without giving effect to any qualifications for "Knowledge," "materiality" or "Material Adverse Effect" contained in any

representation or warranty) and any action, suit or proceeding arising out of such breach or failure;

(b) Seller's breach of any covenant or agreement made by Seller in or pursuant to this Agreement and any action, suit or proceeding arising out of such breach;

(c) Seller's failure to pay, perform or discharge when due any of the Retained Liabilities and any action, suit or proceeding arising out of such failure;

(d) Seller's operation of the Business or any event relating to or arising out of Seller's assets (including the Purchased Assets), in each case prior to the Closing, except with respect to the Assumed Liabilities;

(e) Taxes assessed on, or expenses attributable to, any of the Real Property or the Real Property Leases after the Closing Date for the period prior to the Closing Date (such that Seller shall have borne all real property Taxes and all expenses attributable thereto allocable to the period prior to the Closing Date), in each case net of any amount previously paid under Section 2.5(c). Notwithstanding the foregoing, an increase in a Real Property Tax assessment as a result of the Acquisition, including the California Supplemental Tax Bill and any similar Taxes, shall not be prorated under this Section 9.2(e) or Section 2.5(c) and shall be the sole liability of Purchaser;

(f) a third party claim that the conduct of the Business as it is currently conducted infringes U.S. Patent No. *, or any other patent claiming priority over U.S. Patent No.*; or

(g) a third-party claim by * or any other Person alleging that the conduct of the Business as it is currently conducted with respect to the items at issue in this lawsuit gives rise to liability under the theories alleged in *.

Without limiting the generality of the foregoing, Seller shall indemnify, defend and hold harmless Purchaser Indemnitees from and against all Losses asserted against, resulting to, imposed on, sustained, incurred or suffered by any of Purchaser Indemnitees, directly or indirectly (except to the extent included in the Assumed Liabilities), by reason of or resulting from (i) any claim, action, suit, investigation, arbitration, inquiry, proceeding or litigation involving the Business, Seller or any of Seller's agents or assets (including the Purchased Assets), in each case arising from events on or prior to the Closing Date but excluding (A) all Assumed Liabilities and (B) Losses to the extent arising from or related to any post-Closing breach or default by Purchaser of or under any Assumed Contract, (ii) any liability of Purchaser Indemnitees arising from the non-compliance with any applicable bulk transfer laws or Article 6 of the Uniform Commercial Code, (iii) any Environmental Claim or pollution or threat to human health or the environment that is related in any way to the management, use, control, ownership or operation of the Business, including all on-site and off-site activities involving Materials of Environmental Concern, and that occurred, existed, arises out of conditions or circumstances that occurred or existed, or was caused, in whole or in part, on or before the Closing Date, whether or

* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

not the pollution or threat to human health or the environment is described in Schedule 3.18, (iv) any and all obligations or liabilities under covenants relating to employment, other than those obligations and liabilities expressly undertaken or assumed by Purchaser hereunder, (v) any and all Taxes of Seller for all taxable periods, whether before, on or after the Closing Date (except to the extent allocated to Purchaser with respect to the Real Property or the Real Property Leases pursuant to Sections 2.5(c) and 9.2(e) of this Agreement), (vi) any and all employee benefits or employment related liabilities relating to any employee benefit plan that is sponsored, maintained or contributed to or required to be contributed to by Seller or any Affiliate of Seller, (vii) arising from any conflict, violation, breach or default by Seller described in Section 3.3(a) or 3.3(b) (without giving effect to any qualifications described in the Schedules or for "Knowledge," "materiality" or "Material Adverse Effect" contained therein), (viii) Seller's failing to obtain any consents, approvals, authorizations,

permits and filings pursuant to Section 3.4(c) (without giving effect to any qualifications for "Knowledge," "materiality" or "Material Adverse Effect" contained therein) and (ix) failing to remove any Title Objections pursuant to Section 5.8(b).

9.3 **Indemnification by Kerr and Purchaser**. Subject to the limitations set forth in this Article IX, Kerr and Purchaser shall jointly and severally indemnify, defend, save and hold Seller, Seller's Affiliates and the Representatives of any of them (collectively, "Seller Indemnitees") harmless from and against any and all Losses incurred by any Seller Indemnitee arising out of:

(a) Kerr's or Purchaser's breach of any representation or warranty contained in this Agreement and any action, suit or proceeding arising out of such breach;

(b) Kerr's or Purchaser's breach of any covenant or agreement made by Kerr or Purchaser in or pursuant to this Agreement (such breach or failure to be determined without giving effect to any qualifications for "Knowledge," "materiality" or "Material Adverse Effect" contained in any representation or warranty) and any action, suit or proceeding arising out of such breach;

(c) Kerr's or Purchaser's failure to pay, perform or discharge when due any of the Assumed Liabilities and any action, suit or proceeding arising out of such failure;

(d) any Assumed Liabilities, except for Losses to the extent attributable to a breach by Seller of any Assigned Contract prior to Closing; or

(e) following the Closing, Purchaser's operation of the Business or any event relating to or arising out of Purchaser's assets (including the Purchased Assets).

9.4 **Notice of Claims**. Except as provided in Section 8.5, if any Purchaser Indemnitee or Seller Indemnitee (an "Indemnified Party") believes that it has suffered or incurred any Losses for which it is entitled to indemnification under this Article IX, such Indemnified Party shall so notify the Party from whom indemnification is being claimed (the "Indemnifying Party") with reasonable promptness and reasonable particularity in light of the circumstances then existing. If any claim is instituted by or against a third party with respect to which any Indemnified Party intends to claim indemnification under this Article IX, such Indemnified Party shall promptly

notify the Indemnifying Party of such claim. The notice provided by the Indemnified Party to the Indemnifying Party shall describe the claim (the "Asserted Liability") in reasonable detail and shall indicate the amount (or an estimate) of the Losses that have been or may be suffered by the Indemnified Party. The failure of an Indemnified Party to give any notice required by this Section 9.4 shall not affect any of the Indemnified Party's rights under this Article IX or otherwise except and to the extent that such failure is prejudicial to the rights or obligations of the Indemnifying Party.

9.5 **Opportunity to Defend Third Party Claims**. If any action is brought by a third party against any Indemnified Party, the Indemnifying Party shall be entitled: (a) to participate in such action and (b) to elect, by written notice delivered to the Indemnified Party within thirty (30) days after the Indemnifying Party's receipt of notice of the Asserted Liability, to defend, compromise or settle such action, with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall cooperate with respect to any such participation, defense, settlement or compromise. The Indemnified Party shall have the right to employ its own counsel in any such case, but the fees and expenses of the Indemnified Party's counsel shall be at the sole expense of the Indemnified Party unless: (i) the Indemnifying Party shall have authorized in writing employment of such counsel at the expense of the Indemnifying Party; (ii) the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party to defend such action within thirty (30) days after the Indemnifying Party received notice of the Asserted Liability; (iii) the Indemnified Party shall have reasonably concluded, based upon written advice of counsel, that there are defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Party with respect to such different defenses); or (iv) representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding, in any of which events the fees and expenses of one additional counsel shall be borne by the Indemnifying Party. The Indemnifying Party shall not settle or compromise any action or consent to the entry of a judgment that: (a) does not provide for the claimant to give an unconditional release to the Indemnified Party in respect of the Asserted Liability; (b) involves relief other than monetary damages; (c) places restrictions or conditions on the operation of the business of the Indemnified Party or any of its Affiliates; or (d) involves any finding or admission of liability or of any violation of Law. The Indemnifying Party shall not be liable for any settlement of any claim or action effected without its written consent; provided that such consent is not unreasonably withheld. After payment of any Asserted Liability by the Indemnifying Party, the Indemnified Party, if requested by the Indemnifying Party, shall assign to the Indemnifying Party all rights the Indemnified Party may have against any applicable account debtor or other responsible Person in respect of the Asserted Liability. If the Indemnifying Party chooses to defend any Asserted Liability, the Indemnified Party shall make available to the Indemnifying Party any books, records or other documents within its control that are necessary or appropriate for such defense. Any expenses of any Indemnified Party for which indemnification is available hereunder shall be paid upon written demand therefor.

9.6 Limitation of Liability.

(a) Seller shall not be obligated to provide any indemnification under Section 9.2(a) except to the extent the aggregate amount for which it is obligated to provide such indemnification exceeds the sum of $1,000,000, after which Seller shall be obligated to pay the entire amount, beginning with the first dollar of Loss, which is payable pursuant to Section 9.2(a); provided, however, that De Minimis Losses shall not count towards such $1,000,000 amount unless and until the aggregate amount of all De Minimis Losses exceeds $100,000; provided, further, that in the case of any breach of any representation or warranty under Sections 3.1, 3.2, 3.3, 3.6, 3.8(e), 3.16, 3.17, 3.18, 3.19, 3.23 and 3.24, respectively, Seller shall be obligated to provide indemnification for the entire amount of such Loss, beginning with the first dollar of Loss, without regard to whether such loss is a De Minimis Loss and without regard to whether the aggregate amount for which the obligation to provide indemnification under this Article IX exceeds the sum of $1,000,000; provided, further, that in no event shall the aggregate liability of Seller under this Article IX with respect to Seller's breach of its representations and

warranties exceed one-half of the Purchase Price other than for breach of any representation or warranty contained in Sections 3.1, 3.2, 3.3, 3.6, 3.8, 3.16, 3.17, 3.18, 3.19, 3.23 and 3.24, which liability and obligation to indemnify shall be without limitation.

(b) Kerr and Purchaser shall not be obligated to provide any indemnification under Section 9.3(a) except to the extent the aggregate amount for which they are obligated to provide such indemnification exceeds the sum of $1,000,000, after which Kerr and Purchaser shall be obligated to pay the entire amount, beginning with the first dollar of Loss, which is payable pursuant to Section 9.3(a); provided, however, that De Minimis Losses shall not count towards such $1,000,000 amount unless and until the aggregate amount of all De Minimis Losses exceeds $100,000; provided, further, that in the case of any breach of any representation or warranty under Sections 4.1, 4.2, 4.3(a) or (b), and 4.5, respectively, Kerr and Purchaser shall be obligated to provide indemnification for the entire amount of such Loss, beginning with the first dollar of Loss, without regard to whether such loss is a De Minimis Loss and without regard to whether the aggregate amount for which the obligation to provide indemnification under this Article IX exceeds the sum of $1,000,000; provided, further, that in no event shall the aggregate liability of Kerr and Purchaser under this Article IX with respect to Kerr's and Purchaser's breach of their representations and warranties exceed one-half of the Purchase Price other than for breach of any representation or warranty contained in Sections 4.1, 4.2, 4.3(a) or (b), and 4.5, which liability and obligation to indemnify shall be without limitation; provided, further, that the preceding clause shall not limit Purchaser's obligation or liability with respect to the Assumed Liabilities.

(c) The provisions of this Article IX shall be the exclusive remedy available to the Seller Indemnitees and the Purchaser Indemnitees after the Closing in the event any such Person shall have a claim with respect to the matters covered by this Agreement, other than with respect to claims involving intentional misrepresentation, fraud, or willful misconduct.

9.7 **Effect of Taxes and Insurance**. The amount of any Losses for which indemnification is provided under this Article IX (a) shall be reduced to take account of any net Tax benefit realized, in the year of the Tax payment or the next succeeding taxable year and shall be increased to take account of any net Tax detriment realized, in the year of the Tax payment or

the next succeeding taxable year arising from the incurrence or payment of any such Losses or from the receipt of any such indemnification payment determined on a with or without basis and (b) shall be reduced by the insurance proceeds received and any other amount, if any, recovered from third parties by the Indemnified Party (or its Affiliates) with respect to any Losses. If any Indemnified Party shall have received any indemnification payment pursuant to this Article IX with respect to any Loss, such Indemnified Party shall, upon written request by the Indemnifying Party, assign to such Indemnifying Party (to the extent of the indemnification payment) any claim which such Indemnified Party may have under any applicable insurance policy which provides coverage for such Loss. Such Indemnified Party shall reasonably cooperate (at the expense of the Indemnifying Party) to collect under such insurance policy. If any Indemnified Party shall have received any payment pursuant to this Article IX with respect to any Loss and has or shall subsequently have received insurance proceeds or other amounts with respect to such Loss, then such Indemnified Party shall promptly pay over to the Indemnifying Party the amount so recovered (after deducting the amount of the expenses incurred by it in procuring such recovery), but not in excess of the amount previously so paid by the Indemnifying Party.

9.8 **Treatment of Indemnity Payments; No Duplication**. Any indemnification payment made pursuant to this Article IX shall be treated, to the extent permitted or required by law, by all Parties as an adjustment to the Purchase Price. Notwithstanding anything contained in this Article IX to the contrary, Purchaser shall not be entitled to indemnification hereunder to the extent that any Losses were (i) included in the calculation of the Working Capital Adjustment or the Final Closing Capital Expenditures (excluding losses resulting from Seller's breach of any payment or other obligation to any counterparty with respect to any Capital Expenditures) or (ii) offset by an adjustment pursuant to Section 3.3 or 3.4 of the Supply Agreement.

ARTICLE X
GENERAL

10.1 **Notices**. All notices, requests, claims, demands or other communications that are required or may be given pursuant to the terms of this Agreement or the other Transaction Documents shall be in writing and shall be deemed to have been duly given: (a) when delivered, if delivered by hand; (b) one (1) Business Day after transmitted, if transmitted by a nationally-recognized overnight courier service; (c) when sent by facsimile transmission, if sent by facsimile transmission which is confirmed; or (d) three (3) Business Days after mailing, if mailed by registered or certified mail (return receipt requested), in each case to the Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 10.1):

(a) If to Seller:

Tubed Products, Inc.
18 Loveton Circle
Sparks, Maryland 21152
Attention: Corporate Secretary
Telephone: (410) 771-7563
Fax: (410) 527-8228

With a simultaneous copy to:

Piper Rudnick LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600
Attention: Theodore Segal, Esq.
Telephone: (410) 580-3000
Fax: (410) 580-3001

(b) If to Purchaser:

Kerr Acquisition Sub II, LLC
c/o Kerr Group Inc.
500 New Holland Avenue
Lancaster, Pennsylvania 17602-2104
Attention: Lawrence C. Caldwell
Telephone: (717) 390-8439

With a simultaneous copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1100
Palo Alto, California 94301
Attention: Kenton J. King, Esq.
Telephone: (650) 470-4500
Fax: (650) 470-4570

(c) If to Kerr:

Kerr Group, Inc.
500 New Holland Avenue
Lancaster, Pennsylvania 17602-2104
Attention: Lawrence C. Caldwell
Telephone: (717) 390-8439

With a simultaneous copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1100
Palo Alto, California 94301
Attention: Kenton J. King, Esq.
Telephone: (650) 470-4500
Fax: (650) 470-4570

10.2 **Severability**. If any provision of this Agreement for any reason shall be held to be illegal, invalid or unenforceable, such illegality shall not affect any other provision of this

Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been included herein.

10.3 **Assignment; Binding Effect; Benefit**. No assignment by any Party of its rights nor delegation by any Party of its obligations under this Agreement or any Transaction Document shall be permitted unless Kerr and Purchaser, on the one hand, or Seller, on the other hand, consents in writing thereto, except that Purchaser may (a) assign, in its sole discretion, any of or all of its rights, interests and obligations under this Agreement to Kerr or to any direct or indirect wholly-owned Subsidiary of Kerr, and (b) pledge this Agreement and any of its rights and obligations hereunder in whole or in part to any other Person, in each case without the consent of Seller, provided in each case that no such assignment shall relieve Purchaser of any of its obligations hereunder. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Notwithstanding anything in this Agreement to the contrary, expressed or implied, this Agreement is not intended to confer any rights or remedies on any Person other than the Parties and their respective successors and permitted assigns.

10.4 **Incorporation of Exhibits and Schedules**. All Exhibits and Schedules attached hereto and referred to herein are hereby incorporated herein and made a part of this Agreement for all purposes as if fully set forth herein. The disclosures made by the Parties in any Schedule to this Agreement shall apply with the same force and effect to each other Section hereof to which it is reasonably apparent that such disclosures should apply.

10.5 **Governing Law; Submission to Jurisdiction**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK OTHER THAN CONFLICT OF LAWS PRINCIPLES THEREOF DIRECTING THE APPLICATION OF ANY LAW OTHER THAN THAT OF NEW YORK. COURTS WITHIN THE STATE OF NEW YORK (LOCATED WITHIN NEW YORK CITY) WILL HAVE JURISDICTION OVER ALL DISPUTES BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS. THE PARTIES HEREBY CONSENT TO AND AGREE TO SUBMIT TO THE JURISDICTION OF SUCH COURTS. EACH OF THE PARTIES WAIVES, AND AGREES NOT TO ASSERT IN ANY SUCH DISPUTE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (A) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS; (B) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS; OR (C) ANY LITIGATION COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM.

10.6 **Waiver of Jury Trial**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION OR AGREEMENT CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

10.7 **Interpretation**. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

10.8 **Counterparts**. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

10.9 **Entire Agreement**. This Agreement (including the Schedules and Exhibits attached hereto) and the other Transaction Documents executed in connection with the consummation of the Acquisition contain the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, written or oral, with respect thereto.

10.10 **Waivers and Amendments**. This Agreement may be amended, superseded, canceled, renewed or extended only by a written instrument signed by all of the Parties. The provisions hereof may be waived only in writing signed by the Party or Parties waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

[*Signatures appear on the next page*]

EXECUTION

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the date first above written.

KERR GROUP, INC.

By: /s/ Richard D. Hofmann
Name: Richard D. Hofmann
Title: President & CEO

KERR ACQUISITION SUB II, LLC

By: /s/ Richard D. Hofmann
Name: Richard D. Hofmann
Title: President & CEO

Signature Page 1 of 3 to
Asset Purchase Agreement, dated as of June 26, 2003, among
Kerr Group, Inc., Purchaser and Tubed Products, Inc.

TUBED PRODUCTS, INC.

By: /s/ Robert G. Davey
Name: Robert G. Davey
Title: President

Signature Page 2 of 3 to
Asset Purchase Agreement, dated as of June 26, 2003, among
Kerr Group, Inc., Purchaser and Tubed Products, Inc.

GUARANTY

Parent hereby guarantees the prompt payment by Seller of Seller's indemnification obligations under Section 9.2 of this Agreement. If Seller defaults in the payment of any such indemnification obligation, Parent shall pay to Purchaser or the applicable Purchaser Indemnitee any damages, costs and expenses that such Person is entitled to recover from Seller by reason of Seller's default. Parent acknowledges that the bankruptcy of Seller shall not relieve Parent of its obligations under this Guaranty. Parent further agrees to the provisions of Sections 5.3 (Consents, Filings and Authorizations; Efforts to

Consummate), 5.6 (Access to Information; Confidentiality), 5.12 (Patent Transfer), 8.3 (Non-Competition Covenant) and the last three sentences of Section 3.5 (Financial Statements) of this Agreement.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Robert G. Davey
Name: Robert G. Davey
Title: Executive Vice President

Signature Page 3 of 3 to
Asset Purchase Agreement, dated as of June 26, 2003, among
Kerr Group, Inc., Purchaser and Tubed Products, Inc.

ASSET PURCHASE AGREEMENT

among

KERR GROUP, INC.,

KERR ACQUISITION SUB II, LLC,
as Purchaser,

and

O.G. DEHYDRATED, INC.,
as Seller

Dated as of June 26, 2003

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EXHIBITS

SCHEDULES

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of June 26, 2003 among KERR GROUP, INC., a Delaware corporation ("Kerr"), KERR ACQUISITION SUB II, LLC, a wholly-owned limited liability company ("Purchaser"), and O.G. DEHYDRATED, INC., a California corporation ("Seller").

RECITALS

Seller engages in the business of developing, manufacturing, marketing and distributing specialty molded closures and flexible plastic packaging for the healthcare, personal care, health and beauty, pharmaceutical, household chemical, automotive, industrial and dentifrice industries (the "Business"). Subject to the terms and conditions set forth herein, Seller desires to sell, convey, transfer, assign and deliver to Purchaser, and Purchaser desires to purchase and acquire from Seller, all of Seller's right, title and interest in and to all of the Purchased Assets, as defined herein (the "Acquisition").

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 **Definitions**. As used herein, the following terms shall have the following meanings:

"Accounts Payable" means normal trade payables associated with the ongoing operations of the business, including liabilities relating to sales allowances, customer rebates, third party royalty payments and commissions, and pro-card accruals; provided that the disputed Manpower International, Inc. payable shall not be deemed to be an "Account Payable".

"Acquisition" has the meaning given to such term in the Recitals.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. The Affiliates of Seller include the Persons listed on Schedule 1.1(a).

"Affiliate Marks" means the service marks, trademarks, trade names and domain names used by Seller in the operation of the Business and owned by or licensed to an Affiliate of Seller, as listed on Schedule 2.2(g).

"Agreement" means this Asset Purchase Agreement.

"Asserted Liability" has the meaning given to such term in Section 9.4.

"Assigned Contracts" has the meaning given to such term in Section 2.1(e).

"Assignment and Assumption Agreement" has the meaning given to such term in Section 2.5(b)(ii).

"Assignment of Lease" has the meaning given to such term in Section 6.2(d)(i).

"Associate" means, as to any Person, (a) any trust or other estate in which such Person has a substantial beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity, and (b) any family member or spouse of such Person, or any family member of such spouse, or any individual who has the same home as such Person or who is a director or officer of such Person or any of its parents or Subsidiaries.

"Assumed Liabilities" has the meaning given to such term in Section 2.3.

"Audited Financials" has the meaning given to such term in Section 3.5.

"Base Purchase Price" has the meaning given to such term in Section 6.2(c)(vii).

"Business" has the meaning given to such term in the Recitals.

"Business Day" means any day other than a Saturday, Sunday or a day on which banks in New York City or San Francisco, California, are authorized or obligated by applicable Law to close.

"Capital Expenditures" means Seller's actual capital expenditures properly classified as property, plant and equipment in accordance with GAAP (using, to the extent permitted by GAAP, the practices, procedures and methods historically used by Seller), accrued during the period beginning on December 1, 2002 and ending on the earlier of August 31, 2003 and the Closing Date; provided, however, that if the Closing does not occur on or prior to August 31, 2003 as a result of (i) postponement of the Closing by Seller pursuant to Section 5.8(b), (ii) a second request under the HSR Act under Section 7.1(b), or (iii) breach by Seller of its obligations hereunder, then Capital Expenditures shall accrue during the period beginning on December 1, 2002 and ending on the Closing Date. For the avoidance of doubt, items set forth on Capital Expenditures Schedule 5.1(m) shall be deemed to be Capital Expenditures for purposes of this Agreement.

"Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f).

"Closing" has the meaning given to such term in Section 2.7.

"Closing Balance Sheet" means a balance sheet of Seller, prepared pursuant to Section 2.5(d) setting forth the Purchased Assets and the Assumed Liabilities as of the Closing Date to the extent such assets and liabilities would be shown on a balance sheet of Seller prepared in accordance with GAAP, using, to the extent permitted by GAAP, the practices,

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procedures and methods used by Seller in preparing the Audited Financials, which balance sheet shall be prepared by Purchaser.

"Closing Capital Expenditures" has the meaning given to such term in Section 2.5(f)(ii).

"Closing Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f)(ii).

"Closing Capital Expenditures Objection Notice" has the meaning given to such term in Section 2.5(f)(ii).

"Closing Date" has the meaning given to such term in Section 2.7.

"Closing Proration" has the meaning given to such term in Section 2.5(c).

"Code" means the Internal Revenue Code of 1986, as amended.

"Commitments" has the meaning given to such term in Section 5.8(a).

"Computer Software" means all computer programs other than computer programs designed for use in the preparation of Tax Returns, and all documentation relating to the foregoing.

"Counterpart Plans" has the meaning given to such term in Section 8.2.

"Current Assets" shall mean the current assets of the Business that are among the Purchased Assets set forth in the Closing Balance Sheet.

"Current Liabilities" shall mean the current liabilities of the Business that are among the Assumed Liabilities set forth in the Closing Balance Sheet.

"De Minimis Losses" means a Loss resulting from a single set of facts or circumstances that does not exceed $10,000.

"Environmental Claim" means any claim, action, cause of action, investigation or notice by any person or entity alleging potential liability (including potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, or release into the environment, of any Material of Environmental Concern at any location, whether or not owned or operated by Seller, (b) any violation, or alleged violation, of any Environmental Law, and (c) the presence of fungus or mold in any building owned or operated by Seller.

"Environmental Laws" means all Laws relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata, and natural resources), including laws and regulations relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern.

"Estimated Capital Expenditures" has the meaning given to such term in Section 2.5(f)(i).

"Exceptions" has the meaning given to such term in Section 5.8(a).

"Excluded Assets" has the meaning given to such term in Section 2.2.

"Excluded Contracts" has the meaning given to such term in Section 2.2(g).

"Final Closing Capital Expenditures" has the meaning given to such term in Section 2.5(f)(ii).

"Final Closing Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f)(ii).

"GAAP" means generally accepted accounting principles in the United States in effect from time to time, consistently applied.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity (including a court exercising executive, legislative, judicial, regulatory, administrative functions of, or pertaining to, government).

"Guarantee Obligations" has the meaning given to such term in Section 3.10(a)(vi).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person at any date shall include (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (b) any other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (c) all obligations of such Person under any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee, (d) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (e) all liabilities secured by any Lien on property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, and (f) all Guarantee Obligations of such Person.

"Indemnified Party" has the meaning given to such term in Section 9.4.

"Indemnifying Party" has the meaning given to such term in Section 9.4.

"Independent Accounting Firm" means PricewaterhouseCoopers or such other independent accounting firm of national reputation as is selected by mutual agreement of Seller and Purchaser; provided, that if PricewaterhouseCoopers declines to serve and Seller and Purchaser cannot agree, the Independent Accounting Firm shall be selected by the American Arbitration Association in accordance with its then-prevailing rules; provided, further, that any services to be performed by PricewaterhouseCoopers or such firm selected by the American

Arbitration Association shall be performed by professionals who (i) have not previously performed any services for any of the Parties, Parent or their respective Affiliates and (ii) are based in an office of such firm that has not previously been the primary office from which services for any of the Parties, Parent or their respective Affiliates have been performed.

"Initial Capital Expenditures Adjustment" has the meaning given to such term in Section 2.5(f)(i).

"Intellectual Property" means, collectively, the Listed Intellectual Property and the Other Intellectual Property.

"IRS" means the United States Internal Revenue Service.

"Kerr" has the meaning given to such term in the preamble of this Agreement.

"Knowledge of Seller" means the actual knowledge of a particular fact or other matter being possessed as of the pertinent date by any of Robert G. Davey, Paul C. Beard, W. Geoffrey Carpenter, Tony Imbraguglio, Jim Dunn, Stephen Rafter, Craig Berger, James Farley, Willie Lam and Jim Robertson.

"Latest Balance Sheet" has the meaning given to such term in Section 3.6.

"Latest Balance Sheet Date" has the meaning given to such term in Section 3.6.

"Law" means any federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, requirement, specification, determination, decision, opinion or interpretation issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

"Lien" means any mortgage, lien, claim, pledge, charge, equitable interest, right-of-way, easement, encroachment, security interest, preemptive right, right of first refusal or similar restriction or right, option, judgment, title defect or encumbrance of any kind.

"Listed Intellectual Property" has the meaning given to such term in Section 2.1(g).

"Listed Permits" has the meaning given to such term in Section 2.1(f).

"Losses" means any costs, payments, Taxes, losses, claims, damages and expenses whatsoever, including court costs and reasonable counsel and other professional fees and expenses.

"Material Adverse Effect" means any change or effect that, individually or taken together with all other such changes or effects that have occurred prior to the date of determination of the Material Adverse Effect, is materially adverse to the ability of Seller to achieve its projections or to the Business, assets, liabilities, financial condition or results of operations of Seller considered as a whole; provided, however, that in no event shall any of the following, alone or in

combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been, or will be, a Material Adverse Effect: (a) changes in general economic conditions or changes generally affecting the industry in which Seller operates (which changes do not affect Seller in a materially disproportionate manner); or (b) changes resulting from the loss, diminution or disruption, whether actual or threatened, of existing or prospective employee, customer, distributor or supplier relationships as to which Seller furnishes reasonable evidence that such changes have resulted from the announcement that Seller entered into this Agreement.

"Material Contracts" has the meaning given to such term in Section 3.10(a).

"Materials of Environmental Concern" means chemicals, pollutants, contaminants, wastes, toxic substances or hazardous substances listed, regulated, defined or included under Environmental Laws, including petroleum and petroleum products, asbestos or asbestos-containing materials or products, polychlorinated biphenyls, lead or lead-based paints or materials, and radon.

"NHDS" has the meaning given to such term in Section 2.9.

"Other Intellectual Property" means trade secrets and know-how, if any, owned by Seller and used by Seller in the operation of the Business as currently conducted, including trade secrets and know-how relating to the technology, systems and processes identified as such on Schedule 2.1(g). Other Intellectual Property does not include patents, copyrights, service marks, service names, trademarks, trade names or domain names (or any applications therefor).

"Other Liens" has the meaning given to such term in Section 5.8(b).

"Parent" means McCormick & Company, Incorporated, a Maryland corporation.

"Party" means Seller, Purchaser or Kerr, as the context requires, and the term "Parties" means, collectively, Seller, Purchaser and Kerr.

"Permitted Exceptions" has the meaning given to such term in Section 5.8(a).

"Permitted Lien" means: (a) any Lien imposed by Law for Taxes, assessments or governmental charges that are not yet delinquent and remain payable without penalty or that are being contested in good faith by appropriate proceedings; (b) any carrier's, warehousemen's, mechanic's, materialmen's, repairmen's or other like Lien imposed by Law, arising in the ordinary course of business and securing obligations that are not overdue by more than forty-five (45) days or are being contested in good faith by appropriate proceedings; (c) any pledge or deposit made in the ordinary course of business in compliance with workers' compensation, unemployment insurance or other social security Laws or other statutory obligations of Seller; (d) any cash deposit or right of set-off to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds,

government contracts and other obligations of a like nature, in each case in the ordinary course of business; (e) any Lien arising by operation of Law; and (f) any Permitted Exception.

"Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, syndicate, person (including a "person" as defined in Section 13(d)(3) of the Securities Exchange Act of 1934), trust, association, entity or government or political subdivision, agency or instrumentality of a government.

"Plan" or "Plans" have the meanings given to such terms in Section 3.16.

"Pro Forma Revenues" has the meaning given to such term in Section 3.5.

"Product" has the meaning given to such term in Section 3.10(a)(ix).

"Purchase Price" has the meaning given to such term in Section 2.5(a).

"Purchase Price Objection Notice" has the meaning given to such term in Section 2.5(d).

"Purchased Assets" has the meaning given to such term in Section 2.1.

"Purchaser" has the meaning given to such term in the preamble of this Agreement.

"Purchaser Indemnitee" has the meaning given to such term in Section 9.2.

"R&T Code" has the meaning given to such term in Section 8.7.

"Real Property" has the meaning given to such term in Section 2.1(a).

"Real Property Leases" has the meaning given to such term in Section 2.1(a).

"Registered Intellectual Property Rights" has the meaning given to such term in Section 3.9(a).

"Representative" means, with respect to either Party, any of such Party's directors, officers, employees, attorneys, accountants or other agents.

"Retained Liabilities" has the meaning given to such term in Section 2.4.

"Security Deposits" means the full amount of any and all deposits made by or on behalf of Seller.

"Seller" has the meaning given to such term in the preamble of this Agreement.

"Seller Indemnitee" has the meaning given to such term in Section 9.3.

"Subsidiary" means, with respect to Seller, any corporation, partnership, limited partnership, limited liability company or other legal entity of which Seller (either alone or through or together with any other subsidiary) owns, directly or indirectly, a majority of the stock or other equity interests.

"Supply Agreement" has the meaning given to such term in Section 6.2(c)(vi).

"Surveys" has the meaning given to such term in Section 5.8(a).

"Tangible Personal Property" has the meaning given to such term in Section 2.1(b).

"Target Capital Expenditures" means *.

"Target Working Capital" means *.

"Tax Return" means any return, report, statement, form or other documentation (including any additional or supporting material and any amendments or supplements) filed or maintained, or required to be filed or maintained, with respect to or in connection with the calculation, determination, assessment or collection of any Taxes.

"Taxes" means: (a) any and all taxes, fees, levies, duties, tariffs, imposts and other charges of any kind, imposed by any Governmental Authority, including: (i) taxes or other charges on, measured by, or with respect to income, franchise, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth; (ii) taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value-added or gains taxes; (iii) license, registration and documentation fees; and (iv) customs duties, tariffs and similar charges; (b) any liability for the payment of any amounts of the type described in (a) as a result of being a member of an affiliated, combined, consolidated or unitary group for any taxable period; (c) any liability for the payment of amounts of the type described in (a) or (b) as a result of being a transferee of, or a successor in interest to, any Person or as a result of an express or implied obligation to indemnify any Person; and (d) any and all interest, penalties, additions to tax and additional amounts imposed in connection with or with respect to any amounts described in (a), (b) or (c).

"Terminated Employee" has the meaning given to such term in Section 8.2.

"Title Company" has the meaning given to such term in Section 5.8(a).

"Title Documents" has the meaning given to such term in Section 5.8(a).

"Title Objections" has the meaning given to such term in Section 5.8(b).

"Title Policy" has the meaning given to such term in Section 6.3(g).

"Transaction Documents" means, collectively, this Agreement and each of the other agreements and instruments to be executed and delivered by either or both of the Parties in connection with the consummation of the Acquisition.

"Transferred Employee" has the meaning given to such term in Section 8.2.

"Transition Services Agreement" has the meaning given to such term in Section 6.2(c)(v).

"WARN Act" means the Worker Adjustment and Retraining Notification Act.

* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

"Withholding Taxes" has the meaning given to such term in Section 2.5(b).

"Working Capital" shall mean Current Assets minus Current Liabilities, (prepared in accordance with GAAP, using, to the extent permitted by GAAP, the accounting principles, methodologies, procedures and classifications used by Seller in preparing the Audited Financials).

"Working Capital Adjustment" has the meaning given to such term in Section 2.5(d).

1.2 **Rules of Construction**. The definitions in Section 1.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "but not limited to." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. All Exhibits and Schedules attached to this Agreement shall be deemed incorporated herein by reference as if fully set forth herein. Words such as "herein," "hereof," "hereto," "hereby" and "hereunder" refer to this Agreement and to the Schedules and Exhibits, taken as a whole. Except as otherwise expressly provided herein: (a) any reference in this Agreement to any agreement shall mean such agreement as amended, restated, supplemented or otherwise modified from time to time; (b) any reference in this Agreement to any Law shall include corresponding provisions of any successor Law and any regulations and rules promulgated pursuant to such Law or such successor Law; and (c) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. Neither the captions to Sections or subdivisions thereof nor the Table of Contents shall be deemed to be a part of this Agreement.

ARTICLE II
PURCHASE AND SALE OF PURCHASED ASSETS

2.1 **Purchased Assets**. Subject to the terms and conditions of this Agreement and in reliance upon the representations, warranties, covenants and agreements of the Parties contained herein, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller, free and clear of all Liens other than Permitted Liens (except with respect to the Real Property, subject only to Permitted Exceptions), all of Seller's right, title and interest in and to the following assets, properties, rights and interests of Seller as of the date hereof and those acquired after the date hereof and on or before the Closing Date, except for those assets, properties, rights and interests that are set forth in Section 2.2 as being Excluded Assets (collectively, the "Purchased Assets"):

(a) all the real property and interests in real property described on Schedule 2.1(a)(i) and such as are required to make the statement in the second sentence of Section 3.8(a) true, together with all buildings, fixtures, facilities and other improvements located on such real property (collectively, the "Real Property"), and the leasehold estates, including any Security Deposits relating thereto, described on Schedule 2.1(a)(ii) and such as are required to make the statement in the first sentence of Section 3.8(b) true, under which Seller is a lessee (collectively, the "Real Property Leases");

(b) all the machinery, equipment, tools, furniture, computer hardware, materials, leasehold improvements, computing and telecommunications equipment and other items of tangible personal property owned by the Seller or (to the extent assignable) leased by Seller or by Affiliates of Seller and used in the operation of the Business on the Closing Date, including those listed or described on Schedule 2.1(b), together with any express or implied warranty by the manufacturer, seller or lessor of any such item or component part thereof, to the extent such warranties may be assigned without consent or any requisite consent is obtained (collectively, the "Tangible Personal Property");

(c) all inventories of Seller, including all finished goods, work in process, supplies and raw materials;

(d) (i) all trade accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment; (ii) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes; and (iii) any claim, remedy or other right related to any of the foregoing;

(e) all the contracts, leases, licenses, purchase orders, commitments and other binding arrangements of Seller, including those listed or described on Schedule 2.1(e) ("Assigned Contracts");

(f) all the permits, licenses, approvals, franchises, certificates, consents and other authorizations of any Governmental Authority issued to or held by Seller, including those listed or described on Schedule 2.1(f), and such as are required to make the statement in the first sentence of Section 3.11 true (collectively, the "Listed Permits"), to the extent they may be legally transferred by agreement;

(g) all the patents, copyrights, service marks, trademarks, trade names and domain names (and all registrations and applications therefor) owned by or licensed to Seller and used, held for use or planned to be used in connection with products currently under active development, in each case, by Seller in the operation of the Business, including those listed or required to be listed on Schedule 2.1(g), and such as are required to make the statement in the first sentence of Section 3.9(a) true (the "Listed Intellectual Property"), together with the Other Intellectual Property;

(h) all the data, records, files, manuals, blueprints and other documentation of Seller, in each case related to the Purchased Assets and used, held for use or planned to be used in connection with products currently under active development, in each case, by Seller in the operation of the Business, including: (i) service and warranty records; (ii) sales promotion materials, creative materials, art work, photographs, public relations and advertising material, studies, reports, correspondence and other similar documents and records, whether in electronic form or otherwise; (iii) all client, customer and supplier lists, telephone numbers and electronic mail addresses with respect to past, present or prospective clients, customers and suppliers; (iv) copies of accounting and tax books, ledgers and records and other financial records; (v) all sales and credit records, catalogs and brochures, purchasing records and records relating to suppliers; and (vi) subject to applicable Law, original personnel records of all Transferred Employees;

(i) all the payments (or pro rata portions thereof) made by Seller with respect to the Purchased Assets or the Business which constitute, as of the Closing Date, prepaid expenses in accordance with GAAP;

(j) all the vehicles owned or (to the extent assignable) leased by Seller or by Affiliates of Seller and used in the operation of the Business on the Closing Date, in each case as listed on Schedule 2.1(j);

(k) the goodwill related to the conduct of the Business and all rights to continue to use the Purchased Assets as an ongoing business;

(l) all assets included in the calculation of Current Assets on the Closing Balance Sheet; and

(m) all other assets, properties, rights, claims and interests of Seller that are not specifically included in the definition of the term "Excluded Assets" in Section 2.2.

2.2 **Excluded Assets**. Notwithstanding anything to the contrary in Section 2.1, the following assets, properties, rights and interests of Seller (collectively, the "Excluded Assets") are excluded from the Purchased Assets and shall remain the property of Seller after the Closing:

(a) corporate seals, articles of incorporation, minute books, stock books, Tax Returns, original accounting and tax books, ledgers, records and other financial records or other records relating to the corporate organization of Seller;

(b) all cash on hand, cash equivalents, investments (including stock, debt instruments, options and other instruments and securities) and bank deposits;

(c) all accounts or notes receivable owed to Seller by Parent or any Person listed on Schedule 1.1(a) other than accounts owed by Tubed Products, Inc. a Maryland corporation;

(d) all rights of Seller: (i) to use any service marks, service names, trademarks, trade names, domain names, logos or brand names, and related goodwill, of Parent or any other Person listed on Schedule 1.1(a) (including any derivatives thereof), or to use blueprints, drawings, designs, manuals, documentation or other intellectual property rights attributable to or which are used solely in Seller's manufacturing of products for Parent or any other Person listed on Schedule 1.1(a) and (ii) in any tangible personal property (including molds, tooling and other equipment) which are used or usable solely in Seller's manufacturing of products for Parent or any other Person listed on Schedule 1.1(a), in each case to the extent listed on Schedule 2.2(d);

(e) all insurance policies, fidelity or surety bonds or fiduciary liability policies covering the Purchased Assets, the Business or the operations, employees, officers or directors of Seller and all rights of Seller of every nature and description under or arising out of such policies and bonds;

(f) originals of all personnel records and other records that Seller is required by Law to retain in its possession;

(g) the assets listed on Schedule 2.2(g), including the contracts, leases, licenses, permits, plans, purchase orders, commitments and other binding arrangements of Seller, including those between Seller and its Affiliates, listed on Schedule 2.2(g) (the "Excluded Contracts");

(h) any assets, properties, rights or interests of Seller which have been transferred or disposed of in the ordinary course of the Business prior to the Closing Date to the extent permitted by Section 5.1;

(i) except as expressly provided in Section 2.5(c), claims for refunds of Taxes paid by Seller;

(j) all shares of capital stock or other ownership interests held by Seller in any Subsidiary set forth on Schedule 3.1; and

(k) all rights of Seller under this Agreement, including Seller's rights in the consideration paid to Seller pursuant to this Agreement.

2.3 **Assumed Liabilities**. Upon the terms and subject to the conditions of this Agreement, Purchaser shall assume on the Closing Date, upon the consummation of the Closing, and shall pay, perform and discharge when due, the following obligations and liabilities arising on or after the Closing Date (the "Assumed Liabilities"):

(a) all obligations of Seller under the Assigned Contracts other than (i) liabilities or obligations arising from any pre-Closing breach or default by Seller of or under any Assigned Contract and (ii) liabilities for Capital Expenditures not yet paid that are included in the calculation of the Capital Expenditures Adjustment; and

(b) Accounts Payable as set forth in the Closing Balance Sheet as of the Closing Date.

2.4 **Retained Liabilities**. Purchaser shall not assume, and Seller shall pay, perform and discharge when due and remain liable for any and all liabilities of Seller (including any liability of Seller under this Agreement) and any liabilities that otherwise encumber the Business or the Purchased Assets, in each case other than the Assumed Liabilities (collectively, the "Retained Liabilities").

2.5 **Purchase Price; Payment of Purchase Price; Adjustments.**

(a) The aggregate consideration payable to Seller for the Purchased Assets (collectively, the "Purchase Price") shall be as follows:

(i) The Base Purchase Price, as adjusted at Closing in accordance with Section 2.5(c) and as adjusted after Closing in accordance with Sections 2.5(d) and 2.5(f); and

(ii) the assumption of the Assumed Liabilities; and

(b) The Purchase Price shall be paid as follows:

(i) At Closing, Purchaser shall pay Seller cash in the amount equal to the Base Purchase Price, plus or minus the Closing Proration, as determined in accordance with Section 2.5(c), plus or minus the Initial Capital Expenditures Adjustment and minus all applicable withholding Taxes (the "Withholding Taxes"). Purchaser shall make such payment via wire transfer of immediately available funds to an account specified by Seller, which account shall be so specified at least two (2) Business Days prior to the Closing Date.

(ii) At Closing, Purchaser shall execute and deliver an Assignment and Assumption Agreement, in the form attached as Exhibit A (the "Assignment and Assumption Agreement"), evidencing the assignment by Seller of certain of the Purchased Assets and the assumption by Purchaser of the Assumed Liabilities.

(iii) After Closing, any Working Capital Adjustment due shall be paid by the paying Party within five (5) Business Days after the calculation of the Working Capital Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(d). The paying Party shall make such payment via wire transfer of immediately available funds to an account specified by the recipient Party, which account shall be so specified at least two (2) Business Days before payment of the Working Capital Adjustment becomes due.

(iv) After Closing, any Final Closing Capital Expenditures Adjustment due shall be paid by the paying Party within five (5) Business Days after the calculation of the Final Closing Capital Expenditures Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(f). The paying Party shall make such payment via wire transfer of immediately available funds to an account specified by the recipient Party, which account shall be so specified at least two (2) Business Days before payment of the Final Capital Expenditure Adjustment becomes due.

(c) Liability for all accrued or prepaid real estate Taxes attributable to the Real Property and the Real Property Leases shall be prorated between Seller and Purchaser as of 12:01 a.m. on the Closing Date based on the most recently ascertainable real estate Tax bill. Such proration between the pre-Closing Date period and the post-Closing Date period shall be made by multiplying such Taxes by a fraction, the numerator of which is the actual number of days in the pre-Closing period and the denominator of which is the number of days in the real property tax year in which the real property taxes are assessed, as the case may be. Any net credit resulting from such proration in favor of Seller shall be paid in cash by Purchaser to Seller at Closing and any resulting net credit in favor of Purchaser shall be credited against the Purchase Price paid by Purchaser at Closing (such amount, as applicable, the "Closing Proration"). Any refunds of such real estate Taxes made after the Closing shall first be applied to the unreimbursed third-party costs incurred by Seller or Purchaser in obtaining the refund, then shall be paid to Seller (for such Taxes accrued through the period prior to the Closing Date) and to Purchaser (for the period commencing on and after the Closing Date). If any proceeding to determine the assessed value of the Real Property or the real estate Taxes payable with respect to the Real Property commenced before the date hereof is continuing as of the Closing Date,

Seller shall be authorized to continue to prosecute such proceeding and shall be entitled to any abatement proceeds therefrom allocable to any period before the Closing Date, and Purchaser agrees to cooperate as reasonably requested with Seller and to execute any and all documents reasonably requested by Seller in furtherance of the foregoing.

(d) The Purchase Price shall be: (i) increased on a dollar for dollar basis to the extent that the Working Capital on the Closing Date exceeds the Target Working Capital and (ii) decreased on a dollar for dollar basis to the extent that the Working Capital on the Closing Date is less than the Target Working Capital (the "Working Capital Adjustment"). Within sixty (60) days following the Closing, Purchaser shall prepare and deliver to Seller a Closing Balance Sheet as of the Closing Date, together with a calculation of the Working Capital Adjustment based on such Closing Balance Sheet. Following delivery of the Closing Balance Sheet and Working Capital Adjustment, Purchaser shall provide Seller and its Representatives with reasonable access to the books, records, facilities and employees of Purchaser, and shall cooperate with Seller's Representatives, in connection with Seller's review of the Closing Balance Sheet and Working Capital Adjustment. The Working Capital Adjustment calculated by Purchaser shall be conclusive and binding on the Parties unless Seller, within thirty (30) days after its receipt of the Working Capital Adjustment, gives Purchaser a written notice of objection setting forth in reasonable detail the amount in dispute and the basis for such dispute (a "Purchase Price Objection Notice"); provided, that Seller shall not be required to give

details regarding the amount or basis of any dispute if Purchaser shall have failed to provide Seller the access and cooperation required by this Section. If Seller delivers a Purchase Price Objection Notice, the Parties shall attempt in good faith to resolve such dispute through negotiation, and any agreement reached shall be conclusive and binding on the Parties. If the Parties are unable, despite good faith negotiations, to resolve the disputes described in the Purchase Price Objection Notice within thirty (30) days after delivery of the Purchase Price Objection Notice, then the Parties shall promptly submit any such unresolved dispute to the Independent Accounting Firm. The Parties shall cooperate fully with the Independent Accounting Firm, including providing all work papers and back-up materials relating to the unresolved disputes requested by the Independent Accounting Firm to the extent available to the Parties and their respective Representatives. The determination of the Independent Accounting Firm shall be set forth in a written notice delivered to Purchaser and Seller within thirty (30) days after submission of the disputes to the Independent Accounting Firm and shall be conclusive and binding on the Parties. The fees and expenses of the Independent Accounting Firm shall be shared equally by Seller and Purchaser. The Working Capital Adjustment shall be revised to reflect the resolution of the disputes resolved in accordance with this Section 2.5(d).

(e) Intentionally Omitted.

(f) The Purchase Price shall be adjusted as follows:

(i) Two Business Days before the Closing Date, the Seller shall deliver to Purchaser a certificate containing a calculation of the Capital Expenditures as of such date (the "Estimated Capital Expenditures"). The Estimated Capital Expenditures minus the Target Capital Expenditures shall be the "Initial Capital Expenditures Adjustment"; provided that the Initial Capital Expenditures Adjustment shall be zero if such adjustment would otherwise be less than the product of (A) 0.05 and (B) the Target Capital Expenditures. On the Closing Date,

the Purchase Price shall be (i) increased on a dollar for dollar basis to the extent that the Initial Capital Expenditures Adjustment exceeds zero and (ii) decreased on a dollar for dollar basis to the extent that the Initial Capital Expenditures Adjustment is less than zero.

(ii) Within sixty (60) days following the Closing, Purchaser shall prepare and deliver to Seller a calculation of the Capital Expenditures as of the Closing Date (the "Closing Capital Expenditures"). The Closing Capital Expenditures minus the Target Capital Expenditures, if any, shall be the "Closing Capital Expenditures Adjustment"; provided that the Closing Capital Expenditures Adjustment shall be zero if such adjustment would otherwise be less than the product of (A) 0.05 and (B) the Target Capital Expenditures. Following delivery of the calculation of the Closing Capital Expenditures Adjustment, Purchaser shall provide Seller and its Representatives with reasonable access to the books, records, facilities and employees of Purchaser, and shall cooperate with Seller and its Representatives, in connection with Seller's review of the Closing Capital Expenditures Adjustment. The Closing Capital Expenditures Adjustment calculated by Purchaser shall be conclusive and binding on the Parties unless Seller, within thirty (30) days after its receipt of the Closing Capital Expenditures Adjustment, gives Purchaser a written notice of objection setting forth in reasonable detail the amount in dispute and the basis for such dispute (a "Closing Capital Expenditures Objection Notice"); provided, that Seller shall not be required to give details regarding the amount or basis of any dispute if Purchaser shall have failed to provide Seller the access and cooperation required by this Section. If Seller delivers a Closing Capital Expenditures Objection Notice, the Parties shall attempt in good faith to resolve such dispute through negotiation, and any agreement reached shall be conclusive and binding on the Parties. If the Parties are unable, despite good faith negotiations, to resolve the disputes described in the Closing Capital Expenditures Objection Notice within thirty (30) days after delivery of the Closing Capital Expenditures Objection Notice, then the Parties shall promptly submit any such unresolved dispute to the Independent Accounting Firm. The Parties shall cooperate fully with the Independent Accounting Firm, including providing all work papers and back-up materials relating to the unresolved disputes requested by the Independent Accounting Firm to the extent available to the Parties and their respective Representatives. The determination of the Independent Accounting Firm shall be set forth in a written notice delivered to Purchaser and Seller within thirty (30) days after submission of the disputes to the Independent Accounting Firm and shall be conclusive and binding on the Parties. The fees and expenses of the Independent Accounting Firm shall be shared equally by Seller and Purchaser. The Closing Capital Expenditures and the Closing Capital Expenditures Adjustment shall be revised to reflect the resolution of the disputes resolved in accordance with this Section 2.5(f) (the "Final Closing Capital Expenditures" and the "Final Closing Capital Expenditures Adjustment", respectively). After the Final Closing Capital Expenditures is determined in accordance with this Section 2.5(f), (x) Purchaser shall pay to Seller in accordance with Section 2.5(b)(iv) any amount by which the Final Closing Capital Expenditures Adjustment exceeds the Initial Capital Expenditures Adjustment and (y) Seller shall pay to Purchaser in accordance with Section 2.5(b)(iv) any amount by which the Final Capital Expenditures Adjustment is less than the Initial Capital Expenditures Adjustment.

2.6 **Allocation of Purchase Price**. Promptly after the date hereof, but in any event within five (5) Business Days after the date hereof, Purchaser shall engage a valuation or appraisal firm and shall instruct it to deliver to Purchaser and Seller within twenty (20) days after

engagement a statement of the value of the Real Property, Real Property Leases, and any motor vehicles for which a value must be stated in the applicable transfer documents or related filings to be made on or about the Closing Date. By the later of: (i) February 1, 2004, (ii) 30 Business Days after the calculation of the Working Capital Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(d) or (iii) 30 Business Days after the calculation of the Final Closing Capital Expenditures Adjustment becomes conclusive and binding on the Parties in accordance with Section 2.5(f), Purchaser shall deliver to Seller a statement (the "Final Allocation Statement"), such Final Allocation Statement to be subject to Seller's consent, which consent shall not be unreasonably withheld allocating the Purchase Price, in accordance with Section 1060 of the Code and (with respect to the Real Property, Real Property Leases and motor vehicles described therein) in conformity with the statement of the valuation or appraisal firm described above, among: (a) the Purchased Assets, (b) the non-competition covenant contained in Section 8.3 of this Agreement and (c) the Assumed Liabilities required to be transferred pursuant to Section 6.3(e). If the Parties are unable, despite good faith negotiations, to agree on such allocation within twenty (20) days after delivery of the Final Allocation Statement, then the Independent Accounting Firm will be retained to determine such allocation (the fees and expenses of which shall be shared equally by Purchaser and Seller) and shall be instructed to provide its determination to Purchaser and Seller, which determination shall be final and binding upon Purchaser and Seller. The Parties agree that such allocation pursuant to the Final Allocation Statement shall be used in filing IRS Form 8594, Asset Acquisition Statement under Section 1060 of the Code ("Form 8594"), and all Tax Returns (except to the extent such filings are required to be made by Seller prior to receipt of the Final Allocation Statement, in which case the Parties shall agree on the appropriate allocation for such filings). Subject to the requirements of applicable Tax Laws or prior Tax elections, neither Seller nor Purchaser will take any position inconsistent with such allocations in any Tax Return or in any examination of any Tax Return, in any refund claim or in any Tax litigation. For avoidance of doubt, Seller shall have no liability for inconsistent Tax Returns or other filings made prior to Seller's receipt of the Final Allocation Statement if made in a manner consistent with the procedures

provided above if after receipt of the Final Allocation Statement Seller takes such steps as are reasonably available under applicable Law to amend such inconsistent Tax Returns to be consistent with the Final Allocation Statement.

2.7 **Closing**. The consumption of the purchase and sale of the Purchased Assets in accordance with this Agreement (the "Closing") shall take place at 10:00 a.m., local time, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Embarcadero Center, San Francisco, California 94111, on the second Business Day after all of the conditions precedent to Closing hereunder shall have been satisfied or waived, or at such other time and place as the Parties shall agree in writing. Unless the parties otherwise agree in writing, the Closing with respect to the Real Property shall be conducted through a customary escrow arrangement with the Title Company. The date of the Closing is referred to as the "Closing Date." The Parties shall deliver at the Closing such documents, certificates of officers and other instruments as are set forth in Article VI hereof and as may reasonably be required to effect the transfer by Seller of the Purchased Assets pursuant to and as contemplated by this Agreement and to consummate the Acquisition. All events occurring at the Closing shall be deemed to occur simultaneously (with the concurrent delivery of the documents required to be delivered pursuant to Article VI, delivery of the Title Policies and payment of the Purchase Price).

2.8 **Assignment of Contracts**. Seller shall use its best efforts (subject to the limitations below) to obtain the written consent of any third party required in connection with the transfer of any Assigned Contract to Purchaser on or before the Closing Date (including, for the avoidance of doubt, leaving in place any guarantees requested by any such third party as set forth under Section 5.11). Notwithstanding anything in this Agreement to the contrary, to the extent that any Assigned Contract is not assignable without the consent of another party whose consent has not been obtained, this Agreement shall not constitute an assignment or attempted assignment of such Assigned Contract if the assignment or attempted assignment would constitute a breach thereof or materially detract from the rights transferred to Purchaser. If such consent is not obtained, then (A) Seller shall use its best efforts to enter into any arrangement requested by Purchaser that is designed to give Purchaser the full benefit of such Assigned Contract accruing on or after the Closing and that does not violate any applicable law or presently existing agreement to which Seller is a party, and (B) Purchaser shall use its best efforts to cooperate with Seller to consummate such arrangement. Notwithstanding anything to the contrary in this Section 2.8, (i) Seller shall not be required to make out-of-pocket payments to third parties (excluding payments to Seller's or Parent's employees or other internal costs of Seller or Parent) in excess of * in connection with its obligations under this Section 2.8 and (ii) neither of Purchaser and Kerr shall be required to make any payment to any third party in connection with its obligations under this Section 2.8. Seller shall provide Purchaser with a reasonable opportunity to participate in any discussions or negotiations, written or oral, with each lessor under each Lease in connection with obtaining consent thereunder.

2.9 **Natural Hazard Disclosure Statement**. Promptly following execution of this Agreement, Seller shall deliver to Purchaser a Natural Hazard Disclosure Statement executed by Seller as and to the extent prescribed by California Law, in the form attached as Exhibit B (the "NHDS"), applicable to the Real Property. Within seven (7) Business Days after Purchaser's receipt of the NHDS, Purchaser shall execute and deliver to Seller one counterpart original of the NHDS. Purchaser's signature on the NHDS shall, among other things, serve to acknowledge Purchaser's receipt from Seller of the NHDS and Purchaser's understanding and acceptance thereof.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Kerr and Purchaser to enter into this Agreement and to consummate the Acquisition, Seller represents and warrants to Kerr and Purchaser as follows:

3.1 **Organization and Qualification**. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of California and has all requisite corporate power and authority to own, lease and operate its assets and properties and to carry on the Business as it is now being conducted. Seller is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the assets and properties owned, leased or operated by it or the nature of the Business makes such qualification or licensing necessary, except for failures to be so qualified or licensed and in good standing that do not have a Material Adverse Effect. Except as set forth on Schedule 3.1, Seller has no Subsidiaries.

* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

3.2 **Authority Relative to this Agreement**. Seller has all necessary corporate power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and to consummate the Acquisition. The execution and delivery of this Agreement and such other Transaction Documents by Seller and the consummation by Seller of the Acquisition have been duly and validly authorized by all necessary corporate action on the part of Seller, and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the Acquisition. This Agreement and such other Transaction Documents have been or will be duly executed and delivered by Seller and, assuming the due authorization, execution and delivery by Purchaser, each such agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, fraudulent conveyance, reorganization or other similar Law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies (whether in a proceeding at law or in equity).

3.3 **No Conflict**. Except as set forth on Schedule 3.3, the execution and delivery of this Agreement by Seller do not, and the performance by Seller of its obligations hereunder and the consummation of the Acquisition will not: (a) conflict with or violate any provision of the articles of incorporation or by-laws of Seller; (b) assuming that all filings and notifications described in Section 3.4 have been made, conflict with or violate any Law or order applicable to Seller or by which any of the Purchased Assets or Seller is bound or affected; or (c) result in any material breach of or constitute a material default under, or require notice or consent under, any mortgage, indenture, deed of trust, lease, contract, agreement, license or other instrument to which Seller is a party or by which any of the Purchased Assets is bound or affected, or result in the creation of a material Lien on any of the Purchased Assets, except in the case of clauses (b) and (c), for any conflict, violation, breach or default that would not reasonably be expected to have a Material Adverse Effect.

3.4 **Required Filings and Consents**. The execution and delivery of this Agreement by Seller do not, and the performance by Seller of its obligations hereunder and the consummation of the Acquisition will not, require any consent, approval, authorization or permit of, or filing by Seller with or notification by Seller to, any Governmental Authority, except for: (a) the consents, approvals, authorizations, declarations or rulings set forth on Schedule 3.4; (b) the filing of a Notification and Report Form pursuant to the HSR Act and the expiration or earlier termination of the applicable waiting period thereunder with respect to the Acquisition; and (c) such consents, approvals, authorizations, permits and filings the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect.

3.5 **Financial Statements**. Set forth on Schedule 3.5 are true and complete copies of (a) Seller's balance sheets at November 30, 2001 and 2002, and its income statements and statements of cash flows for the three (3) years ended November 30, 2002, together with the notes thereto and the report thereon of Ernst & Young LLP (the "Audited Financials"), and (b) Seller's unaudited balance sheet at May 31, 2003 and the related unaudited consolidated income statements and a statement of capital expenditures for the six month period ended at such date (the "Interim Financials") and (c) the pro forma presentation of Seller's revenues for (i) the year ended November 30, 2002, and (ii) the six months ended May 31, 2003, which pro forma presentations are based on the Audited Financials or the Interim Financials, as applicable, and

have been adjusted solely to reflect the pricing referred to in subclauses (x) and (y) below (the "Pro Forma Revenues"). The Audited Financials and, subject to normal and recurring quarter-end, year-end and audit adjustments, the Interim Financials have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to the Audited Financials and except for the absence of notes to the Interim Financials), and present fairly the financial position of Seller as of the applicable date and Seller's results of operations and cash flows for the periods then ended. Parent and Seller agree that the Pro Forma Revenues represent in all material respects the revenues of Seller for the periods set forth therein as if sales by Seller to Parent (x) during the year ended November 30, 2002 had occurred at prices set forth on Schedule 3.5 hereto and (y) during the six months ended May 31, 2003 had occurred at prices set forth on Schedules 3.1(a) and 3.1(b) to the Supply Agreement. Parent and Seller agree that Seller's aggregate gross margin on sales to Parent and the other Persons identified on Schedule 1.1(a) for the six months ended May 31, 2003 would not have been materially less than the aggregate gross margin set forth on Schedule 3.5 if the pricing on Schedules 3.1(a) and 3.1(b) to the Supply Agreement had been in effect during such period and such aggregate gross margins had otherwise been calculated in accordance with the practices, procedures and methods used by Seller in preparing the Interim Financials. Parent and Seller acknowledge that Kerr and Purchaser's acceptance of the prices set forth on Schedules 3.1(a) and 3.1(b) to the Supply Agreements is made solely in reliance on this representation.

3.6 **Absence of Undisclosed Liabilities**. As of the date hereof, Seller does not have any liabilities (absolute, contingent, accrued or otherwise) in respect of the Business other than: (a) liabilities reflected in the balance sheet of Seller at May 31, 2003 included in the Interim Financials (the "Latest Balance Sheet"); (b) liabilities incurred since the date of the Latest Balance Sheet (the "Latest Balance Sheet Date") in the ordinary course of business; (c) obligations of continued performance under contracts and other commitments and arrangements entered into in the ordinary course of the Business to the extent permitted under Section 5.1; (d) the liabilities described on Schedule 3.6; and (e) liabilities under this Agreement.

3.7 **Absence of Certain Changes or Events**. From the Latest Balance Sheet Date to the date hereof, except as contemplated by this Agreement or disclosed on Schedule 3.7, Seller has conducted the Business in the ordinary course of business and:

(a) there has not been any material damage to or destruction or loss of any asset, property, right or interest of Seller used in the Business, whether or not covered by insurance, that has had or would reasonably be expected to have a Material Adverse Effect;

(b) Seller has not sold or transferred any material amount of its assets, properties, rights or interests used in the Business, other than sales of inventory and disposal of obsolete, damaged or defective inventory or other assets in the ordinary course of business;

(c) Seller has not increased the salary, bonus or other compensation payable to any officer or employee of Seller other than in the ordinary course of business consistent with past practice;

(d) Seller has not entered into, modified or terminated any contract or transaction involving a total remaining commitment of at least $250,000 other than in the

ordinary course of business, or received written notice of termination of any material contract or transaction;

(e) Seller has not entered into any agreement to take any of the actions set forth in subsections (b) through (d) of this Section 3.7; and

(f) Seller has not taken or failed to take any other action which action or failure would violate Section 5.1 if such action or failure were to occur after the date hereof.

3.8 **Sufficiency and Title to Assets**. Except as set forth on Schedule 3.8:

(a) No proceeding is pending or, to the Knowledge of Seller, threatened for the taking or condemnation of all or any portion of the Real Property. The Real Property is all of the real property owned by Seller. Seller has not entered into any agreements giving any Person any right to lease, sublease or otherwise occupy any portion of the Real Property. To the Knowledge of Seller, true and complete copies of all surveys of the Real Property in Seller's possession have heretofore been furnished to Purchaser. There are no ongoing proceedings (judicial or, to the Knowledge of Seller, legislative), claims or disputes of which Seller has notice affecting any Real Property that might curtail or interfere with the use of such property. To the Knowledge of Seller, each Real Property is in material compliance with all Laws, including (i) the Americans with Disabilities Act, 42 U.S.C. § 12102, et seq., together with all rules, regulations and official interpretations promulgated pursuant thereto, and (ii) all Laws with respect to zoning, building, fire, life safety, health codes and sanitation. Seller has not, since June 1, 2001, received any notices of existing violations of any Laws applicable to any Real Property. Since January 1, 2001, Seller has not received any notice of, or other writing referring to, any requirements or recommendations by any insurance company that has issued a policy covering any part of the Real Property or by any board of fire underwriters or other body exercising similar functions, requiring or recommending any repairs or work to be done on any part of the Real Property, which repair or work has not been completed. To the Knowledge of Seller, Seller has obtained all

appropriate certificates of occupancy required to use and operate the Real Property located in the State of California in the manner in which such Real Property is currently being used and operated. True and complete copies of all such certificates have heretofore been furnished to Purchaser.

(b) The Real Property Leases are the only leasehold estates under which Seller is a lessee (or sublessee) of any real property or interest therein. To the Knowledge of Seller, no proceeding is pending (and Seller has not received notice of any pending proceeding) and, to the Knowledge of Seller, no proceeding is threatened for the taking or condemnation of all or any portion of the property demised under the Real Property Leases. A true and complete copy of each Real Property Lease has heretofore been delivered to Purchaser. Each Real Property Lease is valid, binding and enforceable against Seller and, to the Knowledge of Seller (without inquiry), against the landlord thereunder in accordance with its terms and is in full force and effect with respect to Seller and, to the Knowledge of Seller (without inquiry) the landlord thereunder. Seller has not encumbered the leasehold estate created by each Real Property Lease with any leasehold mortgages or any other Liens. Seller has not received notice of any existing defaults by Seller under any of the Real Property Leases and, to the Knowledge of Seller, there are no existing defaults by Seller under any of the Real Property Leases. To the Knowledge of

Seller, no event has occurred that (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a default under any Real Property Lease. To the Knowledge of Seller, Seller has obtained all appropriate certificates of occupancy required to use and operate each Real Property Lease in the manner in which such Real Property Lease is currently being used and operated in California to the extent that Seller is obligated to obtain such certificate of occupancy pursuant to applicable Laws and the terms of the Real Property Leases. True and complete copies of all such certificates have heretofore been furnished to Purchaser.

(c) The Real Property, the premises demised under the Real Property Leases, the other assets comprising the Purchased Assets and the Affiliate Marks are, taken together, all of the assets used, held for use or planned to be used in connection with products currently under active development, in each case, in the Business, and are adequate and sufficient for the operation of the Business as currently conducted.

(d) To the Knowledge of Seller, except as disclosed in the engineering reports previously made available to Purchaser and listed on Schedule 3.8, each of the buildings, improvements, and equipment owned, leased or used by Seller are structurally sound with no known defects and are in good operating condition and repair and are adequate for the uses to which they are being put. Seller is not in possession of any engineering reports dated June 1, 1993 or later regarding the structural sufficiency of the buildings, improvements, and/or equipment owned, leased or used by Seller except as set forth in Schedule 3.8. To the Knowledge of Seller, except as disclosed in the engineering reports previously made available to Purchaser and listed on Schedule 3.8, none of such buildings, improvements, or equipment is in need of maintenance or repairs except for ordinary, routine maintenance and repairs which are not material in nature or cost. The roof of each such structure is in good repair and condition.

(e) Seller has good and valid title to the Tangible Personal Property, free and clear of all Liens other than Permitted Liens.

3.9 **Intellectual Property.**

(a) Schedule 3.9(a) is a complete list of the Listed Intellectual Property that is the subject of any application filed with, or any registration issued by, any government agency (collectively, "Registered Intellectual Property Rights"). All Registered Intellectual Property Rights and the Affiliate Marks are, to the Knowledge of Seller, enforceable, and all material fees, payments and filings due in respect of such Registered Intellectual Property Rights and the Affiliate Marks as of the date hereof have been made. Each material item of Intellectual Property is: (i) owned by Seller, free and clear of all Liens, restrictions or encumbrances on Seller's right to transfer to Purchaser the Listed Intellectual Property and Other Intellectual Property (or in the case of the Affiliate Marks, owned by an Affiliate of Seller), or (ii) rightfully used by Seller pursuant to a valid license, sublicense, consent or other similar agreement identified as such in Schedule 3.9(a); and the Intellectual Property (together with any intellectual property included in the Excluded Assets) constitutes all of the intellectual property that is necessary to conduct the Business as currently conducted and in connection with products currently under active development.

(b) Each material item of Intellectual Property transferred to Purchaser pursuant to the Acquisition shall be owned, available for use or enforceable, as the case may be, by Purchaser immediately following the Closing on substantially identical terms and conditions as it was owned by, available to or enforceable by, as the case may be, Seller immediately prior to the Closing.

(c) The consummation of the Acquisition will not result in Kerr or Purchaser being bound by any non-compete or other restriction on the operation of the Business that was previously binding on Seller or the granting by Kerr or Purchaser of any rights or licenses to any intellectual property rights of Kerr or Purchaser to a third party (including a covenant not to sue) that was previously binding on Seller.

(d) Except as disclosed on Schedule 3.9(d), Seller is not aware of any facts which would lead it to reasonably believe that the operation of the Business as currently conducted infringes or will infringe on any intellectual property rights of any other Person.

(e) Except as disclosed on Schedule 3.9(e), no claims have been asserted nor, to the Knowledge of Seller, are threatened by any Person against Seller that: (i) challenge the validity, enforceability, registrability or ownership by Seller of any of the Intellectual Property or (ii) claim that the operation of the Business as currently conducted infringes or will infringe any intellectual property rights of any other Person. To the Knowledge of Seller, no third party is engaged in unauthorized use, infringement or misappropriation of any Intellectual Property.

(f) There are no settlements, forbearances to sue, consents, judgments, or orders or similar obligations (other than license agreements in the ordinary course of business) which (i) restrict Seller's rights to use any Intellectual Property; (ii) restrict Seller's Business in order to accommodate a third party's intellectual property rights; or (iii) permit third parties to use any intellectual property owned by Seller.

(g) Schedule 3.9(g) lists all Computer Software owned or licensed by, or otherwise used in the Business, other than third party software applications that are generally available and have an individual acquisition cost of $5,000 or less, and identifies whether each of the foregoing items of Computer Software are owned, licensed or otherwise used, as the case may be.

(h) Schedule 3.9(h) lists all domain names that are the subject of any application filed by Seller with, or any registration issued to Seller by, a recognized registration authority.

3.10 **Contracts.**

(a) Schedule 3.10 sets forth a list of the following contracts, agreements and instruments pertaining to the Business to which Seller is a party or is bound as of the date hereof (collectively, the "Material Contracts"):

(i) any contract involving more than $100,000 over the life of the contract;

(ii) any contract that expires more than one (1) year after the date of this Agreement or that may be renewed at the option of any Person other than Seller so as to expire more than one (1) year after the date of this Agreement;

(iii) any trust indenture, mortgage, promissory note, loan agreement or other contract for borrowed money (other than trade payables incurred in the ordinary course of business not exceeding $100,000 individually or $200,000 in the aggregate);

(iv) any contract for capital expenditures in excess of $200,000 in the aggregate except as set forth on Schedule 5.1(m);

(v) any contract limiting the freedom of Seller to engage in any line of business or to compete with any other Person, or any confidentiality, secrecy or non-disclosure contract or any contract that may be terminable as a result of Seller's status as a competitor of any party to such contract;

(vi) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the liabilities of any other Person other than customer agreements made in the ordinary course of the Business ("Guarantee Obligations");

(vii) any employment contract, arrangement or policy (including any collective bargaining contract or union agreement) which may not be immediately terminated without notification or penalty (including any augmentation or acceleration of benefits);

(viii) any contract providing for a joint venture, partnership or similar legal relationship with any other Person;

(ix) any contract granting to any Person, on a conditional basis or otherwise, any ownership interest in, or license to manufacture or prepare, any product developed, manufactured or sold by the Business (each, a "Product") utilizing any proprietary recipe or formulation;

(x) any sales agency, distribution or similar agreements with respect to Products or for the distribution by Seller of products of another party involving consideration in excess of $100,000;

(xi) any agreement providing for a rebate, discount, bonus or commission in excess of $100,000 with respect to the sale of any Product;

(xii) any agreement requiring Seller to advance or loan any amount in excess of $100,000 to or on behalf of any of its directors, employees, shareholders, Affiliates or Associates (or their respective Affiliates or Associates);

(xiii) any agreement providing for the acquisition after January 1, 2001 by Seller (or any predecessor in interest) of any real property, operating business or the shares or other equity interests of any Person for consideration in excess of $100,000;

(xiv) any employment, severance, consulting or other agreement of any nature with any current or former shareholder, director, officer or any Affiliate thereof involving consideration in excess of $100,000 per year individually or $100,000 per year in the aggregate;

(xv) any agreement restricting the ability of Seller to incur Indebtedness;

(xvi) any agreement relating to Indebtedness, interest rate swap or hedging agreements, sale and leaseback transactions and other similar financing transactions;

(xvii) any contract existing between Seller and any Governmental Authority;

(xviii) any agreement providing for the provision by Seller to any third party of any confidential information or restricting Seller from providing such information to third parties;

(xix) any agreement restricting Seller's ownership, operation, sale, transfer, pledge or other disposition of any of the Purchased Assets;

(xx) any Real Property Lease;

(xxi) any agreement providing for production by Seller of any Product on an exclusive or requirements basis;

(xxii) any agreement with a consultant or subcontractor involving payment of consideration over the term of such agreement in excess of $100,000; or

(xxiii) any contract, agreement or instrument within the Knowledge of Seller which is otherwise material to the conduct or operation of the Business.

(b) Seller has performed in all material respects the obligations required to be performed by it under the Material Contracts, and, to the Knowledge of Seller, each of the Material Contracts is valid and binding and in full force and effect. True, correct and complete copies of all Material Contracts have been made available to Purchaser. Seller has not made or received any claim of any material default under any Material Contract, and as of the date hereof, to the Knowledge of Seller, there is no material breach or anticipated breach by any other party to any Material Contract.

3.11 **Permits**. The Listed Permits are all material permits, licenses, approvals, franchises, certificates, consents and other authorizations of any Governmental Authority that are required in order for Seller to conduct the Business as it is now being conducted. Each of the Listed Permits is in full force and effect, except for immaterial failures. To the Knowledge of Seller, Seller is not in conflict in any material respect with or in material default or violation of any Listed Permit.

3.12 **Compliance with Laws**. Seller is not in material conflict with or in material default or violation of any Law applicable to the Purchased Assets or the Business.

3.13 **Litigation**. Except as set forth on Schedule 3.13, as of the date hereof, there are no material claims, actions, suits, investigations, arbitrations, inquiries or proceedings pending or, to the Knowledge of Seller, threatened, against Seller before any Governmental Authority.

3.14 **Books and Records**. All books of account and other financial books and records of Seller directly relating to the Business are true, correct and complete in all material respects.

3.15 **Employment Matters**.

(a) Schedule 3.15 sets forth a list of all Persons who were employed by Seller, on a full time or a part time basis, as of February 1, 2003, including all such Persons who at such date were on military leave, disability leave or any other leave approved by the Company or mandated by applicable Law and a description of all compensation and benefits provided by Seller to each such Person, which list is true and complete in all material respects. Except as otherwise required by Law or as set forth on Schedule 3.15, the employment of all such employees is terminable by Seller at will.

(b) Except as set forth on Schedule 3.15: (i) Seller is not a party to any contract with any labor organization or other bargaining representative of its employees; (ii) there is no unfair labor practice charge or complaint pending or, to the Knowledge of Seller, threatened against Seller; (iii) Seller has not experienced any labor strike, slowdown, work stoppage or similar labor controversy within the past three (3) years; (iv) Seller has paid in full to all of its employees all compensation and benefits due and payable to such employees; and (v) Seller is in material compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety and health and Seller has not received written notice of any investigation, charge or complaint against Seller relating to the Business pending before the Equal Employment Opportunity Commission or any other federal, state or local government agency or court or other tribunal regarding an unlawful employment practice.

(c) Since January 1, 2003, (i) Seller has not effectuated a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility; (ii) there has not occurred a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the Seller; and (iii) Seller has not engaged in layoffs or employment terminations sufficient in number to trigger application of the WARN Act or any similar state, local or foreign law or regulation. Except as set forth on Schedule 3.15(c), no employee of Seller has suffered an "employment loss" (as defined in the WARN Act) during the six-month period prior to the date of this Agreement.

3.16 **Employee Benefits**. Schedule 3.16 sets forth a complete and accurate list as of the date hereof of each employment, consulting, bonus, deferred compensation, incentive compensation, stock purchase, stock option, stock appreciation right or other equity-based incentive, severance or termination pay, change in control, hospitalization or other medical, life, disability or other insurance, supplemental unemployment benefits, savings, profit-sharing, pension or retirement plan, program, policy, agreement or arrangement, and each other employee or fringe benefit plan, program, policy agreement or arrangement, sponsored, maintained or

contributed to or required to be contributed to by Seller for the benefit of Seller's employees, whether formal or informal and whether legally binding or not (each, a "Plan;" collectively, the "Plans"). No event has occurred in connection with any Plan that has, will or may result in any fine, penalty, assessment or other liability for which any transferee of assets of Seller may be responsible, whether by operation of Law or by contract. The transactions contemplated by this Agreement, will not, either alone or in combination with any other event or events, cause Kerr or Purchaser to incur any liabilities with respect to any Plan, including (a) any liability under Section 4980B of the Code or (b) any liability with respect to any employee of Seller that was incurred or arose on or prior to the Closing Date.

3.17 **No Finder**. Seller has not incurred any liability to any broker, finder, investment banker or any other Person for any brokerage, finder's or other fee or commission in connection with this Agreement or the Acquisition.

3.18 **Environmental Matters**.

(a) Except as set forth on Schedule 3.18, (i) the Business is in material compliance with all applicable Environmental Laws, which compliance includes, but is not limited to, the possession by Seller and its Subsidiaries of all permits and other governmental authorizations required under Environmental Laws for the Business, and compliance with the terms and conditions thereof; (ii) neither Seller nor any of its Subsidiaries has received any written or, to the Knowledge of Seller, oral communication, whether from a Governmental Authority or any other Person, that alleges that the Business is not in compliance with any Environmental Laws, and, to the Knowledge of Seller, there are no circumstances that would be reasonably expected to prevent or interfere with such compliance in the future. For purposes of this Section 3.18, "Knowledge of Seller" includes the actual knowledge of each plant manager and environmental manager for each facility or property in the Business named in Schedule 3.18.

(b) Except as set forth on Schedule 3.18, there is no Environmental Claim pending or, to the Knowledge of Seller, threatened against Seller and any of its Subsidiaries relating to the Business or, to the Knowledge of Seller, against any Person whose liability for any Environmental Claim relating to the Business Seller or any of its Subsidiaries has retained or assumed either contractually or by operation of law.

(c) Except as set forth on Schedule 3.18, to the Knowledge of Seller, there has been no release, emission, discharge, presence or disposal of any Material of Environmental Concern, and there are no actions, activities, circumstances, conditions, events or incidents that present a material threat of release, emission, discharge, presence or disposal of any Material of Environmental Concern, that would reasonably be expected to form the basis of any material Environmental Claim against Seller or any Subsidiary relating to the Business, or, to the Knowledge of Seller, against any Person whose liability for any Environmental Claim relating to the Business Seller or any of its Subsidiaries has retained or assumed either contractually or by operation of law.

(d) Except as set forth on Schedule 3.18: (i) neither Seller nor any Subsidiary is the subject, either directly or indirectly, of any Environmental Claim with respect to any on-site or off-site locations where Seller or any Subsidiary has stored, disposed or arranged for the disposal of Materials of Environmental Concern for, from or with respect to the Business, (ii)

there are no underground storage tanks located on property owned or controlled by Seller or any Subsidiary for the Business, and, to the Knowledge of Seller, there are no underground storage tanks located on property otherwise used for the Business, (iii) there is no damaged asbestos contained in or forming part of any building, building component, structure or office space owned, leased or otherwise used for the Business, (iv) to the Knowledge of the Seller, there is no other asbestos contained in or forming part of any building, building component, structure or office space owned, leased or otherwise used for the Business, and (v) to the Knowledge of Seller, no polychlorinated biphenyls (PCBs) or PCB-containing items are used or stored at any property owned, used or leased for the Business.

(e) Except as set forth on Schedule 3.18, Seller has provided to Purchaser all written assessments, reports, data, results of investigations or audits and similar documents that are in the possession of or reasonably available to Seller or any Subsidiary regarding the environmental condition of the property owned, used or leased for the Business, or the compliance (or noncompliance) by Seller or any Subsidiary with any Environmental Laws relating to the Business.

(f) Except as set forth in Section 5.10 or on Schedule 3.18, Seller is not required by virtue of the transactions set forth herein and contemplated hereby, or as a condition to the effectiveness of any transactions contemplated hereby, (i) to perform a site assessment for Materials of Environmental Concern, (ii) to remove or remediate Materials of Environmental Concern, (iii) to give notice to or receive approval from any governmental authority, or (iv) to record or deliver to any person or entity any disclosure document or statement pertaining to environmental matters.

(g) With respect to the matters disclosed in the reports listed in Schedule 3.18(g) hereto, there is no individual item or series of related items that would reasonably be expected to cause Losses greater than $200,000, or that, taken in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.19 **Taxes and Tax Returns**. Except as set forth on Schedule 3.19:

(a) Seller has timely filed or will have timely filed on its behalf (taking into account extensions to file) those Tax Returns which are currently due or, if not yet due, will timely file, or will have timely filed on its behalf (taking into account extensions to file) all Tax Returns required to be filed by it or on its behalf for all taxable periods ending on or before the Closing Date, and all such Tax Returns are, or will be when filed, true, correct and complete in all material respects;

(b) Seller has paid, or had paid on its behalf, to the appropriate Governmental Authority, or, if payment is not yet due, will pay, or will have paid, to the appropriate Governmental Authority, all Taxes due and payable for all taxable periods beginning on or before the Closing Date;

(c) except in the case of a Lien for *ad valorem* property taxes or income taxes not yet due and payable or otherwise disclosed on Schedule 3.19, there is no unpaid Tax which constitutes a Lien upon any of the Purchased Assets;

(d) Seller is not a party to any Tax allocation or Tax sharing agreement or has any liability or obligation to any Person as a result of, or pursuant to, any such allocation or agreement, except as set forth in the notes to the Audited Financials; and

(e) Seller is not a Person other than a “United States Person” within the meaning of the Code.

3.20 **Customers and Suppliers.**

(a) Schedule 3.20 lists the ten customers of Seller who, during the period December 1, 2001 to November 30, 2002, purchased the largest amount of Products from Seller, based on net sales. Since December 1, 2002, except as set forth on Schedule 3.20, there has not been any material adverse change in the business relationship of Seller with any such customer or customers. Except as set forth on Schedule 3.20, no such customer has materially reduced its purchases since December 1, 2002, or, to the Knowledge of Seller or to the actual knowledge of the salesperson responsible for the account of such customer, has advised Seller that it is (i) terminating, considering terminating, or planning to terminate its business relationship with Seller, or (ii) considering reducing or planning to reduce (other than oral statements made in the ordinary course of business in connection with contract renewal negotiations) its future purchases from Seller by 10% or more.

(b) Since December 1, 2002, no Person who supplies resin to Seller has reduced the supply of resin available to Seller or, to the Knowledge of Seller or to the actual knowledge of the purchaser responsible for the account of such supplier, advised Seller that it is (i) terminating or intends to terminate its business relationship with Seller or (ii) reducing or intends to reduce the supply of resin available to Seller by 10% or more. Seller currently

maintains sufficient resin inventory to conduct the Business as it is conducted. Seller has access to sufficient amounts of resin supply, purchasable at then prevailing market prices, necessary to conduct the Business as it is conducted.

3.21 **Inventory**. The inventory reflected in the Latest Balance Sheet is good and merchantable material, of a quality and quantity saleable in the ordinary course of Business consistent with Seller's past practice and was acquired by Seller in the ordinary course of business of the Business consistent with Seller's past practice and is carried on the books and records of Seller in accordance with GAAP.

3.22 **Insurance**. Set forth in Schedule 3.22 is a complete and accurate list as of the date hereof of all insurance policies carried by Seller (as a party, named insured or otherwise the beneficiary of coverage). All such insurance policies are in full force and effect and shall remain in full force and effect through the Closing Date. Such policies are sufficient for compliance with all requirements of Law and of all agreements to which Seller is a party, are valid, outstanding and enforceable policies, insure against risks of the kind customarily insured against and in amounts customarily carried by companies similarly situated and by companies engaged in similar businesses and owning similar properties. Neither Seller nor, to the Knowledge of Seller, any other insured party to any insurance policy, is in breach or default (including any breach or default with respect to the payment of premiums or the giving of notices) and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default

or permit termination or modification of any such policy. The Seller has not been denied coverage since January 1, 2000. Seller does not currently owe any deficiency amounts or Taxes for industrial insurance obligations arising under applicable state law.

3.23 **Affiliate Transactions**. Schedule 3.23 lists all agreements and arrangements and contains a summary of all transactions since January 1, 2000 and all currently proposed agreements, arrangements and transactions related to the Business and that are between Seller, on the one hand, and any current or former director, officer, shareholder or other Affiliate or Associate of Seller, or any of their respective Affiliates or Associates, or any entity in which any such Person has a direct or indirect material interest, on the other hand. All Indebtedness that is related to the Business and that is owed by any of the current or former officers, directors, shareholders or other Affiliate or Associate of Seller, or any of their respective Affiliates or Associates, are reflected in the Latest Balance Sheet.

3.24 **Questionable Payments**. Neither Seller nor any employee, officer, director, Affiliate or Associate of Seller or other Person acting on behalf of Seller, has (a) used any corporate or company funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (b) made any direct or indirect unlawful payments to government officials or employees from corporate funds; (c) established or maintained any unlawful or unrecorded fund of corporate monies or other assets; (d) made any false or fictitious entries on the books or records of any of such corporations; (e) made any bribe, payoff, kickback or other unlawful payment; or (f) made any material favor or gift which is not, in good faith, believed by Seller to be fully deductible by Seller or Seller's consolidated group for any income tax purposes and which was, in fact, so deducted.

3.25 **Products Liability**. Except as set forth on Schedule 3.13, there are no material claims presently pending or, to the Knowledge of Seller, threatened against Seller that are (a) for products liability on account of any express or implied warranty, law, regulation or other theory or (b) for personal injury.

3.26 **No Powers of Attorney**. Seller has not granted any general or special powers of attorney or any other authorizations of third parties to act as agents for Seller except for powers of attorney granted in connection with Seller's Taxes and Tax Returns.

3.27 **Full Disclosure**. No representation or warranty by Seller in this Agreement or statement in any Schedule contains any untrue statements of a material fact or omits to state any material fact necessary, in order to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF KERR AND PURCHASER

As an inducement to Seller to enter into this Agreement and to consummate the Acquisition, each of Kerr and Purchaser jointly and severally represents and warrants to Seller as follows:

4.1 **Organization and Qualification**. Kerr is a corporation and Purchaser is a limited liability company, each duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Kerr and Purchaser is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for failures to be so qualified or licensed and in good standing that do not have a material adverse effect on the ability of Kerr and Purchaser to consummate the transactions contemplated hereby.

4.2 **Authority Relative to this Agreement**. Each of Kerr and Purchaser has all necessary corporate or limited liability company power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and to consummate the Acquisition. The execution and delivery of this Agreement and the other Transaction Documents to which it is a party by each of Kerr and Purchaser and the consummation by Purchaser of the Acquisition have been duly and validly authorized by all necessary corporate action on the part of each of Kerr and Purchaser, and no other corporate proceedings on the part of Kerr or Purchaser are necessary to authorize this Agreement or to consummate the Acquisition. This Agreement and the other Transaction Documents to which it is a party have been or will be duly executed and delivered by each of Kerr and Purchaser and, assuming the due authorization, execution and delivery by Seller, each such agreement constitutes a legal, valid and binding obligation of each of Kerr and Purchaser, enforceable against each of Kerr and Purchaser in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, fraudulent conveyance, reorganization or other similar Law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies (whether in a proceeding at law or in equity).

4.3 **No Conflict**. The execution and delivery of this Agreement by each of Kerr and Purchaser do not, and the performance by each of Kerr and Purchaser of its obligations hereunder and the consummation of the Acquisition will not: (a) conflict with or violate any provision of the certificate of

incorporation or by-laws of Kerr or the certificate of formation or limited liability company operating agreement of Purchaser; (b) to the knowledge of Kerr and Purchaser, assuming that all filings and notifications described in Section 4.4 have been made, conflict with or violate any Law or order applicable to Kerr or Purchaser or by which Kerr or Purchaser or any of their assets or properties is bound or affected; or (c) to the knowledge of Kerr and Purchaser, result in any material breach of or constitute a material default under, or require notice or consent under, any mortgage, indenture, deed of trust, lease, contract, agreement, license or other instrument to which Kerr or Purchaser is a party or by which Kerr's or Purchaser's assets or properties are bound, or result in the creation of a material Lien on any asset or property of Kerr or Purchaser, except in the case of clauses (b) and (c), for any conflict, violation, breach or default that would not reasonably be expected to have a material adverse effect on the ability of Kerr or Purchaser to consummate the transactions contemplated hereby.

4.4 **Required Filings and Consents**. The execution and delivery of this Agreement by each of Kerr and Purchaser do not, and the performance by Kerr or Purchaser of its obligations hereunder and the consummation of the Acquisition will not, require any consent, approval, authorization or permit of, or filing by Kerr or Purchaser with or notification by Kerr

or Purchaser to, any Governmental Authority, except for: (a) the filing of a Notification and Report Form pursuant to the HSR Act and the expiration or earlier termination of the applicable waiting period thereunder with respect to the Acquisition and (b) such consents, approvals, authorizations, permits and filings the failure of which to obtain would not reasonably be expected to have a material adverse effect on the ability of Kerr or Purchaser to consummate the transactions contemplated hereby.

4.5 **No Finder**. Other than an aggregate fee of $1,687,500 payable to Fremont Partners, L.L.C. and Fremont Partners III, L.L.C., which fee shall be the sole responsibility of Kerr and/or Purchaser, neither Kerr nor Purchaser has agreed to pay to any broker, finder, investment banker or any other Person a brokerage, finder's or other fee or commission in connection with this Agreement or the Acquisition.

4.6 **No Litigation.** There is no claim, action, suit or proceeding pending or, to the knowledge of Kerr and Purchaser, threatened, before any Governmental Authority that prohibits or restricts, or seeks to prohibit or restrict, the consummation of the Acquisition.

4.7 **Commitment Letters.** Kerr has provided to Seller a true and complete copy of the commitment letter received by Kerr from Wells Fargo Bank.

ARTICLE V
ADDITIONAL COVENANTS

5.1 **Conduct of Business**. From the date hereof through the Closing Date, except as contemplated by this Agreement or described on Schedule 5.1, Seller agrees to conduct Seller's operations in the ordinary course, consistent with past practice, and agrees to:

(a) use its commercially reasonable efforts to (i) preserve for the benefit of Purchaser the goodwill and the existing relationships of Seller with its customers, suppliers and others with whom Seller deals; (ii) retain the services of its key employees; (iii) perform its obligations under the Material Contracts; (iv) maintain, keep and preserve the Business and the Purchased Assets in the same condition as the date hereof, except that in the case of any Purchased Assets constituting Tangible Personal Property, ordinary wear and tear and casualty is permitted; (v) preserve intact the Business and its organization; (vi) maintain books and records in accordance with past practice; and (vii) maintain in effect the insurance coverage provided under the policies set forth in Schedule 3.22;

(b) not waive, release or cancel any material claims against third parties or material debts owing to Seller, other than customer billing reductions and write-downs made in the ordinary course of business consistent with past practice and other than in respect of claims or debts that would be Excluded Assets;

(c) not (i) grant any general increase in the compensation of officers or employees, except in accordance with pre-existing contracts or consistent with past practice; (ii) enter into any contract with any employee, officer, director, Affiliate or Associate of Seller or any Affiliate or Associate of any such Person, provided, however, that this shall not prevent Seller from hiring employees on an at-will basis to fill an opening vacated by a departing or

transferring employee in the ordinary course of business, provided that the compensation being offered to the individual is consistent with other personnel in the same or a similar position; (iii) enter into any collective bargaining agreement or similar contract; (iv) enter into any agreement that requires Seller to pay any severance or termination pay (or that requires that the Seller provide a certain period of notice to an employee in advance of the effective date of termination or pay in lieu of such advance notice) to any employee, director, officer or consultant of Seller, provided that this shall not serve to prohibit Seller from paying any severance or termination pay (or pay in lieu of advance notice) which Seller was obligated to pay pursuant to any agreement, policy or practice entered into prior to the execution of this Agreement, even if the event triggering the actual obligation to pay such amounts occurs after the execution of this Agreement; (v) adopt or materially amend any employee or fringe benefit plans, agreements or arrangements, except as required pursuant to applicable Law; or (vi) engage in any work force reduction or restructuring resulting in employee layoffs triggering the notification requirements under the Worker Adjustment and Retraining Notification Act or similar applicable state or municipal statute or ordinance;

(d) not make any change in any accounting principle, method, estimate or practice, except for any such change required by reason of a concurrent change in GAAP;

(e) not (i) enter into any contract, agreement, commitment or binding understanding or arrangement requiring performance during or following a period in excess of one year or outside of the ordinary course of business consistent with past practice; or (ii) without prior consultation with Purchaser, renew, fail to renew, or permit or not permit to be automatically renewed any material agreement, including any material customer, supplier, distributor, licensing, employment or other material contracts, to which Seller is a party (other than amendments or terminations of agreements pursuant to or contemplated by this Agreement);

(f) not (i) cancel, materially modify or materially amend any Real Property Lease or Material Contract; (ii) contract for or incur any expense in connection with opening any additional Business facility; (iii) cancel any of the Listed Permits or allow any Listed Permit to expire or not be renewed; (iv) revalue any of its material assets or any material amount of its properties, other than in the ordinary course of business consistent with past practice; or (v) sell or dispose of any of the Purchased Assets (except for the sale of inventory and the disposition of damaged or defective inventory, equipment or other material in the ordinary course of business consistent with past practice), or permit the creation of any Lien, except for Permitted Liens;

(g) not enter into or amend any agreements pursuant to which any other party is granted exclusive marketing, manufacturing or other exclusive rights of any type or scope with respect to any of its products or proprietary technology, other than exclusive rights of Seller's customers in molds, tooling and other design materials of such customers;

(h) not amend the certificate of incorporation, bylaws or similar organizational documents of Seller;

(i) not merge or consolidate with any other Person or acquire a material amount of assets or equity or debt securities from any other Person, except for purchases of

supplies and capital expenditures in the ordinary course of business consistent with past practice or otherwise in accordance with Seller's projections;

(j) not commence a lawsuit, claim, action, arbitration or other administrative or judicial proceeding other than (i) for the routine collection of bills, (ii) in such cases where Seller in good faith determines that failure to commence suit would result in a material impairment of a valuable aspect of Seller's business, provided Seller consults with Purchaser prior to filing such suit, or (iii) for a breach of this Agreement;

(k) not (i) pay, discharge, or satisfy any material claim, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than in the ordinary course of business consistent with past practice; or (ii) fail to pay or otherwise satisfy (except if being contested in good faith) any material accounts payable, liabilities or obligations when due and payable;

(l) not take or fail to take any action that would cause any of the representations and warranties of Seller contained in this Agreement to be untrue in any material respect as of the Closing Date (disregarding for these purposes any materiality or Material Adverse Effect qualifier contained therein);

(m) not make any capital expenditure exceeding $200,000 individually or in the aggregate other than those set forth on Schedule 5.1(m) without the prior written consent of Kerr;

(n) not perform or take, or fail to perform or take, any action that has or is reasonably likely to have a Material Adverse Effect; or

(o) not agree or commit to do any of the foregoing provided in subsections (b) through (n).

Notwithstanding any of the foregoing, nothing herein shall be construed to prohibit or restrict any activities or transactions undertaken with respect to any of the Excluded Assets, the Retained Liabilities, or the business of Seller other than the Business, so long as, in each case, such activities or transactions will not have a negative effect on the Purchased Assets or the Business.

5.2 **Intentionally Omitted**

5.3 **Consents, Filings and Authorizations; Efforts to Consummate**. As promptly as practicable after the date hereof, Purchaser and Seller shall make all filings and submissions under such Laws as are applicable to them or to their respective Affiliates, including the filing of a Notification and Report Form pursuant to the HSR Act, and as may be required for the consummation of the Acquisition in accordance with the terms of this Agreement. Purchaser and Seller shall consult with each other prior to any such filing, and neither Seller nor Purchaser shall make any such filing or submission to which the other of them reasonably objects in writing. All such filings shall comply in form and content in all material respects with applicable Laws. Subject to the terms and conditions herein, each of Seller and Purchaser, without payment or

further consideration, shall use its commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary, proper or advisable: (a) to cause the conditions to the obligations of the other Party to consummate the Acquisition to be satisfied as soon as reasonably practicable (including, in the case of Seller, the removal of all Liens on the Purchased Assets other than Permitted Liens) and (b) under applicable Laws, permits and orders, to consummate and make effective the Acquisition as soon as reasonably practicable, including obtaining all consents required in connection with such Party's consummation of the Acquisition. Seller and Parent (but only to the extent that Parent shall make available its Representatives who are substantially involved in the Business) shall provide Kerr and Purchaser with reasonable assistance to obtain the debt financing needed by Purchaser for the consummation of the transactions contemplated by this Agreement, subject to reimbursement by Kerr and Purchaser for any reasonable documented out-of-pocket expenses incurred by Seller or Parent in connection with the providing of such assistance. Such assistance shall include, to the extent it is commercially reasonable for Seller and Parent to do so, making appropriate Representative of Parent and Seller available to participate in informational meetings, assisting with the preparation of an information package in connection with such financing, including the syndication of any loans to be funded in connection with the transactions contemplated by this Agreement, cooperating with respect to matters relating to bank collateral to take effect as of the Closing in connection with such financing (including the pledge of the Purchased Assets by Purchaser and the obtaining of authorizations, consents and approvals required under any Real Property Lease in order to subject the leasehold interest represented thereby to Liens in favor of any lenders providing such financing), using its commercially reasonable efforts to obtain customary "comfort" letters and legal opinions and executing and delivering such documents, certificates, agreements and other writings as shall take effect as of the Closing and as are reasonably requested in connection therewith. Without limiting the generality of the foregoing, Purchaser shall use its commercially reasonable efforts to obtain such debt financing. Nothing herein shall require any Party to take any action that would reasonably be expected to have a material adverse effect on such Party.

5.4 **Notices of Certain Events**. Prior to the Closing Date, each of Seller and Purchaser shall promptly notify the other of:

(a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Acquisition;

(b) any material notice or other material oral or written communication from any Governmental Authority in connection with the Acquisition;

(c) any change that has a Material Adverse Effect, or could delay or impede the ability of either Seller or Purchaser to perform its obligations under this Agreement and to consummate the Acquisition;

(d) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would cause any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect at or prior to the Closing Date; and

(e) any material failure of any Party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied hereunder.

5.5 **Public Announcements**. From and after the date of this Agreement until the Closing Date, Kerr and Purchaser, on the one hand, and Seller, on the other hand, agree not to make any public announcement or other disclosure concerning this Agreement or the transactions contemplated herein without obtaining the prior consent of the other Party as to form, content and timing (such consent not to be unreasonably withheld); provided, however, that the foregoing shall not restrict (a) any Party (or Parent) from making any public announcement or disclosure as may be required by applicable Law (including the rules of any stock exchange or other self-regulated body) on advice of a nationally recognized securities law firm that such Party is reasonably obliged to make public announcements or disclosure or (b) Seller from informing its employees and agents about this Agreement and the transactions contemplated hereby, provided that Kerr and Purchaser shall be permitted reasonable opportunity to comment upon the initial proposed communication to Seller's employees and agents before release.

5.6 **Access to Information; Confidentiality**.

(a) From and after the date of this Agreement until the Closing Date, upon reasonable notice and subject to applicable Law relating to the exchange of information and to confidentiality obligations of Seller entered into prior to the date hereof, Seller shall afford to Purchaser's Representatives access during normal business hours to the employees of Seller and to such properties, books, computer systems, records, contracts, commitments and other information of Seller relating to the Business as Purchaser may reasonably request, but excluding books, computer systems, records, contracts, commitments and information primarily related to the sale of the Business, the Excluded Assets or the Retained Liabilities. In the event that Purchaser's due diligence reveals any condition of the Real Property or the premises demised under the Real Property Leases that in Purchaser's judgment requires disclosure to any Governmental Authority, Purchaser shall immediately notify Seller thereof. In such event, Seller, and not Purchaser or any Person acting on Purchaser's behalf, shall make such disclosures to the extent Seller reasonably deems appropriate. Notwithstanding the foregoing, Purchaser may disclose matters concerning the Real Property to a Governmental Authority on written advice of a nationally-recognized law firm that Purchaser is reasonably obliged to make such disclosure if Purchaser gives Seller not less than ten (10) days prior written notice of the proposed disclosure, together with a copy of such written advice.

(b) Purchaser acknowledges that the information provided to Purchaser and its Representatives in connection with the Acquisition and this Agreement is subject to, and Purchaser shall, and shall cause its Representatives to, fully comply with the provisions of, that certain Confidentiality Agreement, dated as of February 6, 2003, between Purchaser and Seller (the "Confidentiality Agreement"), the terms of which are incorporated herein by this reference. Notwithstanding the foregoing, following the Closing Date, any information with respect to the Business that is included in the Purchased Assets shall not be subject to the Confidentiality Agreement.

(c) From and after the Closing Date, Parent, Seller and any Representatives of Parent or Seller shall maintain in confidence and not use or disclose to any third party any confidential or proprietary information regarding the business operations, product formulations, ingredients or processes, technical know-how or data, specifications, finances or other business matters of Seller which information constitutes any part of the Purchased Assets; provided, that nothing in this Section 5.6(d) shall apply to information that (i) is in the public domain, (ii) is independently developed by such Person after the Closing, or (iii) is disclosed to the recipient by a third party which has no duty of confidentiality to Purchaser or its Affiliates. Upon discovery by Parent, Seller or any of their respective Representatives that such Person is in possession of any such confidential or proprietary information, such Person shall promptly return all such information to Purchaser, without retaining any copies thereof except for copies that such Person is required to retain by applicable Law. Parent and Seller shall be responsible for ensuring the compliance of their respective Representatives with the obligations in this Section 5.6(d). If Parent, Seller or their respective Representatives receive a request or are required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or any part of such confidential or proprietary information, Parent and Seller, as the case may be, agree to, or will ensure that their respective Representatives, promptly notify Purchaser of the existence, terms and circumstances surrounding such request so that Purchaser may seek a protective order or other appropriate remedy.

(d) Notwithstanding any provision herein to the contrary, each Party and each of the respective employees, representatives and agents of each Party are hereby expressly authorized to disclose to any and all persons, without limitation of any kind, the tax treatment and any facts that may be relevant to the tax structure of the transactions contemplated by this Agreement and the Transaction Documents, provided that the confidentiality provisions of this Agreement shall continue to apply to the extent that any information (e.g., names of the Parties) is not relevant to understanding the tax treatment or tax structure of the transactions contemplated hereby.

5.7 **Expenses**. Except as otherwise specifically provided in this Agreement, each Party shall bear its own expenses incurred in connection with the preparation, execution and performance of this Agreement and the Acquisition, including all fees and expenses of such Party's Representatives, provided that:

(a) Purchaser shall pay all fees required in connection with the filing of the Notification and Report Form under the HSR Act; and

(b) Seller shall pay all recording fees, sales taxes, transfer taxes and similar taxes imposed upon transfer of the Purchased Assets pursuant to this Agreement.

5.8 **Title and Survey Matters**.

(a) Seller has delivered to Purchaser, and Purchaser has reviewed and approved the following: (i) the owner's title commitments identified on Schedule 5.8, as the same have been supplemented or updated prior to the dated hereof (collectively, the "Commitments") for the Real Property prepared by First American Title Insurance Company (the "Title Company"); (ii) copies of all documents supporting exceptions ("Exceptions") set

forth in the Commitments; and (iii) a copy of the existing surveys for the Real Property identified on Schedule 2.1(a)(i) (collectively, the "Surveys") (such Commitments, Exceptions, and Surveys collectively, the "Title Documents"). The following matters are hereby approved by Purchaser (collectively, the "Permitted Exceptions"): (A) all exceptions to title shown on the Commitments and all matters shown on the Surveys; (B) all of the contracts, leases and other agreements listed as Items 1 through 2 on Schedule 2.1(e); (C) the Lien of non-delinquent Taxes (it being agreed by Purchaser and Seller that if any Tax is levied or assessed with respect to the Real Property for public improvements that will benefit the Real Property subsequent to the date of this Agreement and Seller has the election to pay such Tax either immediately or under a payment plan with interest, Seller may elect to pay under a payment plan, which election shall be binding on Purchaser); (D) all printed exceptions and exclusions contained in the form of the Title Policies to be issued at Closing; and (E) any matters caused or created by, or otherwise approved or consented to in writing by, Purchaser.

(b) Purchaser shall have the right to object in writing to any title matter that is not a Permitted Exception (other than any matter falling within subsection (E) of the definition of Permitted Exceptions) which may appear on supplemental title commitments or updates to the Commitments issued after the date of the respective Commitments (collectively, "Other Liens") within five (5) days after receipt thereof (together with a copy of such new exception) by Purchaser. Unless Purchaser shall timely object to such Other Liens, all such Other Liens which are set forth in any such supplemental commitments or updates shall be deemed to constitute additional Permitted Exceptions. Any exceptions which are timely objected to by Purchaser shall be herein collectively called the "Title Objections." Seller may elect (but shall not be obligated) to remove, or cause to be removed at its expense, any Title Objections, and shall be entitled to a reasonable adjournment of the Closing (not to exceed a period of thirty (30) days) for the purpose of such removal, which removal will be deemed effected by the issuance of title insurance eliminating the Title Objections or insuring against the effect of the Title Objections; provided, however, Seller shall be obligated to remove or bond over any and all Liens for borrowed money, mechanics' and materialmen's liens, tax liens and any Liens resulting from the failure to satisfy an obligation when due, in each case affecting any Real Property, on or before the Closing Date. Seller shall notify Purchaser in writing within five (5) days after receipt of Purchaser's notice of Title Objections whether Seller elects to remove the same. If Seller fails to remove any Title Objections prior to the Closing, Purchaser may elect either to: (i) terminate this Agreement or (ii) waive such Title Objections, in which event such Title Objections shall be deemed additional "Permitted Exceptions" and the Closing shall occur as herein provided (A) with a reduction of or credit against the Purchase Price as the Parties may agree or (B) subject to Purchaser's right to indemnification pursuant to Section 9.2.

(c) If on the Closing Date there are any Title Objections which Seller has elected to remove, Seller may use any portion of the Purchase Price to satisfy the same; provided Seller shall either deliver to Purchaser at Closing instruments sufficient to cause such Title Objections to be released of record, together with the cost of recording or filing such instruments, or cause the Title Company to omit as an exception, the same, without any additional cost to Purchaser, whether such insurance is made available in consideration of payment, bonding, indemnity of Seller or otherwise.

5.9 **No Recording**. The provisions of this Agreement shall not constitute a Lien on the Real Property. Neither Purchaser nor any of its Representatives shall record or file this Agreement or any notice or memorandum hereof in any public records. If Purchaser breaches the foregoing provision, this Agreement shall, at Seller's election, terminate.

5.10 **Price Decrease Notification**. Seller shall notify Purchaser within three Business Days after offering any price decrease in excess of 1% to any customer, which notice shall include the name of the customer, the products for which the decrease was made and the amount of the decrease.

ARTICLE VI
CONDITIONS TO CLOSING

6.1 **Conditions to the Obligations of Seller and Purchaser**. The obligations of Seller and Purchaser to consummate the Acquisition are subject to the satisfaction or, if permitted by applicable Law, waiver of the following conditions on or prior to the Closing Date:

(a) No Injunction. No provision of any applicable Law shall be in effect and no interlocutory, appealable or final order shall have been issued that prohibits or restricts the consummation of the Acquisition.

(b) HSR. All waiting periods applicable to the consummation of the Acquisition under the HSR Act shall have expired or been terminated, and no action shall have been instituted by the Department of Justice or the Federal Trade Commission challenging or seeking to enjoin the consummation of the Acquisition, which action shall not have been withdrawn or terminated.

6.2 **Conditions to Obligation of Seller**. The obligation of Seller to consummate the Acquisition is subject to the fulfillment at or prior to the Closing of the following conditions, any one or more of which may be waived in whole or in part by Seller:

(a) Accuracy of Representations and Warranties. Each of the representations and warranties of Purchaser contained in this Agreement shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) when made and on and as of the Closing as if made at and as of the Closing; provided, that representations and warranties which address matters only as of a certain date shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) as of such certain date.

(b) Performance. Purchaser shall have performed and complied in all material respects with all agreements, obligations and covenants required to be performed or complied with by it on or prior to the Closing Date.

(c) Deliveries to Seller. Purchaser shall have delivered to Seller the following:

(i) A certificate, dated the Closing Date, of an executive officer of Purchaser confirming the matters set forth in Section 6.2(a) and (b);

(ii) A certificate, dated the Closing Date, of the Secretary or Assistant Secretary of Purchaser certifying, that attached or appended to such certificate: (A) is a true and correct copy of the certificate of formation of Purchaser, and all amendments thereto; (B) is a true copy of all limited liability company actions taken by it, including actions of its sole member, authorizing the consummation of the Acquisition and the execution, delivery and performance of this Agreement and each of the Transaction Documents to be delivered by Purchaser pursuant hereto; and (C) are the names and signatures of its duly elected or appointed officers who are authorized to execute and deliver this Agreement and the other Transaction Documents to which Purchaser is a party;

(iii) A counterpart of the Assignment and Assumption Agreement duly executed by Purchaser;

(iv) A certificate of good standing from the appropriate state agency, dated as of a recent date, certifying that Purchaser is in good standing in the State of Delaware;

(v) A counterpart of a transition services agreement, in the form attached as Exhibit D (the "Transition Services Agreement"), duly executed by Purchaser;

(vi) A counterpart of a supply agreement, in the form attached as Exhibit E (the "Supply Agreement"), duly executed by Kerr; and

(vii) A certificate setting forth the "Base Purchase Price" (the "Base Purchase Price").

(d) Real Property Deliveries. Purchaser shall have delivered to Seller the following:

(i) A counterpart of an assignment and assumption of each of the Real Property Leases in the form attached as Exhibit F or in the form required by the applicable Real Property Lease (each, an "Assignment of Lease"); and

(ii) If applicable, duly completed and executed real estate transfer tax declarations.

(e) Withholding Tax Estimate. At least three Business Days before the Closing Date, Purchaser shall have delivered to Seller a good faith estimate of the Withholding Taxes.

(f) Consents. Seller shall have obtained the third party consents to the assignment of the contracts listed on Schedule 6.2(f).

6.3 **Conditions to Obligation of Purchaser**. The obligation of Kerr and Purchaser to consummate the Acquisition is subject to the fulfillment at or prior to the Closing of the

following conditions, any one or more of which may be waived in whole or in part by Kerr and Purchaser:

(a) Accuracy of Representations and Warranties. Each of the representations and warranties of Seller contained in this Agreement shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) when made and on and as of the Closing as if made at and as of the Closing; provided, that representations and warranties which address matters only as of a certain date shall have been true and correct in all material respects (other than representations and warranties subject to "materiality" qualifiers, which shall be true and correct as stated) as of such certain date.

(b) Performance. Seller shall have performed and complied in all material respects with all agreements, obligations and covenants required to be performed or complied with by it on or prior to the Closing Date.

(c) No Material Adverse Effect. During the period from the date hereof to the Closing Date, there shall not have occurred and be continuing any Material Adverse Effect.

(d) Deliveries by Seller. Seller shall have delivered to Purchaser the following:

(i) A certificate, dated the Closing Date, of an executive officer of Seller confirming the matters set forth in Section 6.3(a), (b) and (c);

(ii) A certificate, dated the Closing Date, of the Secretary or Assistant Secretary of Seller certifying, among other things, that attached or appended to such certificate: (A) is a true and correct copy of the charter and by-laws of Seller, and all amendments thereto; (B) is a true copy of all corporate actions taken by it, including resolutions of its board of directors and sole stockholder, authorizing the consummation of the Acquisition and the execution, delivery and performance of this Agreement and each of the Transaction Documents to be delivered by Seller pursuant hereto; and (C) are the

names and signatures of its duly elected or appointed officers who are authorized to execute and deliver this Agreement and the other Transaction Documents to which Seller is a party;

(iii) A counterpart of the Assignment and Assumption Agreement duly executed by Seller;

(iv) Certificates of good standing from the appropriate state agencies, dated as of a recent date, certifying that Seller is in good standing in the State of California and in each jurisdiction in which Seller is qualified to do business as a foreign corporation;

(v) An affidavit certifying, under penalties of perjury, Seller's United States taxpayer identification number and that Seller is not a "foreign person" within the meaning of Section 1445(b)(2) of the Code and Section 18662 of the California Revenue and Taxation Code;

(vi) Any certificates, affidavits or forms necessary to comply with or to reduce state withholding Taxes.

(vii) A counterpart of the Transition Services Agreement, duly executed by Seller;

(viii) A counterpart of the Supply Agreement, duly executed by Seller;

(ix) A bill of sale for the Tangible Personal Property, in the form attached as Exhibit G, duly executed by Seller;

(x) Original certificates of title to all vehicles included in the Purchased Assets, executed by Seller to the extent necessary to reflect the assignment by Seller to Purchaser of such assets; and

(xi) Valid and effective assignment documentation, in form and substance reasonably acceptable to Purchaser, of any rights to the Intellectual Property that are included in the Purchased Assets.

(e) [Intentionally Omitted]

(f) Real Property Deliveries. Seller shall have delivered to Purchaser the following:

(i) Special warranty deeds, grant deeds or quitclaim deeds, in the form attached as Exhibit H, duly executed by Seller, in favor of Purchaser, in recordable form, transferring good and valid fee simple title to the Real Property to be conveyed by Seller to Purchaser hereunder, subject only to Permitted Exceptions, and such affidavits or other customary instruments as the Title Company or Purchaser may reasonably request;

(ii) A counterpart of each Assignment of Lease duly executed by Seller; and

(iii) If applicable, duly completed and executed real estate Tax declarations.

(g) Title Company Deliveries. The Title Company shall have delivered to Purchaser (and if applicable, Purchaser's lenders) an owner's (or lender's) form of title insurance policy (or a mark-up commitment therefor) in the form of the Title Commitments (each, a "Title Policy"), in the amount of the Purchase Price applicable to the Real Property insured by such Title Policy, insuring that fee simple title to the Real Property is vested in Purchaser or its nominee subject only to the Permitted Exceptions.

(h) Consents. Seller shall have obtained the third party consents to the assignment of the contracts listed on Schedule 6.3(h) and the pledges of leasehold interests as reasonably requested by Kerr and Purchaser pursuant to Section 5.3.

(i) Financing. Kerr and Purchaser shall have received the financing contemplated by either or both of the commitment letters referred to in Section 4.7.

(j) Liens. Seller shall have removed all Liens on the Purchased Assets other than Permitted Liens.

ARTICLE VII
TERMINATION; EFFECT OF TERMINATION

7.1 **Termination of Agreement**. This Agreement may be terminated and the Acquisition may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Purchaser;

(b) after September 15, 2003, by either Seller or Purchaser, if the Closing has not occurred by that date; provided, however, that Seller shall have the right to extend such date in accordance with Section 5.8(b); provided, further, that such date shall be extended to 120 days after a second request, if any, by the Department of Justice or the Federal Trade Commission in connection with the filing of a Notification and Report Form pursuant to the HSR Act; and provided, further, that the right to terminate this Agreement pursuant to this Section 7.1(b) shall not be available to a Party whose action or failure to act has been a principal cause of or resulted in the failure of the Acquisition to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(c) by Seller, upon written notice, if any representation or warranty of Purchaser shall have become untrue such that the condition set forth in Section 6.2(a) would not be satisfied or if Purchaser shall have materially breached any agreement, obligation or covenant such that the condition set forth in Section 6.2(b) would not be satisfied; provided that if the inaccuracy in Purchaser's representations and warranties or the breach of Purchaser's agreement, obligation or covenant is curable through the exercise of Purchaser's commercially reasonable efforts, then Seller may not terminate this

Agreement for thirty (30) days after Seller shall have given written notice of such inaccuracy or breach to Purchaser (so long as Purchaser continues to use commercially reasonable efforts to cure the inaccuracy or breach during such period), it being understood that Seller may not terminate this Agreement if Purchaser cures such inaccuracy or breach within such thirty (30) day period;

(d) by Purchaser, upon written notice if any representation or warranty of Seller shall have become untrue such that the condition set forth in Section 6.3(a) would not be satisfied or if Seller shall have materially breached any agreement, obligation or covenant such that the condition set forth in Section 6.3(b) would not be satisfied; provided that if the inaccuracy in Seller's representations and warranties or the breach of Seller's agreement, obligation or covenant is curable through the exercise of Seller's commercially reasonable efforts, then Purchaser may not terminate this Agreement for thirty (30) days after Purchaser shall have given written notice of such inaccuracy or breach to Seller (so long as Seller continues to use commercially reasonable efforts to cure such inaccuracy or breach during such period), it being understood that Purchaser may not terminate this Agreement if Seller cures such inaccuracy or breach within such thirty (30) day period;

(e) by Purchaser or Seller if there shall be any Law that makes consummation of the Acquisition illegal or otherwise prohibited, or if any order of any Governmental Authority enjoining Purchaser or Seller from consummating the Acquisition is entered and such order shall have become final and nonappealable; or

(f) by Purchaser, to the extent permitted by Section 5.8(b) if Seller fails to remove any Title Objections.

7.2 **Effect of Termination; Right to Proceed**.

(a) In the event that Seller can demonstrate by a preponderance of the evidence that, prior to the execution of this Agreement by the Parties, Richard Hofmann, Lawrence Caldwell, Robert Rathsam, Timothy Guhl, Kathy Kruse or Megan Petry had actual knowledge of any facts and circumstances that would constitute a breach of or inaccuracy in any representation or warranty of Seller contained in Article III hereof, and such facts and circumstances were not within the Knowledge of Seller as of the execution of this Agreement by the Parties, then Purchaser shall not be entitled to seek indemnification for such breach or inaccuracy pursuant to Section 9.2(a).

(b) In the event that this Agreement is terminated pursuant to Section 7.1(a), (b), (e) or (f), all further obligations of the Parties shall terminate without further liability of either Party (except for obligations under this Section 7.2, Sections 5.5, 5.6 and 5.7 and Articles I, IX and X); provided that termination shall not relieve any party of liability for any breach of this agreement occurring before such termination.

(c) Subject to Section 7.2(a), upon termination of this Agreement for breach pursuant to Section 7.1(c) or (d): (i) the breaching Party shall be liable to the non-breaching Party for any breach of any representation, warranty, covenant or agreement of such breaching Party existing at the time of termination and (ii) the non-breaching Party may seek such remedies, including damages against the breaching Party, with respect to any such breach as are provided in this Agreement or as are otherwise available at Law or in equity. The agreements contained in Sections 3.17, 4.5, 5.5, 5.6, 5.7, 10.5 and 10.6 and Articles I, IX and X shall survive the termination hereof.

(d) In the event that a condition precedent to a Party's obligation is not met, nothing contained herein shall be deemed to require any Party to terminate this Agreement, rather than to waive such condition precedent and proceed with the Acquisition.

ARTICLE VIII
POST-CLOSING COVENANTS

8.1 **Certain Transitional Matters**. From and after the Closing Date:

(a) Purchaser shall have the right and authority to collect for Purchaser's own account all accounts or notes receivable which are included in the Purchased Assets;

(b) Purchaser shall have the right and authority to retain and endorse without recourse the name of Seller on any check or any other evidence of indebtedness received by Purchaser on account of any accounts receivable which are included in the Purchased Assets;

(c) Seller shall promptly transfer and deliver to Purchaser any cash or other property, if any, that Seller may receive which constitutes Purchased Assets; and

(d) Purchaser shall promptly transfer and deliver to Seller any cash or other property, if any, that Purchaser may receive which constitutes Excluded Assets.

8.2 **Transfer and Retention of Transferred Employees; Employee Benefits**. On the Closing Date, Seller shall terminate all Persons who are employed by Seller as of such date, excluding only those Persons who are on short- or long-term disability leave as of such date (the "Terminated Employees"). Purchaser shall offer employment, from and after the Closing Date, on an at-will basis (but shall not be restricted from entering into employment agreements with any Terminated Employee) to all Terminated Employees. In addition, if any Person who was on short- or long-term disability leave from Seller returns to work for Seller on a date that is within six months of the Closing Date, and provides the proper medical authorization to resume work, Purchaser shall offer employment to such Person as of the date of such Person's return to work; provided that Purchaser shall not be obligated to offer employment to more than 20 such employees, taking into account all such employees hired by Purchaser from Seller or any Affiliate of Seller. Employees of Seller who are not offered employment with Purchaser as of the Closing Date shall continue as employees of Seller and to be covered under Seller's employee benefit plans and programs in accordance with the terms of such plans and programs. Seller shall cash-out each Terminated Employee with respect to such Terminated Employee's accrued and unused vacation as of the Closing Date. On and after the Closing Date, Purchaser shall arrange for each employee of Seller who becomes an employee of Purchaser or any Affiliate of Purchaser (each, a "Transferred Employee") to participate in such active counterpart employee benefit plans, programs, and arrangements in which similarly situated employees of Purchaser and its Affiliates participate from time to

time (the "Counterpart Plans"), in accordance with the eligibility criteria thereof, provided that such Transferred Employees shall: (a) receive full credit for years of service prior to the Closing Date for all purposes for which such service was recognized under the Plans, provided that such crediting of service shall not result in the duplication of benefits (such as pension benefits, accrued vacation, etc.), and (b) to the extent Counterpart Plans are maintained by Purchaser or its Affiliates, participate in such Plans on terms no less favorable, in the aggregate, than those offered to similarly-situated employees of the Purchaser and its Affiliates. Purchaser or its Affiliates shall give credit under those of its Counterpart Plans that are welfare benefit plans for all co-payments, deductibles and out-of-pocket maximums satisfied by Transferred Employees (and their eligible dependents) in respect of the calendar year in which the Closing occurs. Purchase or its Affiliates shall waive all pre-existing conditions (to the extent waived under the applicable Plans of the Seller) that would otherwise be applicable to Transferred Employees under the Counterpart Plans in which Transferred Employees of the Seller or Affiliates become eligible to participate on or following the Closing Date. Purchaser will retain the Transferred Employees for such period as may be necessary, when considered together with any employees discharged by Seller prior to Closing, to avoid, with respect to any facility operated by Seller in the Business: (a) a "plant closing," "mass layoff," "layoff," "relocation" or "termination" of "employees" (as those terms are defined

in the Worker Adjustment and Retraining Notification Act of 1988 or California Labor Code Section 1400, et seq., effective January 1, 2003); or (b) any liability to Seller under any Law which would reasonably be expected to arise from any actual or anticipated termination of employees by Purchaser after Closing, provided Seller has provided Purchaser (i) by July 1, 2003 with an accurate list of employees terminated by Seller within 180 days prior to and including such date and (ii) on the Closing Date with an accurate list of employees terminated by Seller within 180 days prior to and including the Closing Date. No assets, liabilities or reserves relating to any Seller Plan will be transferred in connection with this Agreement from Seller or its Affiliates or any Seller Plan to Purchaser or its Affiliates or any employee benefit plan of Purchaser or its Affiliates; provided, however, that the plan administrator of an applicable Counterpart Plan shall accept rollover contributions from an appropriate Plan to the extent such rollover contributions comply with the terms of such Counterpart Plan and the plan administrator of such Counterpart Plan reasonably concludes that the contribution is a valid rollover contribution.

8.3 **Non-Competition Covenant.** Seller and Parent shall not, directly or indirectly, within North America, South America and Europe, for a period of five (5) years after the Closing Date, engage in the business of manufacturing, marketing or distributing to third parties molded closures and flexible plastic packaging for the healthcare, personal care, health and beauty, pharmaceutical, household chemical, automotive, industrial and dentifrice industries; provided, however, that the foregoing shall not restrict (a) Seller's and Parent's ownership, operation or control of any entity acquired by Seller or Parent after the Closing Date (an "Acquired Entity") if the gross revenues of such entity attributable to products, the production, marketing or sale of which would otherwise violate the terms of this Section 8.3, (i) do not exceed five percent (5%) of the net revenues of the Acquired Entity for the twelve (12) month period ending on the last day of the last fiscal quarter preceding the date of the definitive agreement providing for such acquisition for which such results of operation are available and (ii) do not exceed $25,000,000, or (b) the direct or indirect ownership by Seller of five percent (5%) or less of any entity whose securities have been registered under the Securities Act of 1933 or under the Securities Exchange Act of 1934 or the securities Laws of any other jurisdiction. For the avoidance of doubt, nothing in this Section 8.3 shall restrict Parent or any Affiliate of Parent from developing, purchasing, marketing, distributing or otherwise dealing in any products to be sold to third parties by Parent or such Affiliate which incorporate such plastic molded closures or flexible packaging for the healthcare, personal care, health and beauty, pharmaceutical, household chemical, automotive, industrial and dentifrice industries. Seller acknowledges that Purchaser shall be entitled to seek equitable relief from a court of competent jurisdiction restraining any breach by Seller of this Section 8.3.

8.4 **Trademarks, Etc.** As promptly as practicable after the Closing, Purchaser shall revise trademarks and product literature, change signage and stationery and otherwise discontinue use of all intellectual property constituting Excluded Assets and all Affiliate Marks (collectively, "Excluded Intellectual Property"); provided, however, that for a period of forty-five (45) days from the Closing Date, Purchaser may consume stationery and similar supplies and may sell inventory on hand as of the Closing Date which contain such Excluded Intellectual Property so long as such items are, as promptly as practicable after the Closing Date, overstamped or otherwise appropriately indicate that the Business is then owned by Purchaser.

Without limiting the foregoing, Purchaser shall, and shall cause each of its Affiliates to, (i) no later than the close of business on the business day following the Closing Date, discontinue affixing in any manner whatsoever such Excluded Intellectual Property to any Product and (ii) no later than the close of business on the forty-fifth (45^{th}) calendar day after the Closing Date, discontinue selling, shipping and delivering any product having such Excluded Intellectual Property affixed thereto in any manner whatsoever.

8.5 **Tax Covenants**.

(a) From and after the Closing, each of Seller and Purchaser shall cooperate with the other in connection with Tax matters relating to the Business and the Purchased Assets, including: (i) the preparation and filing of Tax Returns; (ii) the determination of a Party's liability for Taxes and the amounts of any Taxes due or of a Party's right to a refund of Taxes and the amount of any such refund; (iii) the examination of Tax Returns; and (iv) the conduct of any administrative or judicial proceedings in respect of Taxes assessed or proposed to be assessed. Subject to Section 5.6(b), such cooperation shall include each Party making all information and documents in its possession relating to the Business and Purchased Assets available to the other Party.

(b) The Parties shall retain all Tax Returns, schedules and work papers, and all material records and other documents relating thereto, until the expiration of the applicable statute of limitations (including, to the extent notified by any Party, any extension thereof) of the Tax period to which such Tax Returns and other documents and information relate. Each Party shall also make available to the other Party, as reasonably requested and available, personnel (including officers, directors, employees and agents) responsible for preparing, maintaining and interpreting information and documents relevant to Taxes, and personnel reasonably required as witnesses or for purposes of providing information or documents in connection with any administrative or judicial proceedings relating to Taxes. Any information or documents provided under this Section 8.5(b) shall be kept confidential by the party receiving such information or documents, except as may otherwise be necessary in connection with the filing of Tax Returns or in connection with administrative or judicial proceedings relating to Taxes.

(c) In the event any Governmental Authority with responsibility for Taxes informs Seller or Purchaser of any notice of proposed audit, claim, assessment or other dispute concerning an amount of Taxes with respect to which the other Party may incur liability hereunder, the Party so informed shall promptly notify the other Party of such matter. Such notice shall contain factual information (to the extent known) describing any asserted Tax liability in reasonable detail and shall be accompanied by copies of any notice or other documents received from such Governmental Authority with respect to such

matter. If an Indemnified Party has knowledge of an asserted Tax liability with respect to a matter for which it is to be indemnified hereunder and such Party fails to provide the Indemnifying Party prompt notice of such asserted Tax liability, then (i) if the Indemnifying Party is precluded from contesting the asserted Tax liability in any forum as a result of the failure to give prompt notice, the Indemnifying Party shall have no obligation to indemnify the Indemnified Party for Taxes arising out of such asserted Tax liability, and (ii) if the Indemnifying Party is not precluded from contesting the asserted Tax liability in any forum, but such failure to provide prompt notice results in a monetary detriment to the Indemnifying Party, then any amount which the

Indemnifying Party is otherwise required to pay the Indemnified Party pursuant to this Agreement shall be reduced by the amount of such detriment.

(d) Seller and Purchaser agree that Purchaser has purchased substantially all the property used in Seller's trade or business, and in connection therewith, Purchaser shall employ Transferred Employees who immediately before the Closing Date were employed in such trade or business by Seller. Accordingly, Seller shall provide Purchaser with all necessary and accurate payroll records for the calendar year which includes the Closing Date. Furthermore, pursuant to Rev. Proc. 96-60, 1996-2 C.B. 399, if Purchaser elects, each Party shall comply with the requirements provided in the alternative procedure under Rev. Proc. 96-60, pursuant to which Purchaser shall furnish a Form W-2 to each employee employed by Purchaser who had been employed by Seller disclosing all wages and other compensation paid for such calendar year, and Taxes withheld therefrom, and Seller shall be relieved of the responsibility to do so. If Purchaser does not elect such alternative procedure, each Party shall comply with the requirements provided in the standard procedure under Rev. Proc. 96-60.

8.6 **Records; Retention**. Following the Closing, each of Purchaser and Seller shall afford the other and its Representatives reasonable access during normal business hours to, and (if permitted by law) the right to make copies and extracts from, the books, records and other data in Purchaser's or Seller's possession relating to the Business, the Purchased Assets, the Excluded Assets, the Assumed Liabilities and the Retained Liabilities with respect to periods prior to the Closing Date, at the requesting Party's expense, to the extent that such access may be requested by Purchaser or Seller for any business purpose, including to facilitate the investigation, litigation and final disposition of any claims which may have been or may be made against Purchaser, Seller or their respective Affiliates. Purchaser and Seller agree that for a period of seven (7) years following the Closing Date, such Party shall not destroy or otherwise dispose of any such books, records or data in its possession without (a) giving the other at least sixty (60) days' prior written notice of such intended disposition and (b) offering to deliver to the other, at the other's expense, custody of any or all of the books, records and data that such Party intends to destroy.

8.7 **Designated Reporting Person**. In order to assure compliance with the requirements of Section 6045 of the Code (and any related reporting requirements) and Section 18643 of the California Revenue and Taxation Code (the "R&T Code"), the Parties agree as follows:

(a) If the Title Company executes a statement in writing, in form and substance reasonably acceptable to the Parties, pursuant to which the Title Company agrees to assume all responsibilities for information reporting required under Section 6045(e) of the Code and Section 18643 of the R&T Code, Seller and Purchaser shall designate the Title Company as the person to be responsible for all information reporting under Section 6045(e) of the Code (the "Reporting Person") and Section 18643 of the R&T Code. If the Title Company refuses to execute a statement pursuant to which it agrees to be the Reporting Person, Seller and Purchaser agree to appoint another third party mutually satisfactory to the Parties as the Reporting Person.

(b) Seller and Purchaser hereby agree:

(i) to provide to the Reporting Person all information and certifications regarding such Party, as reasonably requested by the Reporting Person or otherwise required to be provided by a Party under Section 6045 of the Code; and

(ii) to provide to the Reporting Person such Party's taxpayer identification number and a statement (on IRS Form W-9 or an acceptable substitute form, or on any other form the Code might require and/or any form requested by the Reporting Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such Party to the Reporting Person is correct.

(c) Each Party agrees to retain a copy of this Agreement for not less than four (4) years from the end of the calendar year in which the Closing occurs and to produce such copy to the IRS upon a valid request therefor.

8.8 **Further Assurances**. Seller hereby agrees, without further consideration, to execute and deliver following the Closing such other instruments of transfer and take such other action as Purchaser or its counsel may reasonably request in order to put Purchaser in possession of, and to vest in Purchaser, good and valid title to the Purchased Assets in accordance with this Agreement and to consummate the Acquisition. Purchaser hereby agrees, without further consideration, to take such other action following the Closing and execute and deliver such other documents as Seller or its counsel may reasonably request in order to consummate the Acquisition in accordance with this Agreement.

ARTICLE IX
SURVIVAL; INDEMNIFICATION

9.1 **Expiration of Representations and Warranties**. The representations and warranties in this Agreement (other than the representations and warranties contained in Sections 3.1, 3.2, 3.3(a) and (b), 3.8(e), 3.15(b) and (c), 3.16, 3.17, 3.18, 3.19, 3.23, 3.24 and 3.25) shall survive the Closing until the second anniversary of the Closing Date, at which time they shall terminate; provided that (i) the representations and warranties contained in Sections 3.1, 3.2, 3.3(a) and (b), 3.8(e), 3.17 and 3.23 shall survive the Closing indefinitely and (ii) the representations and warranties contained in Sections 3.15(b) and (c), 3.16, 3.18, 3.19, 3.24 and 3.25 shall survive the Closing until ninety (90) days after the expiration of the relevant statute of limitations.

9.2 **Indemnification by Seller**. Subject to the limitations set forth in Section 7.2(a) and this Article IX, Seller shall indemnify, defend, save and hold Kerr, Purchaser, and their respective Affiliates and the Representatives of any of them (collectively, "Purchaser Indemnitees") harmless from and against any and all Losses incurred by any Purchaser Indemnitee (except to the extent included in the Assumed Liabilities) arising out of:

(a) Seller's breach or the failure of any representation or warranty contained in this Agreement (such breach or failure to be determined without giving effect to any qualifications for "Knowledge," "materiality" or "Material Adverse Effect" contained in any representation or warranty) and any action, suit or proceeding arising out of such breach or failure;

(b) Seller's breach of any covenant or agreement made by Seller in or pursuant to this Agreement and any action, suit or proceeding arising out of such breach;

(c) Seller's failure to pay, perform or discharge when due any of the Retained Liabilities and any action, suit or proceeding arising out of such failure;

(d) Seller's operation of the Business or any event relating to or arising out of Seller's assets (including the Purchased Assets), in each case prior to the Closing, except with respect to the Assumed Liabilities;

(e) Taxes assessed on, or expenses attributable to, any of the Real Property or the Real Property Leases after the Closing Date for the period prior to the Closing Date (such that Seller shall have borne all real property Taxes and all expenses attributable thereto allocable to the period prior to the Closing Date), in each case net of any amount previously paid under Section 2.5(c). Notwithstanding the foregoing, an increase in a Real Property Tax assessment as a result of the Acquisition, including the California Supplemental Tax Bill and any similar Taxes, shall not be prorated under this Section 9.2(e) or Section 2.5(c) and shall be the sole liability of Purchaser;

(f) a third party claim that the conduct of the Business as it is currently conducted infringes U.S. Patent No. *, or any other patent claiming priority over U.S. Patent No. *; or

(g) a third-party claim by * or any other Person alleging that the conduct of the Business as it is currently conducted with respect to the items at issue in this lawsuit gives rise to liability under the theories alleged in *.

Without limiting the generality of the foregoing, Seller shall indemnify, defend and hold harmless Purchaser Indemnitees from and against all Losses asserted against, resulting to, imposed on, sustained, incurred or suffered by any of Purchaser Indemnitees, directly or indirectly (except to the extent included in the Assumed Liabilities), by reason of or resulting from (i) any claim, action, suit, investigation, arbitration, inquiry, proceeding or litigation involving the Business, Seller or any of Seller's agents or assets (including the Purchased Assets), in each case arising from events on or prior to the Closing Date but excluding (A) all Assumed Liabilities and (B) Losses to the extent arising from or related to any post-Closing breach or default by Purchaser of or under any Assumed Contract, (ii) any liability of Purchaser Indemnitees arising from the non-compliance with any applicable bulk transfer laws or Article 6 of the Uniform Commercial Code, (iii) any Environmental Claim or pollution or threat to human health or the environment that is related in any way to the management, use, control, ownership or operation of the Business, including all on-site and off-site activities involving Materials of Environmental Concern, and that occurred, existed, arises out of conditions or circumstances that occurred or existed, or was caused, in whole or in part, on or before the Closing Date, whether or not the pollution or threat to human health or the environment is described in Schedule 3.18, (iv) any and all obligations or liabilities under covenants relating to employment, other than those obligations and liabilities expressly undertaken or assumed by Purchaser hereunder, (v) any and

* Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the SEC. Such portions are omitted from this filing and filed separately with the SEC.

all Taxes of Seller for all taxable periods, whether before, on or after the Closing Date (except to the extent allocated to Purchaser with respect to the Real Property or the Real Property Leases pursuant to Sections 2.5(c) and 9.2(e) of this Agreement), (vi) any and all employee benefits or employment related liabilities relating to any employee benefit plan that is sponsored, maintained or contributed to or required to be contributed to by Seller or any Affiliate of Seller, (vii) arising from any conflict, violation, breach or default by Seller described in Section 3.3(a) or 3.3(b) (without giving effect to any qualifications described in the Schedules or for "Knowledge," "materiality" or "Material Adverse Effect" contained therein), (viii) Seller's failing to obtain any consents, approvals, authorizations, permits and filings pursuant to Section 3.4(c) (without giving effect to any qualifications for "Knowledge," "materiality" or "Material Adverse Effect" contained therein) and (ix) failing to remove any Title Objections pursuant to Section 5.8(b).

9.3 **Indemnification by Kerr and Purchaser**. Subject to the limitations set forth in this Article IX, Kerr and Purchaser shall jointly and severally indemnify, defend, save and hold Seller, Seller's Affiliates and the Representatives of any of them (collectively, "Seller Indemnitees") harmless from and against any and all Losses incurred by any Seller Indemnitee arising out of:

(a) Kerr's or Purchaser's breach of any representation or warranty contained in this Agreement and any action, suit or proceeding arising out of such breach;

(b) Kerr's or Purchaser's breach of any covenant or agreement made by Kerr or Purchaser in or pursuant to this Agreement (such breach or failure to be determined without giving effect to any qualifications for "Knowledge," "materiality" or "Material Adverse Effect" contained in any representation or warranty) and any action, suit or proceeding arising out of such breach;

(c) Kerr's or Purchaser's failure to pay, perform or discharge when due any of the Assumed Liabilities and any action, suit or proceeding arising out of such failure;

(d) any Assumed Liabilities, except for Losses to the extent attributable to a breach by Seller of any Assigned Contract prior to Closing; or

(e) following the Closing, Purchaser's operation of the Business or any event relating to or arising out of Purchaser's assets (including the Purchased Assets).

9.4 **Notice of Claims**. Except as provided in Section 8.5, if any Purchaser Indemnitee or Seller Indemnitee (an "Indemnified Party") believes that it has suffered or incurred any Losses for which it is entitled to indemnification under this Article IX, such Indemnified Party shall so notify the Party from whom indemnification is being claimed (the "Indemnifying Party") with reasonable promptness and reasonable particularity in light of the circumstances then existing. If any claim is instituted by or against a third party with respect to which any Indemnified Party intends to claim indemnification under this Article IX, such Indemnified Party shall promptly notify the Indemnifying Party of such claim. The notice provided by the Indemnified Party to the Indemnifying Party shall describe the claim (the "Asserted Liability") in reasonable detail and shall indicate the amount (or an estimate) of the Losses that have been or may be suffered by

the Indemnified Party. The failure of an Indemnified Party to give any notice required by this Section 9.4 shall not affect any of the Indemnified Party's rights under this Article IX or otherwise except and to the extent that such failure is prejudicial to the rights or obligations of the Indemnifying Party.

9.5 **Opportunity to Defend Third Party Claims**. If any action is brought by a third party against any Indemnified Party, the Indemnifying Party shall be entitled: (a) to participate in such action and (b) to elect, by written notice delivered to the Indemnified Party within thirty (30) days after the Indemnifying Party's receipt of notice of the Asserted Liability, to defend, compromise or settle such action, with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall cooperate with respect to any such participation, defense, settlement or compromise. The Indemnified Party shall have the right to employ its own counsel in any such case, but the fees and expenses of the Indemnified Party's counsel shall be at the sole expense of the Indemnified Party unless: (i) the Indemnifying Party shall have authorized in writing employment of such counsel at the expense of the Indemnifying Party; (ii) the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party to defend such action within thirty (30) days after the Indemnifying Party received notice of the Asserted Liability; (iii) the Indemnified Party shall have reasonably concluded, based upon written advice of counsel, that there are defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Party with respect to such different defenses); or (iv) representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding, in any of which events the fees and expenses of one additional counsel shall be borne by the Indemnifying Party. The Indemnifying Party shall not settle or compromise any action or consent to the entry of a judgment that: (a) does not provide for the claimant to give an unconditional release to the Indemnified Party in respect of the Asserted Liability; (b) involves relief other than monetary damages; (c) places restrictions or conditions on the operation of the business of the Indemnified Party or any of its Affiliates; or (d) involves any finding or admission of liability or of any violation of Law. The Indemnifying Party shall not be liable for any settlement of any claim or action effected without its written consent; provided that such consent is not unreasonably withheld. After payment of any Asserted Liability by the Indemnifying Party, the Indemnified Party, if requested by the Indemnifying Party, shall assign to the Indemnifying Party all rights the Indemnified Party may have against any applicable account debtor or other responsible Person in respect of the Asserted Liability. If the Indemnifying Party chooses to defend any Asserted Liability, the Indemnified Party shall make available to the Indemnifying Party any books, records or other documents within its control that are necessary or appropriate for such defense. Any expenses of any Indemnified Party for which indemnification is available hereunder shall be paid upon written demand therefor.

9.6 **Limitation of Liability**.

(a) Seller shall not be obligated to provide any indemnification under Section 9.2(a) except to the extent the aggregate amount for which it is obligated to provide such indemnification exceeds the sum of $1,000,000, after which Seller shall be obligated to pay the

entire amount, beginning with the first dollar of Loss, which is payable pursuant to Section 9.2(a); provided, however, that De Minimis Losses shall not count towards such $1,000,000 amount unless and until the aggregate amount of all De Minimis Losses exceeds $100,000; provided, further, that in the case of any breach of any representation or warranty under Sections 3.1, 3.2, 3.3, 3.6, 3.8(e), 3.16, 3.17, 3.18, 3.19, 3.23 and 3.24, respectively, Seller shall be obligated to provide indemnification for the entire amount of such Loss, beginning with the first dollar of Loss, without regard to whether such loss is a De Minimis Loss and without regard to whether the aggregate amount for which the obligation to provide indemnification under this Article IX exceeds the sum of $1,000,000; provided, further, that in no event shall the aggregate liability of Seller under this Article IX with respect to Seller's breach of its representations and warranties exceed one-half of the Purchase Price other than for breach of any representation or warranty contained in Sections 3.1, 3.2, 3.3, 3.6, 3.8, 3.16, 3.17, 3.18, 3.19, 3.23 and 3.24, which liability and obligation to indemnify shall be without limitation.

(b) Kerr and Purchaser shall not be obligated to provide any indemnification under Section 9.3(a) except to the extent the aggregate amount for which they are obligated to provide such indemnification exceeds the sum of $1,000,000, after which Kerr and Purchaser shall be obligated to pay the entire amount, beginning with the first dollar of Loss, which is payable pursuant to Section 9.3(a); provided, however, that De Minimis Losses shall not count towards such $1,000,000 amount unless and until the aggregate amount of all De Minimis Losses exceeds $100,000; provided, further, that in the case of any breach of any representation or warranty under Sections 4.1, 4.2, 4.3(a) or (b), and 4.5, respectively, Kerr and Purchaser shall be obligated to provide indemnification for the entire amount of such Loss, beginning with the first dollar of Loss, without regard to whether such loss is a De Minimis Loss and without regard to whether the aggregate amount for which the obligation to provide indemnification under this Article IX exceeds the sum of $1,000,000; provided, further, that in no event shall the aggregate liability of Kerr and Purchaser under this Article IX with respect to Kerr's and Purchaser's breach of their representations and warranties exceed one-half of the Purchase Price other than for breach of any representation or warranty contained in Sections 4.1, 4.2, 4.3(a) or (b), and 4.5, which liability and obligation to indemnify shall be without limitation; provided, further, that the preceding clause shall not limit Purchaser's obligation or liability with respect to the Assumed Liabilities.

(c) The provisions of this Article IX shall be the exclusive remedy available to the Seller Indemnitees and the Purchaser Indemnitees after the Closing in the event any such Person shall have a claim with respect to the matters covered by this Agreement, other than with respect to claims involving intentional misrepresentation, fraud, or willful misconduct.

9.7 **Effect of Taxes and Insurance**. The amount of any Losses for which indemnification is provided under this Article IX (a) shall be reduced to take account of any net Tax benefit realized, in the year of the Tax payment or the next succeeding taxable year and shall be increased to take account of any net Tax detriment realized, in the year of the Tax payment or the next succeeding taxable year arising from the incurrence or payment of any such Losses

or from the receipt of any such indemnification payment determined on a with or without basis and (b) shall be reduced by the insurance proceeds received and any other amount, if any, recovered from third parties by the Indemnified Party (or its Affiliates) with respect to any Losses. If any Indemnified Party shall have received any indemnification payment pursuant to this Article IX

with respect to any Loss, such Indemnified Party shall, upon written request by the Indemnifying Party, assign to such Indemnifying Party (to the extent of the indemnification payment) any claim which such Indemnified Party may have under any applicable insurance policy which provides coverage for such Loss. Such Indemnified Party shall reasonably cooperate (at the expense of the Indemnifying Party) to collect under such insurance policy. If any Indemnified Party shall have received any payment pursuant to this Article IX with respect to any Loss and has or shall subsequently have received insurance proceeds or other amounts with respect to such Loss, then such Indemnified Party shall promptly pay over to the Indemnifying Party the amount so recovered (after deducting the amount of the expenses incurred by it in procuring such recovery), but not in excess of the amount previously so paid by the Indemnifying Party.

9.8 **Treatment of Indemnity Payments; No Duplication**. Any indemnification payment made pursuant to this Article IX shall be treated, to the extent permitted or required by law, by all Parties as an adjustment to the Purchase Price. Notwithstanding anything contained in this Article IX to the contrary, Purchaser shall not be entitled to indemnification hereunder to the extent that any Losses were (i) included in the calculation of the Working Capital Adjustment or the Final Closing Capital Expenditures (excluding losses resulting from Seller's breach of any payment or other obligation to any counterparty with respect to any Capital Expenditures) or (ii) offset by an adjustment pursuant to Section 3.3 or 3.4 of the Supply Agreement.

ARTICLE X
GENERAL

10.1 **Notices**. All notices, requests, claims, demands or other communications that are required or may be given pursuant to the terms of this Agreement or the other Transaction Documents shall be in writing and shall be deemed to have been duly given: (a) when delivered, if delivered by hand; (b) one (1) Business Day after transmitted, if transmitted by a nationally-recognized overnight courier service; (c) when sent by facsimile transmission, if sent by facsimile transmission which is confirmed; or (d) three (3) Business Days after mailing, if mailed by registered or certified mail (return receipt requested), in each case to the Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 10.1):

(a) If to Seller:

O.G. Dehydrated, Inc.
18 Loveton Circle
Sparks, Maryland 21152
Attention: Corporate Secretary
Telephone: (410) 771-7563
Fax: (410) 527-8228

With a simultaneous copy to:

Piper Rudnick LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600
Attention: Theodore Segal, Esq.
Telephone: (410) 580-3000
Fax: (410) 580-3001

(b) If to Purchaser:

Kerr Acquisition Sub II, LLC
c/o Kerr Group Inc.
500 New Holland Avenue
Lancaster, Pennsylvania 17602-2104
Attention: Lawrence C. Caldwell
Telephone: (717) 390-8439

With a simultaneous copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1100
Palo Alto, California 94301
Attention: Kenton J. King, Esq.
Telephone: (650) 470-4500
Fax: (650) 470-4570

(c) If to Kerr:

Kerr Group, Inc.

500 New Holland Avenue
Lancaster, Pennsylvania 17602-2104
Attention: Lawrence C. Caldwell
Telephone: (717) 390-8439

With a simultaneous copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1100
Palo Alto, California 94301
Attention: Kenton J. King, Esq.
Telephone: (650) 470-4500
Fax: (650) 470-4570

10.2 **Severability**. If any provision of this Agreement for any reason shall be held to be illegal, invalid or unenforceable, such illegality shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been included herein.

10.3 **Assignment; Binding Effect; Benefit**. No assignment by any Party of its rights nor delegation by any Party of its obligations under this Agreement or any Transaction

Document shall be permitted unless Kerr and Purchaser, on the one hand, or Seller, on the other hand, consents in writing thereto, except that Purchaser may (a) assign, in its sole discretion, any of or all of its rights, interests and obligations under this Agreement to Kerr or to any direct or indirect wholly-owned Subsidiary of Kerr, and (b) pledge this Agreement and any of its rights and obligations hereunder in whole or in part to any other Person, in each case without the consent of Seller, provided in each case that no such assignment shall relieve Purchaser of any of its obligations hereunder. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Notwithstanding anything in this Agreement to the contrary, expressed or implied, this Agreement is not intended to confer any rights or remedies on any Person other than the Parties and their respective successors and permitted assigns.

10.4 **Incorporation of Exhibits and Schedules**. All Exhibits and Schedules attached hereto and referred to herein are hereby incorporated herein and made a part of this Agreement for all purposes as if fully set forth herein. The disclosures made by the Parties in any Schedule to this Agreement shall apply with the same force and effect to each other Section hereof to which it is reasonably apparent that such disclosures should apply.

10.5 **Governing Law; Submission to Jurisdiction**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK OTHER THAN CONFLICT OF LAWS PRINCIPLES THEREOF DIRECTING THE APPLICATION OF ANY LAW OTHER THAN THAT OF NEW YORK. COURTS WITHIN THE STATE OF NEW YORK (LOCATED WITHIN NEW YORK CITY) WILL HAVE JURISDICTION OVER ALL DISPUTES BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS. THE PARTIES HEREBY CONSENT TO AND AGREE TO SUBMIT TO THE JURISDICTION OF SUCH COURTS. EACH OF THE PARTIES WAIVES, AND AGREES NOT TO ASSERT IN ANY SUCH DISPUTE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (A) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS; (B) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS; OR (C) ANY LITIGATION COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM.

10.6 **Waiver of Jury Trial**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION OR AGREEMENT CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

10.7 **Interpretation**. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

10.8 **Counterparts**. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

10.9 **Entire Agreement**. This Agreement (including the Schedules and Exhibits attached hereto) and the other Transaction Documents executed in connection with the consummation of the Acquisition contain the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, written or oral, with respect thereto.

10.10 **Waivers and Amendments**. This Agreement may be amended, superseded, canceled, renewed or extended only by a written instrument signed by all of the Parties. The provisions hereof may be waived only in writing signed by the Party or Parties waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

[*Signatures appear on the next page*]

EXECUTION

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the date first above written.

KERR GROUP, INC.

By: /s/ Richard D. Hofmann
Name: Richard D. Hofmann
Title: President & CEO

KERR ACQUISITION SUB II, LLC

By: /s/ Richard D. Hofmann
Name: Richard D. Hofmann
Title: President & CEO

Signature Page 1 of 3 to
Asset Purchase Agreement, dated as of June 26, 2003, among
Kerr Group, Inc., Purchaser and O. G. Dehydrated, Inc.

O.G. DEHYDRATED, INC.

By: /s/ Robert G. Davey
Name: Robert G. Davey
Title: President

Signature Page 2 of 3 to
Asset Purchase Agreement, dated as of June 26, 2003, among
Kerr Group, Inc., Purchaser and O. G. Dehydrated, Inc.

GUARANTY

Parent hereby guarantees the prompt payment by Seller of Seller's indemnification obligations under Section 9.2 of this Agreement. If Seller defaults in the payment of any such indemnification obligation, Parent shall pay to Purchaser or the applicable Purchaser Indemnitee any damages, costs and expenses that such Person is entitled to recover from Seller by reason of Seller's default. Parent acknowledges that the bankruptcy of Seller shall not relieve Parent of its obligations under this Guaranty. Parent further agrees to the provisions of 5.3 (Consents, Filings and Authorizations; Efforts to Consummate), 5.6 (Access to Information; Confidentiality), 8.3 (Non-Competition Covenant) and the last three sentences of Section 3.5 (Financial Statements) of this Agreement.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Robert G. Davey
Name: Robert G. Davey
Title: Executive Vice President

Signature Page 3 of 3 to
Asset Purchase Agreement, dated as of June 26, 2003, among
Kerr Group, Inc., Purchaser and O. G. Dehydrated, Inc.

McCORMICK & COMPANY, INCORPORATED
DEFERRED COMPENSATION PLAN
Effective January 1, 2000

Purpose

This Plan is maintained for the purpose of providing Participants an opportunity to defer compensation that would otherwise be currently payable to such Participants. This Plan is intended to be an unfunded plan maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees within the meaning of Title I of the Employee Income Retirement Security Act of 1974, as amended.

ARTICLE 1

Definitions

For purposes of this Plan, unless otherwise clearly apparent from the context, the following phrases or terms shall have the meanings indicated:

1.1 "Account Balance" shall mean, as of any given date called for under the Plan, the sum of the following: (i) the balance of the Participant's Deferral Contribution Account, and (ii) the balance of the Participant's Discretionary Contribution Account, as such accounts have been adjusted to reflect all applicable Investment Adjustments and all prior withdrawals and distributions, in accordance with Article 3 of the Plan.

1.2 "Base Annual Salary" shall mean the base annual compensation payable to a Participant by an Employer for services rendered during a Plan Year, (i) excluding Bonuses, commissions, director fees and other additional incentives and awards payable to the Participant, but (ii) before reduction for any Elective Deductions. With respect to directors of the Company who are not employees of the Company or any Employer, Base Annual Salary shall mean the director fees payable to such individuals.

1.3 "Beneficiary" shall mean one or more persons, trusts, estates or other entities, designated (or deemed designated) by the Participant in accordance with Article 10, to receive the Participant's undistributed Vested Account Balance in the event of the Participant's death.

1.4 "Beneficiary Designation Form" shall mean the document prescribed by the Committee to be used by the Participant to designate his Beneficiary for the Plan.

1.5 "Benefit Distribution Date" shall mean the date distribution of the Participant's Vested Account Balance is triggered and it shall be deemed to occur as of the date on which the Participant's employment terminates for any reason whatsoever, including but not limited to death or Disability. If the Participant's employment terminates due to Retirement, his Benefit Distribution Date shall be deemed to occur as of the January 1 following such Participant's Retirement. In the event the Benefit Distribution Date is triggered due to: (i) Termination of Employment, the Participant's Vested Account Balance shall be

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payable pursuant to Article 6; (ii) Retirement, the Participant's Vested Account Balance shall be payable pursuant to Article 7; (iii) pre-retirement death, the Participant's Vested Account Balance shall be payable pursuant to Article 8; and (iv) a Disability, the Participant's Vested Account Balance shall be payable pursuant to Article 9.

1.6 "Board" shall mean the board of directors of the Company.

1.7 "Bonus" shall mean the amounts payable to a Participant during a Plan Year under any bonus or incentive plan or arrangement sponsored by an Employer, before reduction for any Elective Deductions, but excluding commissions, stock-related awards and other non-monetary incentives.

1.8 "Change in Control" shall mean the earliest to occur of the following events:

(a) The consummation of any transaction or series of transactions as a result of which any "Person" (as the term person is used for purposes of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) other than an "Excluded Person" (as hereinafter defined) has or obtains ownership or control, directly or indirectly, of fifty percent (50%) or more of the combined voting power of all securities of the Company or any successor or surviving corporation of any merger, consolidation or reorganization involving the Company (the "Voting Securities"). The term "Excluded Person" means any one or more of the following: (i) the Company or any majority-owned subsidiary of the Company, (ii) an employee benefit plan (or a trust forming a part thereof) maintained by (A) the Company or (B) any majority-owned subsidiary of the Company, (iii) any Person who as of the initial effective date of this Plan owned or controlled, directly or indirectly, ten percent (10%) or more of the then outstanding Voting Securities, or any individual, entity or group that was part of such a Person;

(b) A merger, consolidation or reorganization involving the Company as a result of which the holders of Voting Securities immediately before such merger, consolidation or reorganization do not immediately following such merger, consolidation or reorganization own or control, directly or indirectly, at least fifty percent (50%) of the Voting Securities in substantially the same proportion as their ownership or control of the Voting Securities immediately before such merger, consolidation or reorganization; or

(c) The sale or other disposition of all or substantially all of the assets of the Company to any Person (other than a transfer to a majority-owned subsidiary of the Company).

1.9 "Claimant" shall mean the person or persons described in Section 15.1 who apply for benefits or amounts that may be payable under the Plan.

1.10 "Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations and other authority issued thereunder by the appropriate governmental authority.

References to the Code shall include references to any successor section or provision of the Code.

1.11 "Committee" shall mean the committee described in Article 13 which shall administer the Plan.

1.12 "Company" shall mean McCormick & Company, Incorporated, a Maryland corporation, and any successor or assigns.

1.13 "Contributions" shall collectively refer to any and all Deferral Contributions and Discretionary Contributions, as such terms have been defined herein.

1.14 "Deferral Contribution" shall mean the aggregate amount of Base Annual Salary or Bonus deferred by a Participant during a given Plan Year in accordance with the terms of the Plan and the Participant's Election Form and credited to the Participant's Deferral Contribution Account. Deferral Contributions shall be deemed to be made to the Plan by the Participant on the date the Participant would have received such compensation had it not been deferred pursuant to the Plan.

1.15 "Deferral Contribution Account" shall mean a Participant's aggregate Deferral Contributions, as well as any appreciation (or depreciation) specifically attributable to such Deferral Contributions due to Investment Adjustments, reduced to reflect all prior distributions and withdrawals. The Deferral Contribution Account shall be utilized solely as a device for the measurement of amounts to be paid to the Participant under the Plan. The Deferral Contribution Account shall not be, constitute or be treated as an escrow, trust fund, or any other type of funded account for Code or ERISA purposes, and amounts credited thereto shall not be considered "plan assets" for ERISA purposes. The Deferral Contribution Account merely provides a record of the bookkeeping entries relating to the benefits that the Employer intends to provide Participant and shall thus reflect a mere unsecured promise to pay such amounts in the future.

1.16 "Disability" shall mean a period of disability during which a Participant qualifies for disability benefits under his Employer's short-term or long-term disability plan, or, if a Participant does not participate in such a plan, a period of disability during which the Participant would have qualified for disability benefits had the Participant been a participant in such a plan, as determined in the sole discretion of the Committee.

1.17 "Disability Benefit" shall mean the benefit set forth in Article 9.

1.18 "Discretionary Contribution" shall mean the aggregate amounts, if any, credited by the Employer under the Plan on the Participant's behalf during a given Plan Year. Such Discretionary Contributions shall be credited to the Participant's Discretionary Contribution Account as of the date determined appropriate by the applicable Employer, in its sole discretion. The amount of any Participant's Discretionary Contribution shall be determined by the applicable Employer in its sole discretion.

1.19 "Discretionary Contribution Account" shall mean a Participant's aggregate Discretionary Contributions, as well as any appreciation (or depreciation) specifically attributable to such Discretionary Contributions due to Investment Adjustments, reduced to reflect all prior distributions and withdrawals. The Discretionary Contribution Account shall be utilized solely as a device for the measurement of amounts to be paid to the Participant under the Plan. The Discretionary Contribution Account shall not be, constitute or be treated as an escrow, trust fund, or any other type of funded account for Code or ERISA purposes, and amounts credited thereto shall not be considered "plan assets" for ERISA purposes. The Discretionary Contribution Account merely provides a record of the bookkeeping entries relating to the benefits that the Employer intends to provide Participant and shall thus reflect a mere unsecured promise to pay such amounts in the future.

1.20 "Election Form" shall mean the document required by the Committee to be submitted by a Participant, on a timely basis, which specifies (i) the amount of Base Annual Salary and/or Bonus the Participant elects to defer from a given Plan Year and (ii) the portion (if any) of Deferral Contributions that shall be distributable upon an Interim Distribution Date rather than the Benefit Distribution Date. The Election Form must be submitted by the immediately preceding September 30th in order to be deemed timely for the following Plan Year, provided that the Election Form must be submitted by November 15, 1999 in order to be timely for the Plan Year beginning January 1, 2000. An Election Form shall be effective only with respect to (i) Base Annual Salary earned in the Plan Year to which the Election Form applies and (ii) Bonuses not payable by the Employer before the first day of such Plan Year. If a Participant fails to submit an Election Form with respect to a Plan Year or fails to submit such form on a timely basis, the Participant shall not make Deferral Contributions during the Plan Year nor be entitled to Discretionary Contributions attributable to the Plan Year.

1.21 "Elective Deductions" shall mean those deductions from a Participant's Base Annual Salary or Bonus for amounts voluntarily deferred or contributed by the Participant pursuant to any qualified or non-qualified deferred compensation plan, including, without limitation, amounts deferred pursuant to Code Sections 125, 402(e)(3) and 402(h), to the extent that all such amounts would have been payable to the Participant in cash had there been no such deferral or contribution.

1.22 "Employer" shall mean the Company and/or any of its subsidiaries (now in existence or hereafter formed or acquired) that (i) have been selected by the Board to participate in the Plan and (ii) have affirmatively adopted the Plan.

1.23 "Enrollment Forms" shall mean the Participation Agreement, the initial Election Form, the Retirement Benefit Distribution Form and any other forms or documents which may be required of a Participant by the Committee, in its sole discretion, prior to and as a condition of participating in the Plan.

1.24 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations and other authority issued thereunder by the appropriate

governmental authority. References herein to any section of ERISA shall include references to any successor section or provision of ERISA.

1.25 "Financial Emergency" shall mean an unanticipated emergency or severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or a dependent of the Participant, a loss of the Participant's property due to casualty, or such other extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that constitute an unforeseeable emergency will be determined by the Committee in its sole discretion and shall depend upon the facts of each case, provided that a Financial Emergency shall not be deemed to exist to the extent that such hardship is or may be relieved;

(i) through reimbursement or compensation by insurance or otherwise,
(ii) by liquidation or the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or
(iii) by cessation of Deferral Contributions under the Plan, provided that this clause (iii) shall not apply for purposes of Section 4.1.

By way of example, the need to send a Participant's child to college or the desire to purchase a home shall not be considered a Financial Emergency. As a further example, a Financial Emergency that may be relieved by cessation of Deferral Contributions shall be considered to be a Financial Emergency until such time as it is or could be relieved by cessation of Deferral Contributions or by other means.

1.26 "Hypothetical Investment" shall mean an investment fund or benchmark made available to Participants by the Committee for purposes of valuing amounts credited under the Plan. Hypothetical Investment shall also mean Common Stock of the Company ("Stock").

1.27 "Interim Distribution Date" shall mean the first day of any calendar year, selected by the Participant, upon which the designated portion of Deferral (as well as any appreciation or depreciation of such amounts due to Investment Adjustments) attributable to a given Plan Year shall be distributed in a lump sum payment. Notwithstanding the prior sentence, in no event shall a Participant be permitted to select a date that is less than four (4) years from the date the election is made.

1.28 "Investment Adjustment(s)" shall mean any appreciation credited to (as income or gains) or depreciation deducted from (as expenses or losses) a Participant's Deferral Contribution Account and/or Discretionary Contribution Account, in accordance with such Participant's selection of Hypothetical Investments pursuant to the Participant's Investment Allocation Form(s) and/or Investment Re-Allocation Form(s).

1.29 "Investment Allocation Form" (i) shall apply with respect to those Deferral Contributions and Discretionary Contributions made to the Plan after the effective date of the Investment Allocation Form but prior to the effective date of a timely filed subsequent Investment Allocation Form and (ii) shall determine the manner in which such Deferral

Contributions and/or Discretionary Contributions shall be initially allocated by the Participant among the various Hypothetical Investments within the Plan. A new Investment Allocation Form may be submitted by the Participant in electronic or telephonic format, at such times as the Committee shall permit, provided that such new Investment Allocation Form is submitted in a timely manner. An Investment Allocation Form shall be deemed timely if submitted in accordance with the procedures and deadlines established by the Committee.

1.30 "Investment Re-allocation Form" shall re-direct the manner in which earlier Deferral Contributions and/or Discretionary Contributions, as well as any appreciation (or depreciation) to-date, are invested within the Hypothetical Investments (except Stock) available in the Plan. An Investment Re-Allocation Form may be submitted by the Participant in electronic or telephonic format, at such times as the Committee shall permit, with respect to the balance of the (i) Deferral Contribution Account and/or (ii) Discretionary Contribution Account, at such time, provided that such Investment Re-Allocation Form is submitted in a timely manner. An Investment Re-Allocation Form shall be deemed timely if submitted in accordance with the procedures and deadlines established by the Committee.

1.31 "Leave of Absence" shall mean an authorized unpaid leave of absence from employment with the Company or the Employer.

1.32 "Participant" shall mean any employee or member of the Board (i) who is selected to participate in the Plan in accordance with Section 2.1, (ii) who elects to participate in the Plan, (iii) who signs the applicable Enrollment Forms (and other forms required by the Committee) on a timely basis, and (iv) whose signed Enrollment Forms (and other required forms) are accepted by the Committee.

1.33 "Participation Agreement" shall mean the separate written agreement entered into by and between the Employer and the Participant, which shall indicate the Participant's intent to defer compensation subject to the terms of the Plan and the Participation Agreement.

1.34 "Plan" shall mean the McCormick & Company, Incorporated Deferred Compensation Plan, which shall be evidenced by this instrument, each Participation Agreement and each Enrollment Form, as they may be amended from time to time.

1.35 "Plan Year" shall mean the initial period beginning on January 1, 2000 and ending on December 31, 2000. Thereafter, the term "Plan Year" shall mean the period beginning on January 1 of each year and ending December 31. Accordingly, Plan quarters shall commence on January 1, April 1, July 1 and October 1 of each year.

1.36 "Retirement," "Retires" or "Retired" shall mean, with respect to an Employee, severance from employment from any and all Employers for any reason other than an authorized leave of absence, Disability, death or for cause termination on or after the earlier of the attainment of (i) age sixty-five (65) or (ii) age fifty-five (55) and at least one (1) year of service**.** Solely for the purposes of this Section 1.36, the term "Employers" shall include

all subsidiaries and other affiliates of the Company as determined by the Committee in its sole discretion.

1.37 "Retirement Benefit" shall mean the benefit set forth in Article 7.

1.38 "Retirement Benefit Distribution Form" shall mean the document, executed by the Participant, which specifies the manner in which the Participant shall have the balance of his accounts distributed in the event his Benefit Distribution Date is triggered due to such Participant's Retirement from the Employers. The Participant shall elect to receive the Retirement Benefit in a lump sum or in substantially equal annual payments over a period of 5, 10, 15 or 20 years. The Retirement Benefit Distribution Form must be provided to the Committee along with all other Enrollment Forms, pursuant to Article 2, prior to participating in the Plan. Notwithstanding the preceding provisions of this Section, the Participant may submit a subsequent Retirement Benefit Distribution Form in order to change the form of distribution, provided that such form shall be effective only if (i) it is submitted at least thirteen (13) months prior the Participant's actual Benefit Distribution Date and (ii) it is approved by the Committee, in its sole discretion.

1.39 "Termination Benefit" shall mean the benefit set forth in Article 6.

1.40 "Termination of Employment" shall mean the voluntary or involuntary severing of employment, with any and all Employers, for any reason other than an authorized leave of absence, Retirement, Disability, or death. Solely for the purposes of this Section 1.40, the term "Employers" shall include all subsidiaries and other affiliates of the Company as determined by the Committee in its sole discretion.

1.41 "Trust" shall mean a grantor trust of the type commonly referred to as a "rabbi trust" created to hold assets to be used to provide benefits under the Plan.

1.42 "Vested Account Balance" shall mean, as of any given measurement date called for under the Plan, the sum of the following: (i) the balance of the Participant's Deferral Contribution Account and (ii) the balance of the Participant's Discretionary Contribution Account, as such accounts have been adjusted to reflect all applicable Investment Adjustments and all prior withdrawals and distributions, in accordance with Article 3 of the Plan and the Participation Agreement.

1.43 "Years of Service" shall mean the total number of twelve (12) month periods during which a Participant has been continuously employed by one or more Employers.

ARTICLE 2

Eligibility, Selection, Enrollment

2.1 Eligibility, Selection by Committee. Those employees of an Employer who are in Grade 15 or above or non-employee members of the Board who are (i) in the case of an

employee, determined by the Company (or Employer, as applicable) to be includable in a select group of management or highly compensated employees of the applicable Employer, (ii) specifically chosen by the applicable Employer to participate in the Plan, and (iii) approved for such participation by the Committee, in its sole discretion, shall be eligible to participate in the Plan subject to the enrollment requirements described in Section 2.2. As used herein, the term "employee" shall include a member of the Board who is not employed by the Company.

2.2 Enrollment Requirements. Each employee deemed eligible to participate in the Plan pursuant to Section 2.1, shall, as a condition to participating in the Plan, complete and return to the Committee all of the required Enrollment Forms, on a timely basis. In addition, the Committee shall in its sole discretion, establish such other enrollment requirements necessary for continued participation in the Plan.

2.3 Commencement of Participants. If a Participant has met all enrollment requirements set forth in this Plan and required by the Committee, including returning the Enrollment Forms and other required documents to the Committee within the specified time period, the Participant's participation shall commence as of the date established by the Committee in its sole discretion. If a Participant fails to meet all such requirements within the specified time period with respect to any Plan Year, the Participant shall not be eligible to participate during that Plan Year.

ARTICLE 3

Deferral Contributions, Discretionary Contributions Investment Adjustments, Taxes and Vesting

3.1 Deferral Contributions.

(a) Election to Defer. A Participant may elect to defer the receipt of amounts payable to the Participant, in the form of Base Annual Salary and/or Bonus, during any Plan Year. The Participant's intent to defer shall be evidenced by a Participation Agreement and annual Election Form, both completed and submitted to the Committee in accordance with such procedures and time frames as may be established by the Committee in its sole discretion. Amounts deferred by a Participant with respect to a given Plan Year shall be referred to collectively as Deferral Contributions and shall be credited to a Deferral Contribution Account established in the name of the Participant.

(b) Components of Deferral Contributions.

(i) Base Annual Salary. A Participant may designate a percentage to be deducted from his Base Annual Salary. Such amount shall be deducted in substantially equal installments, from each regularly scheduled payment of Base Annual Salary.

(ii) Bonus. A Participant may designate a fixed dollar amount, a percentage, or a percentage above a fixed dollar amount to be deducted from his Bonus. If a fixed dollar amount is designated by the Participant to be deducted from any Bonus payment and such fixed dollar amount exceeds the Bonus actually payable to the Participant, the entire amount of such Bonus shall be deducted.

(iii) Directors' Fees. A Participant may designate a percentage to be deducted from his directors' fees. Such amounts shall be deducted in substantially equal installment, from each regularly scheduled payment of directors' fees.

(c) Minimum Deferral. For any Plan Year, the Committee may permit a Participant to elect to defer, pursuant to an Election Form, one or more of the following forms of compensation in the following minimum percentages:

Deferral	Minimum Percentage
Base Annual Salary	10%
Bonus	10%
Directors' Fees	10%

If an Election Form is submitted which would yield less than the stated minimum amounts, the amount deferred shall be zero.

(d) Maximum Deferral. For any given Plan Year the Committee may permit a Participant to defer, pursuant to an Election Form, one or more of the following forms of compensation up to the following maximum percentages:

Deferral	Maximum Percentage
Base Annual Salary	80%
Bonus	90%
Directors' Fees	100%

3.2 Selection of Hypothetical Investments. The Participant shall, via his Investment Allocation Form(s), as more fully described in Section 1.29, and his Investment Re-Allocation Form(s), as more fully described in Section 1.30, select one or more Hypothetical Investments among which his various contributions shall be distributed. At the beginning of each Plan Year, the Committee shall provide the Participant with a list of Hypothetical Investments available. From time to time, in the sole discretion of the Committee, the Hypothetical Investments available within the Plan may be revised. All Hypothetical Investment selections must be denominated in whole percentages unless the Committee determines that lower increments are acceptable. A Participant may make

changes in his selected Hypothetical Investments (except Stock) on a daily basis via submission of a new Investment Allocation Form, as described in and subject to the language of Section 1.29 or submission of a new Investment Re-Allocation Form, as described in and subject to the language of Section 1.30. Once a Participant makes an allocation with respect to Stock, the Participant may not either increase or decrease the percentage allocated to Stock.

3.3 Discretionary Contributions. A Participant may be credited with Discretionary Contributions for any Plan Year in which such amounts are declared by the applicable Employer with respect to the Participant. Such Discretionary Contributions shall be credited to a Discretionary Contribution Account in the name of the Participant. The applicable Employer shall have sole discretion to determine with respect to each Plan Year and each Participant (i) whether any Discretionary Contribution was declared with respect to the Participant and (ii) the amount of such Discretionary Contribution.

3.4 Adjustment of Participant Accounts. While a Participant's accounts do not represent the Participant's ownership of, or any ownership interest in, any particular assets, the Participant's accounts shall be adjusted in accordance with the Hypothetical Investment(s) chosen by the Participant on his (i) Investment Allocation Form or (ii) Investment Re-Allocation Form, subject to the conditions and procedures set forth herein or established by the Committee from time to time. Any cash earnings generated under a Hypothetical Investment (such as hypothetical interest and cash dividends) shall, at the Committee's sole discretion, either be deemed to be reinvested in that Hypothetical Investment or reinvested in one or more other Hypothetical Investment(s) designated by the Committee. All notional acquisitions and dispositions of Hypothetical Investments that occur within a Participant's accounts, pursuant to the terms of the Plan, shall be deemed to occur at such times as the Committee shall determine to be administratively feasible in its sole discretion and the Participant's accounts shall be adjusted accordingly. Accordingly, if a distribution or re-allocation must occur pursuant to the terms of the Plan and all or some portion of the Account Balance must be valued in connection such distribution or re-allocation (to reflect Investment Adjustments), the Committee may in its sole discretion, unless otherwise provided for in the Plan, select a date or dates that shall be used for valuation purposes. Notwithstanding anything to the contrary, any Investment Adjustments made to any Participants' accounts following a Change in Control shall be made in a manner no less favorable to Participants than the practices and procedures employed under the Plan, or as otherwise in effect, as of the date of the Change in Control.

3.5 Withholding of Taxes.

(a) Annual Withholding from Compensation. For any Plan Year in which Deferral Contributions are credited under the Plan, the Employer shall withhold the Participant's share of FICA and other employment taxes from the portion of the Participant's Base Annual Salary and/or Bonus not deferred. If deemed appropriate by the Committee, the Committee may reduce the amount deferred

pursuant to the Participant's Election Form where necessary to facilitate compliance with applicable withholding requirements.

(b) Withholding from Benefit Distributions. The Participant's Employer (or the trustee of the Trust, as applicable), shall withhold from any payments made to a Participant under this Plan all federal, state and local income, employment and other taxes required to be withheld by the Employer (or the trustee of the Trust, as applicable), in connection with such payments, in amounts and in a manner to be determined in the sole discretion of the Employer (or the trustee of the Trust, as applicable).

3.6 Vesting. The Participant shall at all times be one hundred percent (100%) vested in all Deferral Contributions and Discretionary Contributions adjusted to reflect any appreciation (or depreciation) specifically attributable to such contributions due to Investment Adjustments.

ARTICLE 4

Suspension of Deferrals

4.1 Financial Emergencies. If a Participant experiences a Financial Emergency, the Participant may petition the Committee to suspend any deferrals required to be made by the Participant pursuant to his current Election Form. The Committee shall determine, in its sole discretion, whether to approve the Participant's petition. If the petition for a suspension is approved, suspension shall commence upon the date of approval and shall continue until the earlier of (i) the end of the Plan Year or (ii) the date the Financial Emergency ceases to exist, as determined by the Committee in its sole discretion. The Participant's eligibility for Discretionary Contributions shall be similarly suspended.

4.2 Disability. From and after the date that a Participant is deemed to have suffered a Disability, any current Election Form of the Participant shall automatically be suspended, and no further deferrals shall be required to be made by the Participant pursuant to his current Election Form. The Participant's eligibility for Discretionary Contributions shall be similarly suspended.

4.3 Leave of Absence. If a Participant is authorized by the Participant's Employer for any reason to take a Leave of Absence, the Participant's deferrals shall be suspended (as well as his eligibility for Discretionary Contributions) until the earlier of the date the Leave of Absence expires or the Participant returns to a paid employment status. Upon such expiration or return, deferrals shall resume (as will eligibility for Discretionary Contributions) for the remaining portion of the Plan Year in which the expiration or return occurs, based on the Election Form, if any, made for that Plan Year. If no election was made for that Plan Year, no deferral shall be withheld. If a Participant is authorized by the Participant's Employer for any reason to take a paid leave of absence from the employment of the Employer, the Participant shall continue to be considered employed

by the Employer and the appropriate amounts shall continue to be withheld from the Participant's compensation pursuant to the Participant's then current Election Form.

ARTICLE 5

Interim and Hardship Distributions

5.1 Interim Distributions. A Participant may make an advance election, at the time he files any Election Form for a given Plan Year, to have certain amounts (except Stock) payable from his Deferral Contribution Account at an Interim Distribution Date designated by the Participant, instead of payable at the Participant's Benefit Distribution Date. Such amount(s) shall be measured on the applicable Interim Distribution Date and shall be payable within thirty (30) days of such Interim Distribution Date. The Participant's selection of an Interim Distribution Date must comply with Section 1.27. Notwithstanding a Participant's advance election of an Interim Distribution Date or Dates, the amounts that would otherwise be subject to such Interim Distribution Date or Dates shall be distributable upon the Participant's Benefit Distribution Date (pursuant to Article 6, 7, 8 or 9 as applicable), if such date occurs prior to any Interim Distribution Date.

5.2 Withdrawal in the Event of a Financial Emergency. A Participant who believes he has experienced a Financial Emergency may request in writing a withdrawal of a portion of his accounts (except Stock) necessary to satisfy the emergency. The Committee shall determine, in its sole discretion, (i) whether a Financial Emergency has occurred, (ii) the amount reasonably required to satisfy the Financial Emergency as well as (iii) the accounts from which the withdrawal shall be made. If, subject to the sole discretion of the Committee, the petition for a withdrawal is approved, the distribution shall be made within thirty (30) days of the date of approval by the Committee.

ARTICLE 6

Termination Benefit

6.1 Termination Benefit. If the Participant's Benefit Distribution Date is triggered due to his Termination of Employment, the Participant shall receive a Termination Benefit and no other benefits shall be payable under the Plan.

6.2 Payment of Termination Benefit. The Termination Benefit shall be a lump sum payment equal to the Participant's Vested Account Balance and shall be made no later than thirty (30) days after the occurrence of the Participant's Benefit Distribution Date.

6.3 Death Prior to Payment of Termination Benefit. If a Participant dies after his Termination of Employment but before the Termination Benefit is paid to him, the Participant's unpaid Termination Benefit shall be paid to the Participant's Beneficiary within thirty (30) days of the date of the Participant's death and the receipt by the

Committee of all documents and information deemed by the Committee to be necessary to make the payment.

ARTICLE 7

Retirement Benefit

7.1 Retirement Benefit. If the Participant's Benefit Distribution Date is triggered due to his Retirement, the Participant shall receive the Retirement Benefit and no other benefit shall be payable under the Plan.

7.2 Payment of Retirement Benefit. The Retirement Benefit shall be payable in the form previously selected by the Participant, pursuant to his Retirement Benefit Distribution Form, and shall commence (or be fully paid, in the event a lump-sum form of distribution was selected) no later than thirty (30) days after the Participant's Benefit Distribution Date. If the Retirement Benefit is paid in installments, the initial installment shall be based on the value of the Participant's Account Balance, measured on his Benefit Distribution Date and shall be equal to 1/n (where 'n' is equal to the total number of annual benefit payments not yet distributed). Subsequent installment payments shall be computed in a consistent fashion, with the measurement date being the anniversary of the original measurement date.

7.3 Death Prior to Completion of Retirement Benefit.

If a Participant dies after Retirement but before the Retirement Benefit has commenced or been paid in full, the Participant's unpaid Retirement Benefit payments shall be paid to the Participant's Beneficiary in a lump sum, equal to the Participant's remaining Vested Account Balance. Such lump-sum payment shall be made within thirty (30) days of the date of the Participant's death and the receipt by the Committee of all documents and information deemed by the Committee to be necessary to make the payment.

ARTICLE 8

Pre-Retirement Death Benefit

8.1 Pre-Retirement Death Benefit. If the Participant's Benefit Distribution Date is triggered due to his death during employment, the Participant's Beneficiary shall receive the pre-retirement death benefit described below and no other benefits shall be payable under the Plan.

8.2 Payment of Pre-Retirement Death Benefit. The pre-retirement death benefit shall be a lump-sum payment equal to the Participant's Vested Account Balance and shall be made no later than thirty (30) days after the occurrence of the Participant's Benefit Distribution Date and the receipt by the Committee of all documents and information deemed necessary to make the payments.

ARTICLE 9

Disability Benefit

9.1 Disability Benefit. A Participant suffering a Disability that is found to be total and permanent shall receive a Disability Benefit equal to his Vested Account Balance. Subject to Article 5, the Disability Benefit shall be paid in a lump sum within thirty (30) days of the Committee's determination of such Disability, provided, however, that should the Participant otherwise have been eligible to Retire, he or she shall be paid a Retirement Benefit in accordance with Article 7.

ARTICLE 10

Change in Control Benefit

10.1 Change in Control Benefit. A Participant may elect that upon a Change in Control occurring in the future, the Participant will have his Vested Account Balance paid to him. In order for such election to be valid, it must be received in the form prescribed by the Committee not less than thirteen (13) months prior to the date of the Change in Control. Payment of the Vested Account Balance shall be made in a lump sum and shall be made no later than thirty (30) days after the Change in Control.

ARTICLE 11

Beneficiary Designation

11.1 Beneficiary. Each Participant shall have the right, at any time, to designate a Beneficiary or Beneficiaries to receive, in the event of the Participant's death, those benefits payable under the Plan. The Beneficiary(ies) designated under this Plan may be the same as or different from the Beneficiary designation made under any other plan of the Employer.

11.2 Beneficiary Designation; Change; Spousal Consent. A Participant shall designate his Beneficiary by completing and signing a Beneficiary Designation Form, and returning it to the Committee or its designated agent. A Participant shall have the right to change his Beneficiary by completing, signing and submitting to the Committee a revised Beneficiary Designation Form in accordance with the Committee's rules and procedures, as in effect from time to time. If the Participant names someone other than his spouse as a Beneficiary, a spousal consent, in the form designated by the Committee, must be signed by that Participant's spouse and returned to the Committee. Upon acknowledgement by the Committee of a revised Beneficiary Designation Form, all Beneficiary designations previously filed shall be deemed canceled. The Committee shall be entitled to rely on the last Beneficiary Designation Form both (i) filed by the Participant and (ii) acknowledged by the Committee, prior to his death.

11.3 Acknowledgment. No designation or change in designation of a Beneficiary shall be effective until received, accepted and acknowledged in writing by the Committee or its designated agent.

11.4 No Beneficiary Designation. If a Participant fails to designate a Beneficiary as provided above or, if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, then the Participant's designated Beneficiary shall be deemed to be his surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan shall be payable to the personal representative of the Participant.

11.5 Doubt as to Beneficiary. If the Committee has any doubt as to the proper Beneficiary to receive payments pursuant to this Plan, the Committee shall have the right, exercisable in its discretion, to cause the Participant's Employer (or, if applicable, the trustee of the Trust) to withhold such payments until this matter is resolved to the Committee's satisfaction.

11.6 Discharge of Obligations. The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge all Employers and the Committee from all further obligations under this Plan with respect to the Participant, and the Participant's Participation Agreement shall terminate upon such full payment of benefits.

ARTICLE 12

Termination, Amendment or Modification

12.1 Termination. Although the Employers anticipate that they will continue the Plan for an indefinite period of time, there is no guarantee that any Employer will continue the Plan or will not terminate the Plan at any time in the future. Accordingly, each Employer reserves the right to discontinue its sponsorship of the Plan and to terminate the Plan, at any time, with respect to its participating employees by action of its board of directors. Upon the termination of the Plan with respect to any Employer, the Vested Account of each affected Participant shall be paid to the Participant or, in the case of the Participant's death, to the Participant's Beneficiary, in a lump sum notwithstanding any elections made by the Participant, and the Participation Agreements relating to each of the Participant's accounts shall terminate upon full payment of such Vested Account Balance.

12.2 Amendment. The Company may, at any time, amend or modify the Plan in whole or in part with respect to any or all Employers; provided that (i) no amendment or modification shall decrease or restrict the value of a Participant's Vested Account Balance in existence at the time the amendment or modification is made, calculated as if the Participant had experienced a Termination of Employment as of the effective date of the amendment or modification, or, if the amendment or modification occurs after the date upon which the Participant was eligible to Retire, calculated as if the Participant had Retired as of the effective date of the amendment or modification, and (ii) except as specifically provided in Section 11.1, after a Change in Control, no amendment or modification shall adversely

affect the vesting, calculation or payment of benefits hereunder to any Participant or Beneficiary or diminish any other rights or protections any Participant or Beneficiary would have had, but for such amendment or modification, unless such affected Participant or Beneficiary consents in writing to such amendment.

12.3 Effect of Payment. The full payment of the applicable benefit under the provisions of the Plan shall completely discharge all obligations to a Participant and his Beneficiaries under this Plan and each of the Participant's Participation Agreement shall terminate.

ARTICLE 13

Administration

13.1 Committee Duties. This Plan shall be administered by a Committee which shall consist of the Board, or such committee as the Board shall appoint. Members of the Committee may be Participants in this Plan. The Committee shall also have the discretion and authority to (i) make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Plan and (ii) decide or resolve any and all questions including interpretations of this Plan, as may arise in connection with the Plan. Any individual serving on the Committee who is a Participant shall not vote or act on any matter relating solely to himself or herself. When making a determination or calculation, the Committee shall be entitled to rely on information furnished by Participant or an Employer.

13.2 Agents. In the administration of this Plan, the Committee may, from time to time, employ agents and delegate to them such administrative duties as it sees fit (including acting through a duly appointed representative) and may from time to time consult with counsel who may be counsel to any Employer.

13.3 Binding Effect of Decisions. The decision or action of the Committee with respect to any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations promulgated by the Committee hereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

13.4 Indemnity of Committee. All Employers shall indemnify and hold harmless the members of the Committee, and any Employee to whom duties of the Committee may be delegated, against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to this Plan, except in case of willful misconduct by the Committee or any of its members or any such employee.

13.5 Employer Information. To enable the Committee to perform its functions, each Employer shall supply full and timely information to the Committee on all matters relating to the compensation of its Participants, the date and circumstances of the

Retirement, Disability, death or Termination of Employment of its Participants, and such other pertinent information as the Committee may reasonably require.

ARTICLE 14

Other Benefits and Agreements

The benefits provided for a Participant and Participant's Beneficiary under the Plan are in addition to any other benefits available to such Participant under any other plan or program for employees of the Participant's Employer. The Plan shall supplement and shall not supersede, modify or amend any other such plan or programs except as may otherwise be expressly provided.

ARTICLE 15

Claims Procedures

15.1 Presentation of Claim. Any Participant or Beneficiary of a deceased Participant (such Participant or Beneficiary being referred to below as a "Claimant") may deliver to the Committee a written claim for a determination with respect to the amounts distributable to such Claimant from the Plan. If such a claim relates to the contents of a notice received by the Claimant, the claim must be made within thirty (30) days after such notice was received by the Claimant. The claim must state with particularity the determination desired by the Claimant. All other claims must be made within one hundred eighty (180) days of the date on which the event that caused the claim to arise occurred. The claim must state with particularity the determination desired by the Claimant.

15.2 Notification of Decision. The Committee shall consider a Claimant's claim within a reasonable time, and shall notify the Claimant in writing:

(a) that the Claimant's requested determination has been made, and that the claim has been allowed in full; or

(b) that the Committee has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, and in that event, such notice shall set forth in a manner calculated to be understood by the Claimant:

(i) the specific reason(s) for the denial of the claim, or any part of it;

(ii) specific reference(s) to pertinent provisions of the Plan upon which such denial was based;

(iii) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary; and

(iv) an explanation of the claim review procedure set forth in Section 15.3 below.

15.3 Review of a Denied Claim. Within sixty (60) days after receiving a notice from the Committee that a claim has been denied, in whole or in part, a Claimant (or the Claimant's duly authorized representative) may file with the Committee a written request for a review of the denial of the claim. Thereafter, but not later than thirty (30) days after the review procedure began, the Claimant (or the Claimant's duly authorized representative):

(a) may review pertinent documents;

(b) may submit written comments or other documents; and/or

(c) may request a hearing, which the Committee, in its sole discretion, may grant.

15.4 Decision on Review. The Committee shall render its decision on review promptly, and not later than sixty (60) days after the filing of a written request for review of the denial, unless a hearing is held or other special circumstances require additional time, in which case the Committee's decision must be rendered within one hundred twenty (120) days after such date. Such decision must be written in a manner calculated to be understood by the Claimant, and it must contain:

(a) specific reasons for the decision;

(b) specific reference(s) to the pertinent Plan provisions upon which the decision was based; and

(c) such other matters as the Committee deems relevant.

ARTICLE 16

Trust

16.1 Establishment of the Trust. The Company may utilize one or more Trusts to which the Employers may transfer such assets as the Employers determine in their sole discretion to assist in meeting their obligations under the Plan.

16.2 Interrelationship of the Plan and the Trust. The provisions of the Plan and the Participation Agreement shall govern the rights of a Participant to receive distributions pursuant to the Plan. The provisions of the Trust shall govern the rights of the Employers, Participants and the creditors of the Employers to the assets transferred to the Trust.

16.3 Distributions From the Trust. Each Employer's obligations under the Plan may be satisfied with Trust assets distributed pursuant to the terms of the Trust, and any such distribution shall reduce the Employer's obligations under this Agreement.

ARTICLE 17

Miscellaneous

17.1 Status of Plan. The Plan is intended to be a plan that is not qualified within the meaning of Code Section 401(a) and that "is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees" within the meaning of ERISA. The Plan shall be administered and interpreted to the extent possible in a manner consistent with that intent. All Participant accounts and all credits and other adjustments to such Participant accounts shall be bookkeeping entries only and shall be utilized solely as a device for the measurement and determination of amounts to be paid under the Plan. No Participant accounts, credits or other adjustments under the Plan shall be interpreted as an indication that any benefits under the Plan are in any way funded.

17.2 Unsecured General Creditor. Participants and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interests or claims in any property or assets of an Employer. For purposes of the payment of benefits under this Plan, any and all of an Employer's assets, shall be, and shall remain, the general, unpledged unrestricted assets of the Employer. Any Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

17.3 Employer's Liability. An Employer's liability for the payment of benefits shall be defined only by the Plan and the Participation Agreement, as entered into between the Employer and a Participant. An Employer shall have no obligation to a Participant under the Plan except as expressly provided in the Plan and his Participation Agreement.

17.4 Nonassignability. Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage or otherwise encumber, transfer, hypothecate, alienate or convey in actual receipt, the amount, if any, payable hereunder, or any part thereof, which are, and all rights to which are expressly declared to be, unassignable and non-transferable. Except as required by law, no part of the amounts payable shall, prior to actual payment, be subject to seizure, attachment, garnishment or sequestration for the payment of any debts, judgments, alimony or separate maintenance owed by a Participant or any other person, be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency.

17.5 Not a Contract of Employment. The terms and conditions of this Plan and the Participation Agreement shall not be deemed to constitute a contract of employment between any Employer and the Participant. Such employment is hereby acknowledged to

be an "at will" employment relationship that can be terminated at any time for any reason, or no reason, with or without cause, and with or without notice, except as otherwise provided in a written employment agreement. Nothing in this Plan or any Participation Agreement shall be deemed to give a Participant the right to be retained in the service of any Employer as an employee or to interfere with the right of any Employer to discipline or discharge the Participant at any time.

17.6 Furnishing Information. Each Participant and Beneficiary shall cooperate with the Committee by furnishing any and all information requested by the Committee and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Committee may deem necessary.

17.7 Terms. Whenever any words are used herein in the masculine, they shall be construed as though they were in the feminine in all cases where they would so apply; and whenever any words are used herein in the singular or in the plural, they shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply.

17.8 Captions. The captions of the articles, sections or paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

17.9 Governing Law. The provisions of this Plan shall be construed and interpreted according to ERISA and the internal laws of the State of Maryland without regard to its conflicts of laws principles, to the extent not preempted by ERISA.

17.10 Notice. Any notice or filing required or permitted to be given to the Committee under this Plan shall be sufficient if in writing and hand-delivered, or sent by registered or certified mail, to the address below:

McCormick & Company, Incorporated
18 Loveton Circle
Sparks, Maryland 21152
Attn: Vice President – Human Relations

Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark or the receipt for registration or certification.

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing and hand-delivered, or sent by mail, to the last known address of the Participant.

17.11 Successors. The provisions of this Plan shall bind and inure to the benefit of the Participant's Employer and its successors and assigns, the Participant, the Participant's Beneficiaries and their successors and assigns.

17.12 Validity. In case any provision of this Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts hereof, but this Plan shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.

17.13 Incompetent. If the Committee determines in its discretion that a benefit under this Plan is to be paid to a minor, a person declared incompetent or to a person incapable of handling the disposition of that person's property, the Committee may direct payment of such benefit to the guardian, legal representative or person having the care and custody of such minor, incompetent or incapable person. The Committee may require proof of minority, incompetence, incapacity or guardianship, as it may deem appropriate prior to distribution of the benefit. Any payment of a benefit shall be a payment for the account of the Participant and the Participant's Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.

17.14 Distribution in the Event of Taxation. If, for any reason, all or any portion of a Participant's benefit under this Plan becomes includable in the Participant's gross income for Federal income tax purposes prior to receipt of such benefit, the Participant may petition the Committee for a distribution of that portion of his benefit that has become taxable. Upon the grant of such a petition, which grant shall not be unreasonably withheld, the Participant's Employer shall immediately distribute to the Participant funds in an amount equal to the taxable portion of his benefit (which amount shall not exceed the Participant's unpaid Vested Account Balance under the Plan). If the petition is granted, the tax liability distribution shall be made within ninety (90) days of the date when the Participant's petition is granted. Such a distribution shall correspondingly reduce the benefits with respect to the Participant under this Plan.

17.15 Insurance. The Employers, on their own behalf or on behalf of the trustee of the Trust, and, in their sole discretion, may apply for and procure insurance on the life of the Participant, in such amounts and in such forms as the Trust may choose. The Employers or the trustee of the Trust, as the case may be, shall be the sole owner and beneficiary of any such insurance. The Participant shall have no interest whatsoever in any such policy or policies, and at the request of the Employers shall submit to medical examinations and supply such information and execute such documents as may be required by the insurance company or companies to whom the Employers have applied for insurance.

IN WITNESS WHEREOF, this Plan document has been executed on behalf of the Company as of November 1, 1999.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Karen D. Weatherholtz

Name: Karen D. Weatherholtz

Title: Senior Vice President – Human Relations

McCORMICK & COMPANY, INCORPORATED
DEFERRED COMPENSATION PLAN
AMENDMENT NO. 1

This Amendment No.1 to the McCormick & Company, Incorporated Deferred Compensation Plan (the "Plan") is made this 29th day of August, 2000.

WHEREAS, various proposed changes to other Company benefit plans in which Plan Participants participate will become effective December 1, 2000, but have not been finalized and communicated to employees of the Company;

WHEREAS, these changes to benefit plans may impact a Plan Participant's decision with respect to his or her Deferral Contribution under the Plan for the Plan Year beginning January 1, 2001;

WHEREAS, an extension of the date by which Participants must submit an Election Form with respect to the Plan Year beginning January 1, 2001 will allow Participants to take into account the proposed changes in other benefit plans in the calculation of Deferral Contributions;

WHEREAS, it is advisable to adjust the maximum deferral percentage for bonuses in order to accommodate Company payroll systems;

NOW THEREFORE, pursuant to Section 12.2 of the Plan, the Company hereby amends the Plan as follows:

1. The period at the end of the second sentence of Section 1.20 is deleted and the following language is inserted at the end of such sentence:

   "and provided that the Election Form must be submitted by October 31, 2000 in order to be timely filed for the Plan Year beginning January 1, 2001."

2. Beginning with the Plan Year beginning January 1, 2001, Section 3.1(d) is amended by changing the Maximum Percentage for Deferral of Bonus from 90% to 80%.

3. Each capitalized term used herein shall have the meaning set forth in Article 1 of the Plan.

4. All other provisions of the Plan remain in full force and effect and are unchanged by this Amendment.

WITNESS the signature of the undersigned as of the date first above written.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Karen D. Weatherholtz

Karen D. Weatherholtz
Senior Vice President – Human Relations

McCORMICK & COMPANY, INCORPORATED
DEFERRED COMPENSATION PLAN

AMENDMENT NO. 2

This Amendment No. 2 to the McCormick & Company, Incorporated Deferred Compensation Plan (the "Plan") is made this 5th day of September, 2000.

WHEREAS, the Company wishes to expand the eligibility of the Plan to include employees who serve on boards of directors of United States divisions;

NOW THEREFORE, pursuant to Section 12.2 of the Plan, the Company hereby amends the Plan as follows:

1. Section 2.1 is hereby amended by inserting the words "or who serve on boards of directors of United States divisions of the Company" after the words "who are in Grades 15 or above."

2. Each capitalized term used herein shall have the meaning set forth in Article 1 of the Plan.

3. All other provisions of the Plan remain in full force and effect and are unchanged by this Amendment.

WITNESS the signature of the undersigned as of the date first above written.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Karen D. Weatherholtz

Karen D. Weatherholtz
Senior Vice President – Human Relations

McCORMICK & COMPANY, INCORPORATED
DEFERRED COMPENSATION PLAN

AMENDMENT NO. 3

This Amendment No. 3 to the McCormick & Company, Incorporated Deferred Compensation Plan (the "Plan") is made this 16th day of May, 2003.

WHEREAS, the Company wishes to allow Plan participants to continue as participants in the Plan following a change in their status which would no longer include them as employees eligible to participate in the Plan;

NOW THEREFORE, pursuant to Section 12.2 of the Plan, the Company hereby amends the Plan as follows:

1. Section 2.1 is hereby amended by the addition of the following sentence:

   An employee who is eligible to participate in the Plan by virtue of his or her service on a board of directors of United States divisions of the Company, and who does participate in the Plan, shall be eligible to continue participation in the Plan even if such employee no longer serves on a board of directors of United States divisions of the Company.

2. Each of the Capitalized terms used herein shall have the meaning set forth in Article 1 of the Plan.

3. All other provisions of the Plan remain in full force and effect and are unchanged by this Amendment.

WITNESS the signature of the undersigned as of the date first above written.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Karen D. Weatherholtz

Karen D. Weatherholtz
Senior Vice President – Human Relations

U.S. $100,000,000

364-DAY CREDIT AGREEMENT

dated as of May 30, 2003

among

McCORMICK & COMPANY, INCORPORATED,

as the Borrower,

CERTAIN FINANCIAL INSTITUTIONS,

as the Lenders,

and

WACHOVIA BANK, NATIONAL ASSOCIATION,

as the Administrative Agent

WACHOVIA SECURITIES, INC.
Lead Arranger and Book Manager

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SCHEDULES AND EXHIBITS

364-DAY CREDIT AGREEMENT

THIS 364-DAY CREDIT AGREEMENT, dated as of May 30, 2003, among McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), the various financial institutions parties hereto (collectively, the "Lenders") and WACHOVIA BANK, NATIONAL ASSOCIATION, as the administrative agent (in such capacity, the "Agent") for the Lenders.

W I T N E S S E T H:

WHEREAS, the Borrower has requested that the Lenders provide to it a $100,000,000 364-day revolving line of credit; and the Lenders and the Agent are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Borrower, the Lenders and the Agent agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.1. Defined Terms. The following terms (whether or not underscored) when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"Affiliate" of any Person means any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person (excluding any trustee under, or any committee with responsibility for administering, any Plan). A Person shall be deemed to be "controlled by" any other Person if such other Person possesses, directly or indirectly, power

(a) to vote 25% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners; or

(b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise;

provided, however, that notwithstanding the foregoing, for purposes of Section 10.11.1, an "Affiliate" shall be a Person engaged in the business of banking who is controlled by, or under common control with, a Lender.

"Agent" is defined in the preamble and includes each other Person as shall have subsequently been appointed as the successor Agent pursuant to Section 9.10.

"Agreement" means, on any date, this 364-Day Credit Agreement as originally in effect on the Effective Date and as thereafter from time to time amended, supplemented, amended and restated, or otherwise modified and in effect on such date.

"Alternate Base Rate" means, on any date and with respect to all Base Rate Loans, a fluctuating rate of interest per annum equal to the higher of

(a) the rate of interest most recently announced by Wachovia Bank, National Association at its Domestic Office as its prime rate, and

(b) the Federal Funds Rate most recently determined by the Agent plus 1/2 of 1% per annum.

The Alternate Base Rate is not necessarily intended to be the lowest rate of interest determined by Wachovia Bank, National Association in connection with extensions of credit. Changes in the rate of interest on any Loans maintained as Base Rate Loans will take effect simultaneously with each change in the Alternate Base Rate. The Agent will give notice promptly to the Borrower and the Lenders of changes in the Alternate Base Rate.

"Alternate Currency" means any Currency, other than Dollars, which the Lenders shall at any relevant time have agreed (in the manner provided for herein) to treat as an Alternate Currency for the purposes of the Commitment Amount and shall be the denomination for Alternate Currency Advances.

"Alternate Currency Advance" means a LIBO Rate Loan denominated in an Alternate Currency.

"Applicable Law" shall mean, in respect of any Person, all provisions of constitutions, statutes, rules, regulations and orders of governmental bodies or regulatory agencies applicable to such Person, and all orders and decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which it is bound.

"Approved Fund" is defined in Section 10.11.1.

"Assignee Lender" is defined in Section 10.11.1.

"Associated Costs" means, with respect to any LIBO Rate Loan denominated in Sterling, a rate per annum equal to the percentage rate applicable to the LIBOR Office of the Reference Lender according to the following formula:

$$\text{Associated Costs per annum} = \frac{BY + L(Y-X) + S(Y-Z)}{100 - (X+S)}$$

where, with respect to the Reference Lender:

B = The percentage of the Reference Lender's eligible liabilities required, on the first day of the Relevant Period, to be held in

a non-interest-bearing deposit account with the Bank of England pursuant to the cash ratio requirements of the Bank of England.

Y = The LIBO Rate at which Sterling deposits in an amount comparable to the aggregate principal amount of the relevant LIBO Rate Loan are offered by

the Reference Lender to leading banks in the London interbank market at or about 11:00 a.m. (London time) on the first day of the Relevant Period for a period comparable to the Relevant Period.

L = The average percentage of eligible liabilities which the Bank of England, as at the first day of the Relevant Period, requires the Reference Lender to maintain as secured money with members of the London Discount Market Association and/or as secured call money with those money brokers and gilt-edged primary market makers recognized by the Bank of England.

X = The rate at which secured Sterling deposits in an amount comparable to the aggregate principal amount of the relevant LIBO Rate Loan may be placed by the Reference Lender with members of the London Discount Market Association and/or as secured call money with money brokers and gilt-edged primary market makers at or about 11:00 a.m. (London time) on the first day of the Relevant Period for a period comparable to the Relevant Period.

S = The percentage of the Reference Lender's eligible liabilities required on the first day of the relevant Interest Period to be placed as a special deposit with the Bank of England.

Z = The percentage interest rate per annum payable by the Bank of England on special deposits or, if lower, Y.

(a) For the purposes of this definition:

(i) "eligible liabilities" and "special deposits" shall have the meanings ascribed to them from time to time by the Bank of England; and

(ii) "Relevant Period" means, if the Interest Period with respect to such LIBO Rate Loan is three months or less, the duration of such Interest Period or, if such Interest Period is longer than three months, each period of three months and any necessary shorter period in such Interest Period.

(b) In application of the above formula, B, Y, L, X, S and Z will be included in the formula as decimal fractions and not as percentages, e.g., if B = 0.5% and Y = 15%, BY will be calculated as 0.5 x 15 and not as 0.5% x 15%.

(c) Associated Costs shall be computed by the Agent on the first day of each Relevant Period, and shall, if necessary, be rounded upward to the nearest 1/10,000 of 1%. If there is more than one Relevant Period comprised in the relevant Interest Period, then the Associated Costs for that Interest Period shall be the weighted average of the amounts so computed for the relevant periods comprised in that Interest Period.

(d) Calculations of Associated Costs will be made on the basis of a year of 365 days.

"Attributable Value" means, as to any particular Sale-Leaseback Transaction under which any Person is at the time liable, at any date as of which the amount thereof is to be determined (i) in the case of any such transaction involving a Capitalized Lease, the amount on such date of the Capitalized Lease Obligation thereunder, or (ii) in the case of any other such transaction, the then present value of the minimum rental obligation under such transaction during the remaining term thereof (after giving effect to any extensions at the option of the lessor), computed by discounting the respective rental or other payments at the actual interest factor included in such payment or, if such interest factor cannot be readily determined, at the rate of 9.75% per annum, compounded annually, or calculated in such other manner as may be required by GAAP in effect at the time. The amount of any rental or other payment required to be made under any such transaction not involving a Capitalized Lease may exclude amounts required to be paid by the lessee (or equivalent party) on account of maintenance, repairs, insurance, Taxes, assessments, utilities, operating and labor costs and similar charges. In the case of any such transaction not involving a Capitalized Lease which is terminable by the lessee (or equivalent party) upon payment of a penalty, such rental or other payment may include the amount of such penalty, in which case no rental or other payment shall be considered as required to be paid under such transaction subsequent to the first date on which it may be so terminated.

"Authorized Officer" means, relative to the Borrower, those of its officers whose signatures and incumbency shall have been certified to the Agent and the Lenders pursuant to Section 5.1.1 or any successor thereto.

"Available" means, in respect of any Alternate Currency and any Lender, that such Alternate Currency is, at the relevant time, readily available to such Lender as deposits in the London or other applicable interbank market in the relevant amount and for the relevant term, is freely convertible into Dollars and is freely transferable for the purposes of this Agreement, but if, notwithstanding that each of the foregoing tests is satisfied:

(a) such Alternate Currency is, under the then current legislation or regulations of the country of such Alternate Currency (or under the policy of the central bank of such country) or of the Bank of England or F.R.S. Board, not permitted to be used for the purposes of this Agreement; or

(b) there is no, or only insignificant, investor demand for the making of advances having an interest period equivalent to that for the Alternate Currency Advance which the Borrower has requested or in respect of which the Borrower has requested offers to be made;

then such Alternate Currency may be treated by any Lender as not being Available.

"Base Rate Loan" means a Loan bearing interest at a fluctuating rate determined by reference to the Alternate Base Rate.

"Borrower" is defined in the preamble.

"Borrowing" means Loans of the same type made by all Lenders on the same Business Day in accordance with Section 2.1.

"Borrowing Request" means a certificate requesting Loans, duly executed by an Authorized Officer, substantially in the form of Exhibit B-1 attached hereto.

"Business Day" means

(a) any day which is neither a Saturday or Sunday nor a legal holiday on which banks are authorized or required to be closed in New York, New York; and

(b) relative to the making, continuing, prepaying or repaying of any LIBO Rate Loans, any day (i) on which dealings in the relevant currency are carried on in the London interbank market and (ii) in the case of LIBO Rate Loans denominated in a Currency other than Dollars or Sterling, on which banks in the country for which such Currency is the lawful currency are not authorized or required to be closed.

"Capitalized Leases" means all monetary obligations of the Borrower or any of its Subsidiaries under any leasing or similar arrangements which, in accordance with GAAP, would be classified as capitalized leases.

"Capitalized Lease Obligation" means, at any time, the present value of the minimum net lease payments during the term of a Capitalized Lease, computed as provided in the Statement of Financial Accounting Standards No. 13, as amended from time to time.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1990, as amended.

"CERCLIS" means the Comprehensive Environmental Response Compensation Liability Information System List.

"Change in Control" means (a) the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of 51% or more of the outstanding shares of voting stock of the Borrower after giving effect to certain provisions of the Borrower's Certificate of Incorporation with respect to the conversion of non-voting stock to voting stock; provided, however, that acquisition by the Borrower's pension plan or profit sharing plan of 51% or more of the outstanding shares of the Borrower's voting stock shall not constitute a Change in Control; or (b) during any period of 12 consecutive months, a majority of the members of the board of directors of the Borrower cease to be composed of individuals (i) who were members of the board of directors on the first day of such period, (ii) whose election or nomination to the board of directors was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the board of directors or (iii) whose election or nomination to the board of directors was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the board of directors.

"Code" means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

"Commitment" means a Lender's obligation to make Loans pursuant to Section 2.1.

"Commitment Amount" means U.S. $100,000,000, as such amount may be reduced or adjusted from time to time in accordance with this Agreement.

"Commitment Termination Event" means

(a) the occurrence of any Event of Default described in clauses (a) through (e) of Section 8.1.9 with respect to the Borrower or any Principal Subsidiary; or

(b) the occurrence and continuance of any other Event of Default and either

(i) the declaration of the Loans to be due and payable pursuant to Section 8.3, or

(ii) in the absence of such declaration, the giving of notice by the Agent, acting at the direction of the Required Lenders pursuant to Section 8.3, to the Borrower that the Commitments have been terminated.

"Consolidated Net Tangible Assets" means all assets of the Borrower and its Subsidiaries appearing on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP minus goodwill and other intangible assets other than prepaid allowances.

"Contingent Liability" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount (or maximum amount, if larger) of the debt, obligation or other liability guaranteed thereby.

"Continuation/Conversion Notice" means a notice of continuation or conversion and certificate duly executed by an Authorized Officer of the Borrower, substantially in the form of Exhibit E hereto.

"Controlled Group" means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with the Borrower, are treated as a single employer under Section 414(b) or 414(c) of the Code or Section 4001 of ERISA.

"Currency" and "Currencies" means Dollars, Deutschemarks, Yen, Sterling and Euro.

"Default" means any Event of Default or condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

"Deutschemark" and "DM" mean the lawful currency of the Federal Republic of Germany.

"Disclosure Schedule" means the Disclosure Schedule attached hereto as Schedule I, as it may be amended, supplemented or otherwise modified from time to time by the Borrower with the written consent of the Agent and the Required Lenders.

"Dollars" and the sign "$" each mean the lawful currency of the United States of America.

"Dollar Equivalent" of any amount of any Alternate Currency or Non-Major Alternate Currency on any date means the equivalent amount in Dollars, converted at the rate of exchange quoted by Wachovia Bank, National Association at its New York office to prime banks in New York for the spot purchase in the New York foreign exchange market of the relevant Alternate Currency or, to the extent spot quotations are available, the Non-Major Alternate Currency, in each case at approximately 11:00 a.m. (New York time) on such date in accordance with its normal practice.

"Domestic Office" means, relative to any Lender, the office of such Lender designated as such below its signature hereto or designated in the Lender Assignment Agreement or such other office of a Lender (or any successor or assign of such Lender) within the United States as may be designated from time to time by notice from such Lender, as the case may be, to each other Person party hereto.

"EBIT" means, for any period, the sum of the amounts for such period of (a) Net Income (excluding any one-time non-recurring charges), (b) Interest Expense and (c) charges for federal, state, local and foreign income taxes, all determined in accordance with GAAP.

"Euro" means the euro referred to in Council Regulation (EC) no. 1103/97 dated June 17, 1997 passed by the Council of the European Union, or, if different, the then lawful currency of the member states of the European Union that participates in the third stage of Economic and Monetary Union.

"Effective Date" shall mean the first date on which this Agreement shall have been fully signed in accordance with Section 10.8 and each of the conditions precedent set forth in Section 5.1 have been satisfied.

"Environmental Laws" means all applicable federal, state or local statutes, laws, ordinances, codes, rules and regulations (including consent decrees and administrative orders issued to the Borrower or any Subsidiary) relating to public health and safety and protection of the environment.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

"Event of Default" is defined in Section 8.1.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the rate of interest most recently offered to the Agent in the interbank market as the overnight federal funds rate.

"Fiscal Quarter" means any quarter of a Fiscal Year.

"Fiscal Year" means any period of twelve consecutive calendar months ending on November 30; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the "2002 Fiscal Year") refer to the Fiscal Year ending on the November 30 occurring during such calendar year.

"Foreign Currency Equivalent" of any amount of Dollars in any Alternate Currency or Non-Major Alternate Currency on any date means the equivalent amount in the relevant currency converted at the rate of exchange quoted under the heading "Exchange Rates — Currency per U.S. $" in The Wall Street Journal for the immediately preceding Business Day for such Alternate Currency or Non-Major Alternate Currency.

"F.R.S. Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"GAAP" is defined in Section 1.4.

"Granting Lender" is defined in Section 10.11.1.

"Hazardous Material" means

(a) any "hazardous substance", as defined by CERCLA;

(b) any "hazardous waste", as defined by the Resource Conservation and Recovery Act, as amended;

(c) any petroleum product; or

(d) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders issued to the Borrower or any Subsidiary) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended.

"herein," "hereof," "hereto," "hereunder" and similar terms contained in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular Section, paragraph or provision of this Agreement or such other Loan Document.

"Impermissible Qualification" means, relative to the opinion or certification of any independent public accountant as to any financial statement of the Borrower, any qualification or exception to such opinion or certification

(a) which is of a "going concern" or similar nature;

(b) which relates to the limited scope of examination of matters relevant to such financial statement; or

(c) which relates to the treatment or classification of any item in such financial statement and which, as a condition to its removal, would require an adjustment to such item the effect of which would be to cause the Borrower to be in default of any of its obligations under Section 7.2.4.

"including" means including without limiting the generality of any description preceding such term, and, for purposes of this Agreement and each other Loan Document, the parties hereto agree that the rule of ejusdem generis shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned.

"Indebtedness" of any Person means, without duplication, any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money which would be regarded as indebtedness in accordance with GAAP, including all Contingent Liabilities of such Person in respect of any such obligations.

For all purposes of this Agreement, the Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner; provided, however, that the Indebtedness of any Person shall not include any obligation of a partnership in which such Person is a general partner to the extent that such obligation (including any Contingent Liability) is limited by its terms.

"Indemnified Liabilities" is defined in Section 10.4.

"Indemnified Parties" is defined in Section 10.4.

"Interest Expense" means, for any period, all as determined in accordance with GAAP, total interest expense, whether paid or accrued (without duplication) (including the interest component of Capitalized Lease Obligations), of the Borrower and its Subsidiaries on a consolidated basis, including, without limitation, all bank fees, commissions, discounts and other fees and charges owed with respect to letters of credit, but excluding, however, amortization of discount, interest paid in property other than cash or any other interest expense not payable in cash.

"Interest Period" means, relative to any LIBO Rate Loans, the period beginning on (and including) the date on which such LIBO Rate Loans are made or continued as, or converted into, LIBO Rate Loans pursuant to Section 2.1 or 2.3 and shall end on (but exclude) the day which numerically corresponds to such date one, two, three or six months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month), the Borrower may select in its relevant notice pursuant to Section 2.3; provided, however, that

(a) the Borrower shall not be permitted to select Interest Periods to be in effect at any one time which have expiration dates occurring on more than five different dates;

(b) Interest Periods commencing on the same date for Loans comprising part of the same Borrowing shall be of the same duration;

(c) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless, such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day); and

(d) no Interest Period may end later than the Maturity Date.

"Lead Arranger" means Wachovia Securities, Inc.

"Lender Assignment Agreement" means a Lender Assignment Agreement substantially in the form of Exhibit C hereto.

"Lenders" has the meaning specified in the preamble.

"LIBO Alternate Rate" is defined in Section 3.3.1.

"LIBO Rate" is defined in Section 3.3.1.

"LIBO Rate Loan" means a Loan bearing interest, at all times during an Interest Period applicable to such Loan, at a fixed rate of interest determined by reference to the LIBO Rate (Reserve Adjusted).

"LIBO Rate (Reserve Adjusted)" is defined in Section 3.3.1.

"LIBOR Office" means, relative to any Lender, the office of such Lender designated as such below its signature hereto or designated in the Lender Assignment Agreement or such other office of a Lender as designated from time to time by notice from such Lender to the Borrower and the Agent, whether or not outside the United States, which shall be making or maintaining LIBO Rate Loans of such Lender hereunder.

"LIBOR Reserve Percentage" is defined in Section 3.3.1.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property to secure payment of a debt or performance of an obligation or other priority or preferential arrangement of any kind or nature whatsoever.

"Loans" means a loan made on a Business Day by each Lender to the Borrower pursuant to Section 2.1 during the period commencing on the Effective Date until (but not including) the

Maturity Date. The aggregate principal amount at any time outstanding of all Loans made by the Lenders shall not exceed the Commitment Amount.

"Loan Document" means this Agreement, the Notes, the Transaction Fee Letter and each other document and agreement delivered to the Agent in connection herewith or therewith.

"Material Adverse Effect" means any event which will, or is reasonably likely to, have a material adverse effect on (i) the financial condition, assets, liabilities, operations or business of the Borrower and its Subsidiaries taken as a whole or (ii) the Borrower's ability to perform and comply with its monetary obligations under this Agreement, the Notes and each other Loan Document.

"Maturity Date" means the earlier to occur of

(a) May 29, 2004;

(b) the date on which the Commitment Amount is terminated in full or reduced to zero pursuant to Section 2.2; and

(c) immediately and without further notice upon the occurrence of any Commitment Termination Event.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Net Income" means, for any period, with respect to the Borrower and its Subsidiaries, income from continuing operations of the Borrower and its Subsidiaries during such period, determined in accordance with GAAP.

"Non-Major Alternate Currencies" means all currencies other than the Alternate Currencies and Dollars.

"Note" means a promissory note of the Borrower payable to any Lender, in the form of Exhibit A-1 hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from Loans outstanding from such Lender, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

"Obligations" means all obligations (monetary or otherwise) of the Borrower arising under or in connection with this Agreement, the Notes and each other Loan Document.

"Organic Document" means, (a) relative to the Borrower, its certificate of incorporation, its by-laws and all shareholder agreements, voting trusts and similar arrangements applicable to any of its authorized shares of capital stock and (b) relative to any Subsidiary, its applicable corporate, partnership, joint venture or limited liability company organizational and governing documents and all arrangements applicable to any of its equity, ownership or membership interests.

"Participant" is defined in Section 10.11.2.

"PBGC" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"Pension Plan" means a "pension plan," as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a multiemployer plan as defined in Section 4001(a)(3) of ERISA), and to which the Borrower or any corporation, trade or business that is, along with the Borrower, a member of a Controlled Group, may have liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Percentage" means, relative to any Lender, the percentage set forth opposite its signature hereto or set forth in the Lender Assignment Agreement, as such percentage may be adjusted from time to time pursuant to Lender Assignment Agreement(s) executed by such Lender and its Assignee Lender(s) and

delivered pursuant to Section 10.11.

"Person" means any individual, trustee, corporation, general partnership, limited partnership, limited liability company, joint stock company, firm, business association, trust, unincorporated organization, bank, joint venture, government, governmental authority or any other entity, whether acting in an individual, fiduciary or other capacity.

"Plan" means any Pension Plan or Welfare Plan.

"Principal Subsidiary" means a Subsidiary (i) whose total assets or net sales (each such amount expressed on a consolidated basis in the case of a Subsidiary which itself has Subsidiaries) represent, respectively, not less than 15% of either the consolidated total assets or consolidated net sales of the Borrower and its Subsidiaries, all as calculated annually by reference to the immediately preceding Fiscal Year-end financial data (consolidated or unconsolidated, as the case may be) of such Subsidiary and the then latest Fiscal Year-end audited consolidated financial statements of the Borrower, or (ii) to which is transferred all or substantially all of the assets or undertakings of a Principal Subsidiary. A certificate by an Authorized Officer of the Borrower as to whether a Subsidiary is or is not or was or was not a Principal Subsidiary at a specified date shall, in the absence of manifest error, be conclusive and binding.

"Quarterly Payment Date" means the last day of each calendar quarter or, if any such day is not a Business Day, the next succeeding Business Day.

"Reference Lender" means Wachovia Bank, National Association.

"Related Person" means, with respect to any Person, the outstanding capital stock of which is at least 25%, but not more than 50% beneficially owned by the Borrower or its Subsidiaries.

"Release" means a "release," as such term is defined in CERCLA.

"Required Lenders" means, at any time,

(a) except as otherwise provided in clause (c) hereof, with respect to any provision of this Agreement other than the declaration of the acceleration of the maturity of all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable pursuant to Section 8.3, Lenders having greater than 50% of the Commitment Amount,

(b) except as otherwise provided in clause (c) hereof, with respect to the declaration of the acceleration of the maturity of all or any portion of the outstanding principal amount of the Loans and other obligations to be due and payable pursuant to Section 8.3, Lenders holding Loans representing greater than 50% of the aggregate principal amount of the Loans outstanding, or

(c) with respect to any waiver of a Default or any amendment or modification of any provision of this Agreement or any other Loan Document which would have the effect of waiving a Default, Lenders having greater than (i) 50% of the Commitment Amount or (ii) if the Commitments have been terminated, 50% of the aggregate principal amount of the Loans outstanding.

"Resource Conservation and Recovery Act" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 690, et seq., as in effect from time to time.

"Revolving Commitment Amount" means, on any date, relative to any Lender, the amount equal to such Lender's Percentage multiplied by the Commitment Amount.

"Sale-Leaseback Transaction" means any arrangement, directly or indirectly, with any Person whereby a seller or transferor shall sell or otherwise transfer any real or personal property if, as part of the same transaction or series of transactions, the seller or transferor shall then or thereafter lease as lessee, or similarly acquire the right to possession or use of, such sold or transferred property, or property which it intends to use substantially to the same extent or for the same purpose as such sold or transferred property, in any such case under any lease, agreement or other arrangement, whether or not involving a Capitalized Lease, with the Person to whom such property was sold or transferred (other than any such lease, agreement or arrangement having a term, including renewals, not exceeding three years) which obligates the seller or transferor to pay rent as lessee or make any other payment to such Person for such possession or use.

"Senior Debt Rating" means the Borrower's senior, unsecured non-credit-enhanced long term debt rating, as determined by S&P and Moody's.

"S&P" means Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc. and any successor thereto.

"SPC" is defined in Section 10.11.1.

"Sterling" and "£" mean the lawful currency of the United Kingdom of Great Britain and Northern Ireland.

"Subsidiary" means, with respect to any Person, any corporation, partnership, joint venture, limited liability company or other business entity of which more than 50% of the outstanding capital stock or other interests having ordinary voting power to elect a majority of the board of directors or other governing body of such entity (irrespective of whether at the time securities or interests of any other class or classes of such entity shall or might have voting power upon the occurrence of any contingency) is at the time, directly or indirectly, beneficially owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person. Unless otherwise indicated, when used in this Agreement, the term "Subsidiary" shall refer to a Subsidiary of the Borrower.

"Taxes" is defined in Section 4.6.

"Telerate Page 3750" means the display designated as "Page 3750" on the Telerate Service (or such other page as may replace Page 3750 on the service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association interest settlement rates for Deutschemark, U.S. Dollar, Sterling or Yen deposits)

"Transaction Fee Letter" means the confidential letter agreement, dated May , 2003, by and between the Agent, the Lead Arranger and the Borrower.

"type" means, relative to any Loan, the portion thereof being maintained as a Base Rate Loan or a LIBO Rate Loan.

"United States" or "U.S." means the United States of America, its fifty States and the District of Columbia.

"Utilization Fee Rate" means, at any time, the percentage rate per annum at which utilization fees are accruing pursuant to Section 3.4.2 at such time as set forth within such Section.

"Welfare Plan" means a "welfare plan," as such term is defined in Section 3(l) of ERISA.

"Yen" and "¥" means the lawful currency of Japan.

SECTION 1.2. Use of Defined Terms. Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in the Disclosure Schedule and in each Note, Loan Document, Borrowing Request, Continuation/Conversion Notice, notice, request and other communication delivered from time to time in connection with this Agreement or any other Loan Document.

SECTION 1.3. Cross-References. Unless otherwise specified, references in this Agreement and in each other Loan Document to any Article or Section are references to such Article or Section of this Agreement or such other Loan Document, as the case may be, and, unless otherwise specified, references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition.

SECTION 1.4. Accounting and Financial Determinations. Unless otherwise specified, all accounting terms used herein or in any other Loan Document shall be interpreted, all accounting determinations and computations hereunder or thereunder (including under Sections 7.2.2 and 7.2.4) shall be made in accordance with generally accepted accounting principles ("GAAP") as in effect on the Effective Date of this Agreement, and all financial statements required to be delivered hereunder or thereunder shall be prepared in accordance with GAAP as in effect on the date of, or for the period covered by, such financial statements, and applied in the preparation of the financial statements referred to in Section 6.5.

ARTICLE II

MAKING THE LOANS

SECTION 2.1. Commitments and Borrowing Procedure.

(a) Commitments. Subject to the terms and conditions of this Agreement (including Article V), each Lender severally and for itself alone agrees that it will make Loans pursuant to its Commitment described in this Section 2.1. From time to time, on any Business Day occurring prior to the Maturity Date, each Lender will make Loans to the Borrower equal to such Lender's Percentage of the aggregate amount of the Borrowing requested by the Borrower to be made by all Lenders on such day. No Lender shall be required to make any Loan if, after giving effect thereto, the aggregate outstanding principal amount of all Loans (determined in the case of Loans denominated in a currency other than Dollars on the basis of the Dollar Equivalent thereof) of all Lenders would exceed the Commitment Amount. Subject to the terms hereof, the Borrower may from time to time borrow, repay and reborrow Loans under this Agreement.

(b) Borrowing Procedure. By delivering a Borrowing Request to the Agent on a Business Day on or before 10:00 a.m. (New York City time), the Borrower may from time to time irrevocably request a Loan to be made (a) (i) in respect of any Borrowing comprised of Loans denominated in Dollars bearing interest at the LIBO Rate, on not less than three nor more than five Business Days' notice, and in respect of any Borrowing comprised of (ii) Loans denominated in an Alternate Currency bearing interest at the LIBO Rate, on not less than five nor more than ten Business Days, notice and (b) in respect of any Borrowing comprised of Loans denominated in Dollars bearing interest at the Alternate Base Rate, on not less than one Business Day's notice. Each Borrowing Request must be in an aggregate minimum amount of $10,000,000 and in integral multiples of $1,000,000, or the Foreign Currency Equivalent thereof in the case of Loans made in an Alternate Currency. Subject to the terms and conditions of this Agreement, each Borrowing shall be made on the Business Day specified in the Borrowing Request therefor. On such Business Day, each Lender shall deposit in an account maintained with the Agent same day funds, on or before 11:00 a.m. (New York City time) (or, in the case of Loans denominated in a currency other than Dollars, on or before a mutually agreed upon time), in an amount equal to such Lender's Percentage of the requested Borrowing in the relevant currency, such deposit to be made to such account as the Agent shall specify from time to time by notice to the Lenders. No

Lender's obligation to make any Loan shall be affected by any other Lender's failure to make any Loan.

SECTION 2.2. Reduction of the Commitment Amount. The Commitment Amount is subject to reduction from time to time pursuant to this Section. The Borrower may, from time to time on any Business Day voluntarily reduce the Commitment Amount; provided, however, that all such reductions under this Section shall be subject to Section 3.2(b), require at least three Business Days' prior notice to the Agent, be permanent, be applied to the Lenders' Revolving Commitment Amounts pro rata in accordance with their respective Percentages, and any partial reduction of the Commitment Amount shall be in a minimum amount of $10,000,000 and in an integral multiple of $5,000,000.

SECTION 2.3. Continuation and Conversion Elections. By delivering a Continuation/Conversion Notice to the Agent on or before 11:00 a.m. (New York City time) on a Business Day, the Borrower may from time to time irrevocably elect, on not less than three nor more than five Business Days' notice, that all, or any portion in an aggregate minimum amount of $5,000,000 and an integral multiple of $1,000,000 or the Foreign Currency Equivalent thereof, of the Loans be, (a) in the case of Base Rate Loans, converted into LIBO Rate Loans, (b) in the case of LIBO Rate Loans denominated in Dollars, be converted into Base Rate Loans or continued as LIBO Rate Loans, or (c) in the case of LIBO Rate Loans denominated in an Alternate Currency, continued as LIBO Rate Loans in the same Currency.

In the absence of delivery of a Continuation/Conversion Notice with respect to LIBO Rate Loans at least three Business Days' before the last day of the then current Interest Period with respect thereto,

(a) LIBO Rate Loans denominated in Dollars shall be converted automatically on such last day to Base Rate Loans, and

(b) LIBO Rate Loans denominated in an Alternate Currency shall be continued as Loans in the relevant Alternate Currency at a rate per annum equal to the LIBO Alternate Rate for such relevant Currency plus the applicable margin for the shortest available interest period selected by the Agent in its sole discretion (but not later than the Maturity Date).

Each such conversion and continuation shall be prorated among the applicable outstanding Loans of all Lenders, and no portion of the outstanding principal amount of any Loans may be continued as, or be converted into, LIBO Rate Loans when any Default has occurred and is continuing. The Agent shall promptly notify each Lender of the applicable interest period and interest rate.

SECTION 2.4. Funding. Each Lender may, if it so elects, fulfill its obligation to make, continue or convert LIBO Rate Loans hereunder by causing one of its foreign branches or Affiliates (or an international banking facility created by such Lender) to make, continue or convert such LIBO Rate Loan; provided, however, that such LIBO Rate Loan shall nonetheless be deemed to have been made and to be held by such Lender, and the obligation of the Borrower to repay such LIBO Rate Loan shall nevertheless be to such Lender for the account of such

foreign branch, Affiliate or international banking facility. In addition, the Borrower hereby consents and agrees that, for purposes of any determination to be made for purposes of Section 4.1, 4.2, 4.3 it shall be conclusively assumed that each Lender elected to fund all LIBO Rate Loans by purchasing deposits in the relevant currency in the relevant interbank eurodollar market.

SECTION 2.5. Notes. Each Lender's Loans shall be evidenced by a Note payable to the order of such Lender in a principal amount equal to such Lender's original Revolving Commitment Amount. The Borrower hereby irrevocably authorizes each Lender to make (or cause to be made) appropriate notations on the grid attached to such Lender's Note (or on any continuation of such grid), which notations, if made, shall evidence, inter alia, the date of, the outstanding principal of and Interest Period applicable to the Loans evidenced thereby. Such notations shall constitute prima facie evidence of the accuracy of the information so recorded; provided, however, that the failure of any Lender to make any such notations shall not limit or otherwise affect any obligations of the Borrower.

SECTION 2.6. Multicurrency Loans.

SECTION 2.6.1. Notification of Request. If any Borrowing Request requests a Borrowing in an Alternate Currency, the Agent shall in the notice given to the Lenders pursuant to Section 2.1 give details of such request including, without limitation, the aggregate principal amount of the Borrowing in such Alternate Currency to be made by each Lender pursuant to this Agreement.

SECTION 2.6.2. Availability. Each Lender shall be treated as having confirmed that the Alternate Currency requested is Available to it unless no later than 10:00 a.m. (New York City time) on the third Business Day before the Borrowing it shall have notified the Agent that such Alternate Currency is not Available.

SECTION 2.6.3. Notification of Availability. No later than 2:00 p.m. (New York City time) on the third Business Day before the proposed Borrowing the Agent shall notify the Borrower and the Lenders if it has received notification from any of the Lenders that the Alternate Currency is not Available.

SECTION 2.6.4. Consequences of Availability. If the Agent does not notify the Borrower and the Lenders that the Agent has received notification from any of the Lenders that the Alternate Currency requested is not Available, the Lenders shall, on the proposed date of the Borrowing specified in the Borrowing Request become obligated, subject to this Section 2.6, to make the LIBO Rate Loan in accordance with the provisions of this Agreement.

SECTION 2.6.5. Unexpected Non-Availability. If, at any time before 10:00 a.m. (New York City time) on the proposed Borrowing date, any Lender shall have determined that the Alternate Currency in which it is obliged to make a LIBO Rate Loan is no longer Available to it by reason that, under the then current legislation or regulations of the country of incorporation of such Lender or the country of such Alternate Currency (or the then policy of the central bank of such country) or the Bank of England or the F.R.S. Board, such Alternate Currency is not or will not be permitted to be used for the purposes of this Agreement, then such Lender shall give

notice to the Agent (and shall include in such notice a statement of which other Alternate Currencies are not Available to such Lender), and the Agent shall give notice to the Borrower, and the obligation of such Lender to make its share of such Borrowing in such Alternate Currency shall be replaced on the following basis:

(a) The Borrower shall be entitled to notify the Agent (which shall promptly notify each affected Lender) not later than 10:00 a.m. (New York City time) on the third Business Day before the proposed Borrowing, that the Borrower elects either that the said obligation of the relevant Lender shall be:

(i) replaced by an obligation to make a Loan in Dollars by that Lender having an aggregate principal amount equal to its share of such Borrowing in the Alternate Currency, rounded, if necessary, as the Agent shall decide, which such Lender would otherwise have been required to make; or

(ii) replaced by an obligation to make a LIBO Rate Loan in an Alternate Currency by that Lender in an Alternate Currency (other than any Alternate Currency which such Lender shall have stated, as provided above, is not Available to it), such Alternate Currency having an aggregate principal amount which is, on the date on which such notification is actually received by the Agent, the equivalent amount of its share of such Borrowing, rounded, if necessary, as the Agent shall decide, which such Lender would otherwise have been requested to make.

(b) For purposes of clauses (i) and (ii) of paragraph (a) of this Section, any rounding in the amount of Loans by the Agent shall not result in any Lender making Loans in an aggregate principal amount exceeding such Lender's Commitment.

(c) If the Borrower has not notified the Agent as provided in paragraph (a) above, the obligation of the Lender shall be replaced by such an obligation as is mentioned in clause 2.7.5(a)(i).

If such Lender shall be required under paragraph (a) or paragraph (b) of Section 2.6.5 to make the Loan mentioned therein, such Borrowing shall be made on the date of the proposed Borrowing, shall have the same Interest Period as the Alternate Currency Advance which it replaces and the applicable interest rate shall be calculated in accordance with Section 3.3.1 (as though such Borrowing were a separate Loan denominated in Dollars or, as the case may be, in the relevant Alternate Currency).

SECTION 2.6.6. Consequences of Non-Availability. If the Agent notifies the Borrower pursuant to Section 2.6.3 that any of the Lenders has notified the Agent that the Alternate Currency is not Available, such notification shall revoke the relevant Borrowing Request.

ARTICLE III

REPAYMENT, PREPAYMENTS, INTEREST AND FEES

SECTION 3.1. Repayment.

(a) The Borrower shall repay in full the unpaid principal amount of all Loans on the Maturity Date.

(b) The Borrower shall, immediately upon any acceleration of the Maturity Date of any Loans pursuant to Section 8.2 or Section 8.3, repay the aggregate unpaid principal amount of all Loans so accelerated.

SECTION 3.2. Prepayments.

(a) The Borrower may, from time to time on any Business Day, make a voluntary prepayment, in whole or in part, of the outstanding principal amount of any Loans; provided, however, that

(i) any such prepayment shall be made pro rata among Loans of the same type and, if applicable, having the same Interest Period of all Lenders,

(ii) all such voluntary prepayments shall require at least three Business Days' prior written notice to the Agent, and

(iii) all such voluntary partial prepayments shall be in an aggregate minimum amount of $5,000,000 and an integral multiple of $1,000,000 or, if denominated in a Currency other than Dollars, the Foreign Currency Equivalent thereof, rounded to the nearest one million units of such Currency.

(b) The Borrower shall, on each date when any reduction in the Commitment Amount shall become effective including pursuant to Section 2.2, make a mandatory prepayment of Loans equal to the excess, if any, of the aggregate outstanding principal amount of all Loans over the Commitment Amount as so reduced.

(c) On the date of the making of any Loan and on the date of a Continuation/Conversion Notice with respect to any Loan or at any other time periodically, the Agent shall determine that the aggregate principal amount of all Loans outstanding (after converting all Loans denominated in Alternate Currencies or Non-Major Alternate Currencies to their Dollar Equivalent on the date of calculation) is greater than 100% of the Commitment Amount then in effect, the Borrower shall, upon three Business Days, written notice from the Agent, prepay an aggregate principal amount of such Loans denominated in Alternate Currencies or Non-Major Alternate Currencies, as the case may be, such that the Dollar Equivalent of the outstanding principal amount of such Loans, when added to the aggregate principal amount of all Loans outstanding denominated in Dollars, does not exceed the Commitment Amount.

(d) Each prepayment of any Loans made pursuant to this Section shall be without premium or penalty, except as may be required by Section 4.4. No voluntary prepayment of principal of any Loans shall cause a reduction in the Commitment Amount.

SECTION 3.3. Interest Provisions. Interest on the outstanding principal amount of Loans shall accrue and be payable in accordance with this Section 3.3.

SECTION 3.3.1. Rates. Pursuant to an appropriately delivered Borrowing Request or Continuation/Conversion Notice, the Borrower may elect that the Loans accrue interest at a rate per annum:

(a) on that portion maintained from time to time as Base Rate Loans, equal to the Alternate Base Rate from time to time in effect;

(b) on that portion maintained as LIBO Rate Loans, during each Interest Period applicable thereto, equal to the sum of the LIBO Rate (Reserve Adjusted) or the LIBO Alternate Rate, as the case may be, applicable to the relevant Currency for such Interest Period plus the margin set forth below opposite the Borrower's Senior Debt Ratings in the following table:

If the Borrower's Senior Debt Ratings are		**The Applicable Margin is**
S&P	**Moody's**	
A+ or above	A1 or above	15.50 b.p.
A	A2	23.00 b.p.
A-	A3	31.50 b.p.
BBB+	Baa1	39.50 b.p.
BBB	Baa2	50.00 b.p.
BBB- or below	Baa3 or below	70.00 b.p.

If, during any Interest Period, there is any change in such Senior Debt Ratings which would result in an adjustment in the Applicable Margin, such adjustment shall be effective as of the date on which such change occurs. For purposes of determining the Applicable Margin, if Moody's and S&P have split Senior Debt Ratings with a difference of only one rating tier, the higher Senior Debt Rating shall be determinative and the lower Senior Debt Rating shall be disregarded, and if Moody's and S&P have split Senior Debt Ratings with a difference of more than one rating tier, the debt rating one rating tier below the higher Senior Debt Rating will be determinative and both Senior Debt Ratings will be disregarded; and

provided, however, that if the interest rate elected by the Borrower exceeds the highest lawful rate, then the applicable interest rate per annum for any Loan shall be the highest lawful rate.

The "LIBO Alternate Rate" means, with respect to any Loan for which a Continuation/Conversion Notice has not been delivered in accordance with Section 2.3 that is denominated in any Alternate/Currency, relative to the interest period therefor selected by the Agent in its sole discretion,

(a) in the case of Loans denominated in Sterling, the sum of

(i) the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates per annum at which Sterling deposits in immediately available funds are offered to the Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. (London time) on the first day of such interest period for delivery on the first day of such interest period, and in an amount approximately equal to the relevant amount and for a period approximately equal to such interest period;

plus

(ii) Associated Costs; and

(b) in the case of Loans denominated in Alternate Currencies other than Sterling, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates per annum at which the relevant Currency deposits in immediately available funds are offered to the Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. (London time) two Business Days prior to the beginning of such interest period for delivery on the first day of such interest period, and in an amount approximately equal to the relevant amount and for a period approximately equal to such interest period.

If the relevant amount is all or part of a LIBO Rate Loan in an Alternate Currency which became due and payable on a day other than the last day of the Interest Period relating thereto, the first such interest period selected by the Agent shall be of a duration equal to the unexpired portion of the such Interest Period. The LIBO Alternate Rate for any interest period for any Loan bearing interest at the LIBO Alternate Rate will be determined by the Agent on the basis of information in effect on, and the applicable rates furnished to and received by the Agent from the Reference Lender, (x) in the case of Sterling, on the first day of such interest period, or (y) in the case of Alternate Currencies (other than Sterling), two Business Days before the first day of such interest period, subject, however, to the provisions of Section 3.3.4. If for any such interest period selected by the Agent, adequate means do not exist for the Reference Lender to determine the LIBO Alternate Rate for any Currency as set forth above, the LIBO Alternate Rate for such Currency shall be determined by reference to the cost to the Reference Lender of obtaining deposits of such Currency from such sources as the Reference Lender may reasonably select. The Agent shall determine the LIBO Alternate Rate for each such interest period (which determination shall be conclusive in the absence of manifest error), and will promptly give notice to the Borrower and the Lenders thereof.

The "LIBO Rate (Reserve Adjusted)" means, relative to any Loan to be made, continued or maintained as, or converted into, a LIBO Rate Loan bearing interest at the LIBO Rate or the LIBO Alternate Rate, as the case may be, for any Interest Period,

(a) which is denominated in Dollars, a rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) determined pursuant to the following formula:

$$\text{LIBO Rate (Reserve Adjusted)} = \frac{\text{LIBO Rate}}{\text{1.00 - LIBOR Reserve Percentage}}$$

(b) which is denominated in Sterling, a rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) determined pursuant to the following formula:

LIBO Rate (Reserve Adjusted)	=	LIBO Rate	+	Associated Costs

(c) which is denominated in any other Alternate Currency, the relevant LIBO Rate or LIBO Alternate Rate, as the case may be, plus any applicable reserve or other funding costs incurred by the Lenders in making such Loan.

The LIBO Rate (Reserve Adjusted) for any Interest Period for LIBO Rate Loans will be determined by the Agent on the basis of the LIBOR Reserve Percentage in effect on, and the applicable rates furnished to and received by the Agent from the Reference Lender, two Business Days before the first day of such Interest Period, subject, however, to the provisions of Section 3.3.4.

"LIBO Rate" means, relative to any Interest Period,

(a) with respect to LIBO Rate Loans denominated in Dollars, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates per annum at which Dollar deposits in immediately available funds are offered to the Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. London time two Business Days prior to the beginning of such Interest Period for delivery on the first day of such Interest Period, and in an amount approximately equal to the amount of the Reference Lender's LIBO Rate Loan and for a period approximately equal to such Interest Period;

(b) with respect to LIBO Rate Loans denominated in any Alternate Currency, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/10,000 of 1%) for the relevant Alternate Currency for a period equal to such Interest Period which appears

(i) with respect to Sterling, on Telerate, Page 3750;

(ii) with respect to Euros, on Telerate Page 3750;

(iii) with respect to Deutschemarks, on Telerate Page 3750; and

(iv) with respect to Yen, on Telerate Page 3750;

as of 11:00 a.m. (London time) (x) in the case of Sterling, on the first day of such Interest Period, or (y) in the case of Alternate Currencies (other than Sterling), two Business Days before the first day of such Interest Period, or, if fewer than two such offered rates appear on the relevant Telerate Page, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/10,000 of 1%) of the rates per annum at which deposits in the relevant Alternate Currency in immediately available funds are offered to the Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. (London time) (x) in the case of Sterling, on the first day of such Interest Period, or (y) in the case of Alternate Currencies (other than

Sterling), two Business Days before the first day of such Interest Period for delivery on the first day of such Interest Period, and in an amount approximately equal to the amount of the Loans requested and for a period approximately equal to such Interest Period.

"LIBOR Reserve Percentages" means, relative to any Interest Period for LIBO Rate Loans, the reserve percentage (expressed as a decimal) equal to the maximum aggregate reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) specified under regulations issued from time to time by the F.R.S. Board and then applicable to assets or liabilities consisting of and including "Eurocurrency Liabilities", as currently defined in Regulation D of the F.R.S. Board, having a term approximately equal or comparable to such Interest Period.

All LIBO Rate Loans shall bear interest from and including the first day of the applicable Interest Period to (but not including) the last day of such Interest Period at the interest rate determined as applicable to such LIBO Rate Loan.

SECTION 3.3.2. Post-Maturity Rates. After the date any principal amount of any Loan is due and payable (whether on the Maturity Date, upon acceleration or otherwise), or after any other monetary Obligation shall have become due and payable, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such amounts at a rate per annum equal to the Alternate Base Rate plus a margin of 2% for Loans denominated in Dollars and, with respect to Loans denominated in an Alternate Currency, at a rate per annum equal to the LIBO Rate or LIBO Alternate Rate, as the case may be, in such Alternate Currency plus a margin of 2%.

SECTION 3.3.3. Payment Dates. Interest accrued on each Loan shall be payable, without duplication:

(a) on the Maturity Date;

(b) on the date of any payment or prepayment, in whole or in part, of principal outstanding on such Loan;

(c) with respect to LIBO Rate Loans, on the last day of each applicable Interest Period (and, if such Interest Period shall exceed three months, on each three (and integral multiple of three) month anniversary of the making of such Loan);

(d) with respect to Base Rate Loans, on each Quarterly Payment Date;

(e) with respect to any Base Rate Loans converted into LIBO Rate Loans on a day when interest would not otherwise have been payable pursuant to clause (d), on the date of such conversion; and

(f) on that portion of any Loans the Maturity Date of which is accelerated pursuant to Section 8.2 or Section 8.3, immediately upon such acceleration.

Interest accrued on Loans or other monetary Obligations arising under this Agreement or any other Loan Document after the date such amount is due and payable (whether on the Maturity Date, upon acceleration or otherwise) shall be payable upon demand.

SECTION 3.3.4. Interest Rate Determination. The Reference Lender agrees to furnish to the Agent timely information for the purpose of determining the LIBO Rate and the LIBO Alternate Rate. The Agent shall provide each Lender with the LIBO Rate applicable to each LIBO Rate Loan within two Business Days prior to the making of such LIBO Rate Loan.

SECTION 3.4. Fees. The Borrower agrees to pay the fees set forth in this Section 3.4. All such fees shall be nonrefundable.

SECTION 3.4.1. Facility Fee. The Borrower agrees to pay to the Agent for the pro rata account of each Lender, in accordance with such Lender's Percentage, an annual facility fee equal to the Commitment Amount multiplied by the fee set forth below opposite the Borrower's Senior Debt Ratings during the quarter for which the fee is calculated (any change in such Senior Debt Ratings to result in an adjustment in the applicable facility fee, such adjustment to be effective as of the date on which such change occurs):

If the Borrower's Senior Debt Ratings Are		The Facility Fee Is
S&P	**Moody's**	
A+ or above	A1 or above	6.00 b.p.
A	A2	7.00 b.p.
A-	A3	8.50 b.p.
BBB+	Baa1	10.50 b.p.
BBB	Baa2	12.50 b.p.
BBB- or below	Baa3 or below	17.50 b.p.

provided that, for purposes of determining the facility fee, if Moody's and S&P have split Senior Debt Ratings with a difference of only one rating tier, the higher Senior Debt Rating shall be determinative and the lower Senior Debt Rating shall be disregarded, and provided, further, if Moody's and S&P have split Senior Debt Ratings with a difference of more than one rating tier, the debt rating one rating tier below the higher Senior Debt Rating will be determinative and both Senior Debt Ratings will be disregarded.

The facility fee payable under this Section shall be based on the average daily Commitment Amount from the date hereof to and including the Maturity Date, such fee to be payable quarterly in arrears on each Quarterly Payment Date and on the Maturity Date, and regardless of the amount of Loans outstanding under this Agreement; provided, however, that in the event a Commitment Termination Event has occurred, such that the Commitments of the

Lenders hereunder are terminated, the Borrower shall only be obligated to pay such facility fee to the extent that it has accrued up to the date of such Commitment Termination Event.

SECTION 3.4.2. Utilization Fee. The Borrower agrees to pay to the Agent for the pro rata account of each Lender, in accordance with such Lender's Loans, a utilization fee for each day from the date hereof to and including the Maturity Date for each day that the aggregate principal amount of Loans outstanding on the close of business (if a Business Day) of such day is equal to or greater than 50% of the sum of the Commitment Amount. The utilization fee shall accrue at all times, including at any time during which one or more of the conditions in Article V is not met. If applicable, such utilization fee shall be equal to the aggregate principal amount of all Loans outstanding on the close of business (if a Business Day) of such day multiplied by the Utilization Fee Rate set forth below opposite the Borrower's Senior Debt Ratings during the day for which the fee is calculated (any change in such Senior Debt Ratings to result in an adjustment in the applicable utilization fee, such adjustment to be effective as of the date on which such change occurs), payable quarterly in arrears on each Quarterly Payment Date and on the Maturity Date:

If the Borrower's Senior Debt Ratings Are		Utilization Fee Rate
S&P	**Moody's**	
A+ or above	A1 or above	10.00 b.p.
A	A2	10.00 b.p.
A-	A3	10.00 b.p.
BBB+	Baa1	12.50 b.p.
BBB	Baa2	12.50 b.p.
BBB- or below	Baa3 or below	12.50 b.p.

provided that, for purposes of determining the utilization fee, if Moody's and S&P have split Senior Debt Ratings with a difference of only one rating tier, the higher Senior Debt Rating shall be determinative and the lower Senior Debt Rating shall be disregarded, and provided, further, if Moody's and S&P have split Senior Debt Ratings with a difference of more than one rating tier, the debt rating one rating tier below the higher Senior Debt Rating will be determinative and both Senior Debt Ratings will be disregarded.

SECTION 3.4.3. Agent's Fees. The Borrower agrees to pay to the Agent and the Lead Arranger for their own accounts, fees in such amounts and on such dates as are set forth in the Transaction Fee Letter.

ARTICLE IV

CERTAIN LIBO RATE AND OTHER PROVISIONS

SECTION 4.1. Fixed Rate Lending Unlawful. If any Lender shall determine (which determination shall, upon notice thereof to the Borrower and the Lenders, be conclusive and binding on the Borrower) that the introduction of or any change in or in the interpretation of any law makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for such Lender to make, continue or maintain any Loan as, or to convert any Loan into, a LIBO Rate Loan , the obligations of all Lenders to make, continue, maintain or convert any such Loans shall, upon such determination, forthwith be suspended until such Lender shall notify the Agent that the circumstances causing such suspension no longer exist, and (a) all LIBO Rate Loans denominated in Dollars shall automatically convert into Base Rate Loans at the end of the then current Interest Periods with respect thereto or sooner, if required by such law or assertion; and (b) all LIBO Rate Loans denominated in any Alternate Currency shall automatically become due and payable at the end of the then current Interest Periods with respect thereto or sooner, if required by applicable law.

SECTION 4.2. Deposits Unavailable. If the Agent shall have determined that:

(a) Dollar deposits in the relevant amount and for the relevant Interest Period are not available to the Reference Lender in their relevant market; or

(b) by reason of circumstances affecting the Reference Lender's relevant market, adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBO Rate Loans, then, upon notice from the Agent to the Borrower and the Lenders, the obligations of all Lenders under clause (b) of Section 2.1 to make or continue any Loans as, or to convert any Loans into, LIBO Rate Loans shall forthwith be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

SECTION 4.3. Increased LIBO Rate Loan Costs, etc. The Borrower agrees to reimburse each Lender for any increase in the cost to such Lender of, or any reduction in the amount of any sum receivable by such Lender in respect of, making, continuing or maintaining (or of its obligation to make, continue or maintain) any Loans as, or of converting (or of its obligation to convert) any Loans into, LIBO Rate Loans, including, without limitation, by reason of any requirements imposed by the Bank of England upon the making or funding of LIBO Rate Loans. Such Lender shall promptly notify the Agent and the Borrower in writing of the occurrence of any such event, such notice to state, in reasonable detail, the reasons therefor and the additional amount required fully to compensate such Lender for such increased cost or reduced amount. Such additional amounts shall be payable by the Borrower directly to such Lender within five days of its receipt of such notice, and such notice shall, in the absence of manifest error, be conclusive and binding on the Borrower.

SECTION 4.4. Funding Losses. In the event any Lender shall incur any loss or expense by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to make, continue or maintain any portion of the principal amount of any Loan as, or to convert

any portion of the principal amount of any Loan into, a LIBO Rate Loan as a result of (a) any repayment or prepayment of the principal amount of any LIBO Rate Loans on a date other than the scheduled last day of the Interest Period applicable thereto, whether pursuant to Section 3.1, Section 3.2 or otherwise; (b) any Loans not being made as LIBO Rate Loans in accordance with the Borrowing Request therefor; or (c) any Loans not being continued as, or converted into LIBO Rate Loans in accordance with the Continuation/Conversion Notice therefor then, upon the written notice of such Lender to the Borrower (with a copy to the Agent), the Borrower shall, within five days of its receipt thereof, pay directly to such Lender such amount as will (in the reasonable determination of such Lender) reimburse such Lender for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower.

SECTION 4.5. Increased Capital Costs. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other governmental authority after the date hereof affects or would affect the amount of capital required or expected to be maintained by any Lender, and such Lender determines (in its sole and absolute discretion) that the rate of return on its capital as a consequence of its Commitment or the Loans made by such Lender is reduced to a level below that which such Lender could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by such Lender to the Borrower, the Borrower shall immediately pay directly to such Lender additional amounts sufficient to compensate such Lender for such reduction in rate of return. A statement of such Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, such Lender may use any method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable.

SECTION 4.6. Taxes. All payments by the Borrower of principal of, and interest on, the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, but excluding franchise taxes (in lieu of net income taxes) and taxes imposed on or measured by any Lender's net income or receipts (such nonexcluded items being called "Taxes"). In the event that any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Borrower will:

(a) pay directly to the relevant authority the full amount required to be so withheld or deducted;

(b) promptly forward to the Agent an official receipt or other documentation satisfactory to the Agent evidencing such payment to such authority; and

(c) pay to the Agent for the account of the Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender

will equal the full amount such Lender would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Agent or any Lender with respect to any payment received by the Agent or such Lender hereunder, the Agent or such Lender may pay such Taxes and the Borrower will promptly pay such additional amounts (including any penalties, interest or

expenses) as is necessary in order that the net amount received by such person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such person would have received had not such Taxes been asserted.

If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Agent, for the account of the respective Lenders, the required receipts or other required documentary evidence, the Borrower shall indemnify the Lenders for any incremental Taxes, interest or penalties that may become payable by any Lender as a result of any such failure. For purposes of this Section 4.6, a distribution hereunder by the Agent or any Lender to or for the account of any Lender shall be deemed a payment by the Borrower.

Upon the request of the Borrower or the Agent, each Lender and Assignee Lender that is organized under the laws of a jurisdiction other than the United States shall, on or prior to the date hereof (in the case of each Lender that is a party hereto on the date hereof) or on or prior to the date of any assignment hereunder (in the case of an Assignee Lender) and thereafter as reasonably requested from time to time by the Borrower or Agent, execute and deliver to the Borrower and the Agent, one or more (as the Borrower or the Agent may reasonably request) United States Internal Revenue Service Forms W-8EC or Forms W-8BEN or such other forms or documents (or successor forms or documents), appropriately completed, as may be applicable to establish the extent, if any, to which a payment to such Lender is exempt from, or entitled to a reduced rate of, withholding or deduction of Taxes.

SECTION 4.7. Payments, Computations, etc.

(a) Unless otherwise expressly provided, all payments by the Borrower pursuant to this Agreement, the Notes or any other Loan Document shall be made by the Borrower to the Agent for the pro rata account of the Lenders entitled to receive such payment.

(b) All such payments required to be made to the Agent shall be made, without setoff, deduction or counterclaim, by means of wire transfer to be initiated (i) in the case of Loans denominated in Dollars, not later than 11:00 a.m. (New York City time) and (ii) in the case of Loans denominated in a currency other than Dollars, not later than the time reasonably specified by the Agent, in each case on the date due, in same day or immediately available funds, in the applicable currency, to such account as the Agent shall specify from time to time by notice to the Borrower. Funds for which the wire transfer was initiated after the times specified in the preceding sentence shall be deemed to have been received by the Agent on the next succeeding Business Day. The Agent shall promptly remit in same day funds, in the applicable currency, to each Lender its share, if any, of such payments received by the Agent for the account of such Lender.

(c) Subject to the calculation of interest provided in the definition of "Associated Costs", all interest and fees shall be computed on the basis of the actual number of days (including the first day but excluding the last day) occurring during the period for which such interest or fees is payable over a year comprised of 360 days (or, in the case of interest on Base Rate Loans, 365 days or, if appropriate, 366 days). whenever any payment to be made shall otherwise be due on a day which is not a Business Day, such payment shall (except as otherwise required by clause (c) of the definition of the term "Interest Period") be made on the next succeeding Business Day and such extension of time shall be included in computing interest in connection with such payment.

(d) Each Lender will use its best efforts to notify the Borrower of any event that will entitle such Lender to compensation or reimbursement (including on a prospective basis) pursuant to Article IV hereof (including pursuant to Sections 4.5 and 4.6), as promptly as practicable after it obtains knowledge thereof, but the failure to give such notice shall not impair the right of such Lender to receive compensation or reimbursement under this Section.

(e) Each Lender shall determine the applicability of, and the amount due under, Article IV hereof (including Sections 4.5 and 4.6) consistent with the manner in which it applies similar provisions and calculates similar amounts payable to it by other borrowers having in their credit agreements provisions comparable to those contained in Article IV.

SECTION 4.8. Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Sections 4.3, 4.4 and 4.5) in excess of its pro rata share of payments then or therewith obtained by all Lenders, such Lender shall purchase from the other Lenders such participations in Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided, however, that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such recovery together with an amount equal to such selling Lender's ratable share (according to the proportion of

(a) the amount of such selling Lender's required repayment to the purchasing Lender

to

(b) 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 may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 4.9) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. If under any applicable bankruptcy, insolvency or other

similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

SECTION 4.9. Setoff. Each Lender shall, upon the occurrence of any Event of Default described in clauses (a) through (d) of Section 8.1.9 or, upon the occurrence of any other Event of Default, have the right to appropriate and apply to the payment of the obligations owing to it (whether or not then due)

any and all balances, credits, deposits, accounts or moneys of the Borrower then or thereafter maintained with such Lender or any Affiliate of such Lender; provided, however, that any such appropriation and application shall be subject to the provisions of Section 4.8. Each Lender agrees promptly to notify the Borrower and the Agent after any such setoff and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff under applicable law or otherwise) which such Lender may have.

SECTION 4.10. Use of Proceeds. The Borrower shall use the proceeds of the Loans for general corporate purposes and for commercial paper backup; without limiting the foregoing, no proceeds of any Loan will be used to acquire any equity security of a Person as part of a hostile takeover.

ARTICLE V

CONDITIONS PRECEDENT

SECTION 5.1. Conditions Precedent to the Obligations of the Lenders. The obligations of the Lenders under this Agreement shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 5.1.

SECTION 5.1.1. Resolutions, etc. The Agent shall have received from the Borrower a certificate, dated the same date as this Agreement, of its Secretary or Assistant Secretary as to

(a) resolutions of its Board of Directors then in full force and effect authorizing the execution, delivery and performance of this Agreement, the Notes and each other Loan Document to be executed by it,

(b) the incumbency and signatures of those of its officers authorized to act with respect to this Agreement, the Notes and each other Loan Document executed by it, upon which certificate each Lender may conclusively rely until it shall have received a further certificate of the Secretary of the Borrower canceling or amending such prior certificate, and

(c) true and correct copies of the Organic Documents of the Borrower.

SECTION 5.1.2. Officer's Certificate. The Agent shall have received a certificate, dated the date of this Agreement, signed by an Authorized Officer of the Borrower certifying (a) that on such date (both before and after giving effect to the making of any Loans hereunder on such

date) no Default or Event of Default has occurred and is continuing, (b) each of the representations and warranties set forth in Article VI of this Agreement is true and correct on and as of such date and (c) that there has been no event or circumstance since November 30, 2002 which has or could be reasonably expected to have a Material Adverse Effect.

SECTION 5.1.3. Closing Fees, Expenses, etc. The Agent shall have received for its own account and the Lead Arranger all fees, costs and expenses due and payable pursuant to Sections 3.4.3 and 10.3, if then invoiced.

SECTION 5.1.4. Delivery of Financial Information. The Agent shall have received, with copies for each Lender, audited consolidated balance sheets of the Borrower and its Subsidiaries as at November 30, 2002 and the related statements of earnings and cash flow, and unaudited balance sheets of the Borrower and its Subsidiaries as of the end of the Fiscal Quarter ending February 28, 2003 and consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries for such Fiscal Quarter, certified by an Authorized Officer of the Borrower.

SECTION 5.1.5. Delivery of Notes. The Agent shall have received for the account of each Lender its Note duly executed and delivered by the Borrower with respect to such Lender's Commitment.

SECTION 5.1.6. Opinion of Counsel. The Agent shall have received an opinion of Robert W. Skelton, General Counsel of the Borrower or any Associate General Counsel of the Borrower, dated the date of this Agreement and addressed to the Agent and all Lenders, substantially in the form of Exhibit F hereto.

SECTION 5.2. Conditions Precedent to Borrowings. The obligation of each Lender to fund any Loan on the occasion of any Borrowing (including the initial Borrowing) shall be subject to the satisfaction of each of the conditions precedent set forth in this Section 5.2.

SECTION 5.2.1. Compliance with Warranties, No Default, etc. Both before and after giving effect to any Borrowing, the following statements shall be true and correct:

(a) the representations and warranties set forth in Article VI (other than the representations and warranties set forth in Sections 6.6 and 6.7) shall be true and correct with the same effect as if then made (unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date); and

(b) no Default or Event of Default shall have then occurred and be continuing.

SECTION 5.2.2. Borrowing Request. The Agent shall have received a Borrowing Request for such Borrowing. Each of the delivery of a Borrowing Request and the acceptance by the Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Borrowing (both immediately before and after giving effect to such Borrowing and the application of the proceeds thereof) the statements made in Section 5.2.1 are true and correct.

SECTION 5.2.3. Satisfactory Legal Form. All documents executed or submitted pursuant hereto by or on behalf of the Borrower shall be reasonably satisfactory in form and substance to the Agent and its counsel (and the execution of this Agreement by the Agent shall be deemed to evidence such satisfaction); the Agent and its counsel shall have received all non-confidential information, approvals, opinions, documents or instruments as the Agent or its counsel may reasonably request.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders and the Agent to enter into this Agreement and to make Loans hereunder, the Borrower represents and warrants as follows as of the Effective Date, and thereafter, as of the date of each Borrowing to the extent set forth in clause (a) of Section 5.2.1.

SECTION 6.1. Organization, etc. The Borrower and each of its Subsidiaries is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the laws of the State of its incorporation or organization, is duly qualified to do business and is in good standing in each jurisdiction where the nature of its business requires such qualification, except where the failure to so qualify will not have a Material Adverse Effect, and has full power and authority and holds all requisite governmental licenses, permits and other approvals to enter into and perform its Obligations under this Agreement, the Notes and each other Loan Document to which it is a party and to own or hold under lease its property and to conduct its business substantially as currently conducted by it.

SECTION 6.2. Due Authorization, Non-Contravention etc. The execution, delivery and performance by the Borrower of this Agreement, the Notes and each other Loan Document executed or to be executed by it, are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not

(a) contravene the Borrower's Organic Documents;

(b) contravene any contractual restriction, law or governmental regulation or court decree or order binding on or affecting the Borrower and its Subsidiaries; or

(c) result in, or require the creation or imposition of, any Lien on any of the Borrower's properties.

SECTION 6.3. Government Approval Regulation, etc. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or other Person is required for the due execution, delivery or performance by the Borrower of this Agreement, the Notes or any other Loan Document. Neither the Borrower nor any of its Subsidiaries is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", within the meaning of the Public Utility Holding Company Act of 1935, as amended.

SECTION 6.4. Validity, etc. This Agreement constitutes, and the Notes and each other Loan Document executed by the Borrower will, on the due execution and delivery thereof, constitute, the legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms, subject to the effect of bankruptcy insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally and by general principles of equity.

SECTION 6.5. Financial Information. The consolidated balance sheets of the Borrower and its Subsidiaries as at November 30, 2002, and the related consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries, copies of which have been furnished to the Agent and each Lender, have been prepared in accordance with GAAP consistently applied, and present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at the dates thereof and the results of their operations for the periods then ended.

SECTION 6.6. No Material Adverse Change. Since the date of the financial statements described in Section 6.5 (except to the extent the information disclosed therein is modified or superseded, as the case may be, by information in the Borrower's quarterly report on Form 10-Q for the quarter ended February 28, 2003) there has been no material adverse change in the financial condition, operations, assets, business or properties of the Borrower and its Subsidiaries taken as a whole.

SECTION 6.7. Litigation, Labor Controversies, etc. There is no pending or, to the knowledge of the Borrower, threatened litigation, action, proceeding, or labor controversy affecting the Borrower or any of its Subsidiaries, or any of their respective properties, businesses, assets or revenues, which will result in a Material Adverse Effect or which purports to affect the legality, validity or enforceability of this Agreement, the Notes or any other Loan Document, except as disclosed in Item 6.7 ("Litigation") of the Disclosure Schedule.

SECTION 6.8. Subsidiaries. The Borrower has no Subsidiaries, except those Subsidiaries

(a) which are identified in Item 6.8 ("Existing Subsidiaries as of the Effective Date") of the Disclosure Schedule; or

(b) which are hereafter acquired or formed.

It being understood that Subsidiaries may merge, consolidate, liquidate and sell assets as permitted pursuant to Section 7.2.4.

SECTION 6.9. Ownership of Properties. The Borrower and each of its Subsidiaries has good and marketable title to all of its tangible properties and assets, real and personal, of any nature whatsoever, free and clear of all Liens, charges or claims except as permitted pursuant to Section 7.2.3 or Liens, charges or claims that will not have a Material Adverse Effect; and the Borrower has duly registered in the U.S. all trademarks required for the conduct of its business in the U.S., other than those as to which the lack of protection, or failure to register, would not have a Material Adverse Effect.

SECTION 6.10. Taxes. The Borrower and each of its Subsidiaries has filed all federal and all other material income tax returns and reports required by law to have been filed by it and has paid all taxes and governmental charges thereby shown to be owing, except any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

SECTION 6.11. Pension and Welfare Plans. During the twelve-consecutive-month period ending immediately prior to the date of the execution and delivery of this Agreement, no Pension Plan has been terminated, or has been subject to the commencement of any termination, that could reasonably be expected to have a Material Adverse Effect, and no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which might result in the incurrence by the Borrower or any member of the Controlled Group of any liability, fine or penalty which is likely to have a Material Adverse Effect. Except for the post-retirement benefits described in Item 6.11 ("Employee Benefit Plans") of the Disclosure Schedule, the Borrower has no contingent liability with respect to post-retirement benefits provided by the Borrower and its Subsidiaries under a Welfare Plan, other than (i) liability for continuation coverage described in Part 6 of Subtitle B of Title I of ERISA and (ii) liabilities which will not, individually or in the aggregate, have a Material Adverse Effect.

SECTION 6.12. Environmental Warranties. Except as set forth in Item 6.12 ("Environmental Matters") of the Disclosure Schedule:

(a) all facilities and property (including underlying groundwater) owned or leased by the Borrower or any of its Subsidiaries have been, and continue to be, owned or leased by the Borrower and its Subsidiaries in compliance with all Environmental Laws, except for such non-compliance which, singly or in the aggregate, will not have a Material Adverse Effect;

(b) there have been no past unresolved, and there are no pending or threatened (in writing)

(i) claims, complaints, notices or requests for information received by the Borrower or any of its Subsidiaries with respect to any alleged violation of any Environmental Law, or

(ii) complaints, written notices or inquiries to the Borrower or any of its Subsidiaries regarding potential liability under any Environmental Law,

which violation or potential liability singly or in the aggregate will have a Material Adverse Effect;

(c) there have been no Releases of Hazardous Materials at, on or under any property now or to the Borrower's knowledge previously owned or leased by the Borrower or any of its Subsidiaries that, singly or in the aggregate, have, or will have a Material Adverse Effect;

(d) the Borrower and its Subsidiaries have been issued and are in compliance with all permits, certificates, approvals, licenses and other authorizations relating to environmental matters and necessary for their businesses, except for such permits, approvals, licenses and other authorizations which, if not obtained by the Borrower, or as to which the Borrower is not in compliance (in each case singly or in the aggregate), will not have a Material Adverse Effect;

(e) no property now or, to the Borrower's knowledge, previously owned or leased by the Borrower or any of its Subsidiaries is listed or with the knowledge of the Borrower, proposed for listing (with respect to owned property only) on (i) the CERCLIS or on any similar state list of sites requiring investigation or clean-up or (ii) the National Priorities List pursuant to CERCLA; other than properties as to which any such listing will not result in a Material Adverse Effect;

(f) there are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any property now or, to the Borrower's knowledge, previously owned or leased by the Borrower or any of its Subsidiaries that, singly or in the aggregate, have, or will have, a Material Adverse Effect;

(g) to the Borrower's knowledge, neither Borrower nor any Subsidiary of the Borrower has directly transported or directly arranged for the transportation of any Hazardous Material to any location which is listed or, with the knowledge of the Borrower, proposed for listing, on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list or which is the subject of federal, state or local enforcement actions or other investigations which will lead to claims against the Borrower or such Subsidiary thereof for any remedial work, damage to natural resources or personal injury, including claims under CERCLA, which will have a Material Adverse Effect; and

(h) there are no polychlorinated biphenyls or friable asbestos present at any property owned or leased by the Borrower or any Subsidiary of the Borrower that, singly or in the aggregate, have, or will have, a Material Adverse Effect.

SECTION 6.13. Regulations U and X. No proceeds of any Loans will be used for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation U or X. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and not more than 25% of the consolidated assets of the Borrower and its Subsidiaries consists of margin stock. Terms for which meanings are provided in F.R.S. Board Regulation U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

SECTION 6.14. Accuracy of Information. Neither this Agreement nor any other document, certificate or statement furnished to the Agent or any Lender by or on behalf of the Borrower in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading, in light of the circumstances under which they were made.

SECTION 6.15. Compliance with Law; Absence of Default. The Borrower and its Subsidiaries are in compliance with all Applicable Laws the noncompliance with which would have a Material Adverse Effect and with all of the material provisions of their respective Organic Documents, and no event

has occurred or has failed to occur which has not been remedies or waived, the occurrence or non-occurrence of which constitutes (i) a Default or Event of Default or (ii) a default by the Borrower or one of its Subsidiaries under any other material indenture, agreement or other instrument, or any judgment, decree, or order to which the Borrower or such Subsidiary is a party or by which the Borrower or such Subsidiary or any of their respective properties may be bound, which would have a Material Adverse Effect.

ARTICLE VII

COVENANTS

SECTION 7.1. Affirmative Covenants. The Borrower agrees with the Agent and each Lender that, until all Obligations have been paid and performed in full, the Borrower will perform the obligations set forth in this Section 7.1.

SECTION 7.1.1. Financial Information Reports, Notices, etc. The Borrower will furnish, or will cause to be furnished, to each Lender and the Agent copies of the following financial statements, reports, notices and information:

(a) as soon as available and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter and consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter, certified by an Authorized Officer of the Borrower, it being understood and agreed that the delivery of the Borrower's Form 10-Q (as filed with the Securities and Exchange Commission) shall satisfy the requirements set forth in this clause);

(b) as soon as available and in any event within 120 days after the end of each Fiscal Year of the Borrower, a copy of the annual audit report for such Fiscal Year for the Borrower and its Subsidiaries, including therein a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Year and consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries for such Fiscal Year, in each case certified (without any Impermissible Qualification) in a manner acceptable to the Agent and the Required Lenders by Ernst & Young or other independent public accountants reasonably acceptable to the Agent and the Required Lenders (it being understood and agreed that the delivery of the Borrower's Form 10-K (as filed with the Securities and Exchange Commission) shall satisfy such delivery requirement in this clause), together with a certificate from an Authorized Officer of the Borrower containing a computation in reasonable detail of, and showing compliance with, each of the financial ratios and restrictions contained in Sections 7.2.2, 7.2.3, 7.2.4 and 7.2.5 and to the effect that, in making the examination necessary for the signing of such certificate, he has not become aware of any Default or Event of Default that has

occurred and is continuing, or, if he has become aware of such Default or Event of Default, describing such Default or Event of Default and the steps, if any, being taken to cure it;

(c) as soon as available and in any event within 60 days after the end of each Fiscal Quarter, a Compliance Certificate in substantially the form of Exhibit D hereto, executed by the Treasurer or an Authorized Officer of the Borrower, showing (in reasonable detail and with appropriate calculations and computations in all respects satisfactory to the Agent) compliance with the financial covenants set forth in Sections 7.2.2, 7.2.3, 7.2.4 and 7.2.5 and representing as to the absence of any Default;

(d) as soon as possible and in any event within three Business Days upon any officer or director of the Borrower becoming aware of the occurrence of each Default or Event of Default, a statement of the Treasurer or the chief financial Authorized Officer of the Borrower setting forth details of such Default or Event of Default and the action which the Borrower has taken and proposes to take with respect thereto;

(e) as soon as possible and in any event within five Business Days after (x) the occurrence of any adverse development with respect to any litigation, action, proceeding, or labor controversy described in Section 6.7 which will result in or is likely to result in a Material Adverse Effect or (y) the commencement of any labor controversy, litigation, action, proceeding of the type described in Section 6.7, notice thereof and copies of all documentation relating thereto;

(f) promptly after the sending or filing thereof, copies of all reports which the Borrower sends to any of its security holders, and all reports and registration statements (other than on Form S-8 or any successor form) which the Borrower or any of its Subsidiaries files with the Securities and Exchange Commission or any national securities exchange;

(g) immediately upon becoming aware of the taking of any specific actions by the Borrower or any other Person to terminate any Pension Plan (other than a termination pursuant to Section 4041(b) of ERISA which can be completed without the Borrower or any Controlled Group member having to provide more than $3,000,000 in addition to the normal contribution required for the plan year in which termination occurs to make such Pension Plan sufficient), or the failure to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a Lien under section 302(f) of ERISA, or the taking of any action with respect to a Pension Plan which would likely result in the requirement that the Borrower furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan which would likely result in the incurrence by the Borrower of any liability, fine or penalty which will have a Material Adverse Effect, or any increase in the contingent liability of the Borrower with respect to any post-retirement Welfare Plan benefit if the increase in such contingent liability will result in a Material Adverse Effect, notice thereof and copies of all documentation relating thereto;

(h) immediately upon becoming aware of any change in Borrower's Senior Debt Rating, a statement describing such change, whether such change was made by S&P, Moody's or both and the effective date of such change; and

(i) such other non-confidential information respecting the condition or operations, financial or otherwise, of the Borrower or any of its Subsidiaries as any Lender through the Agent may from time to time reasonably request.

SECTION 7.1.2. Compliance with Laws, etc. The Borrower will, and will cause each of its Subsidiaries to, comply in all respects with all Applicable Laws, except where such non-compliance would not have a Material Adverse Effect, such compliance to include (without limitation):

(a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Applicable Laws of the jurisdiction of its organization and each jurisdiction where its conduct of business requires qualification or good standing (except any Subsidiary may merge, consolidate or liquidate as permitted pursuant to Section 7.2.4), and

(b) the payment, before the same become delinquent, of all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

SECTION 7.1.3. Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, maintain, preserve, protect and keep its material properties in good repair, working order and condition, and make necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times unless the Borrower determines in good faith that the continued maintenance of any of its properties is no longer economically desirable.

SECTION 7.1.4. Insurance. The Borrower will, and will cause each of its Subsidiaries to, maintain or cause to be maintained with responsible insurance companies insurance with respect to its properties material to the business of the Borrower and its Subsidiaries against such casualties and contingencies and of such types and in such amounts as is customary in the case of similar businesses and will, upon request of the Agent, furnish to each Lender at reasonable intervals a certificate of an Authorized Officer of the Borrower setting forth the nature and extent of all insurance maintained by the Borrower and its Subsidiaries in accordance with this Section, provided, that the Borrower and its Subsidiaries may self-insure to the extent customary for similarly situated corporations engaged in the same or similar business.

SECTION 7.1.5. Books and Records. The Borrower will, and will cause each of its Subsidiaries to, keep books and records which accurately reflect all of its business affairs and material transactions and permit the Agent and each Lender or any of their respective representatives, at reasonable times and intervals, to visit all of its offices, to discuss its non-confidential financial matters with its officers and independent public accountant and, upon the

reasonable request of the Agent or a Lender, to examine (and, at the expense of the Lenders, photocopy extracts from) any of its non-confidential books or other corporate records.

SECTION 7.1.6. Environmental Covenant. The Borrower will, and will cause each of its Subsidiaries to,

(a) use and operate all of its facilities and properties in compliance with all Environmental Laws except for such non-compliance which, singly or in the aggregate, will not have a Material Adverse Effect, keep all necessary permits, approvals, certificates, licenses and other authorizations relating to environmental matters in effect and remain in compliance therewith, except where the failure to keep such permits, approvals, certificates, licenses or other authorizations, or any non-compliance with the provisions thereof will not have a Material Adverse Effect, and handle all Hazardous Materials in compliance with all applicable Environmental Laws, except for any non-compliance that will not have a Material Adverse Effect;

(b) immediately notify the Agent and provide copies upon receipt of all written inquiries from any local, state or federal governmental agency, claims, complaints or notices relating to the condition of its facilities and properties or compliance with Environmental Laws which will have a Material Adverse Effect, and shall promptly cure and have dismissed with prejudice or contest in good faith any actions and proceedings relating to material compliance with Environmental Laws the result of which, if not contested by the Borrower, would have a Material Adverse Effect; and

(c) provide such non-confidential information and certifications which the Agent may reasonably request from time to time to evidence compliance with this Section 7.1.6.

SECTION 7.2. Negative Covenants. The Borrower agrees with the Agent and each Lender that, until all Obligations have been paid and performed in full, the Borrower will perform the obligations set forth in this Section 7.2.

SECTION 7.2.1. Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, enter into, or cause, suffer or permit to exist any material arrangement or contract with any of its other Affiliates (other than other Subsidiaries) unless such arrangement or contract is fair and equitable to the Borrower or such Subsidiary based upon the good faith judgment of the Borrower's Board of Directors.

SECTION 7.2.2. Indebtedness. The Borrower will not permit any of its Subsidiaries to create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness if, after giving effect to the incurrence of any such Indebtedness, the aggregate outstanding amount of Indebtedness of all Subsidiaries would exceed 25% of Consolidated Net Tangible Assets.

SECTION 7.2.3. Liens. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, except:

(a) Liens securing payment of Indebtedness permitted under Section 7.2.2;

(b) Liens granted prior to June 19, 2001 which are identified in Item 7.2.3 ("Existing Liens") of the Disclosure Schedule;

(c) any Lien existing on the assets of any Person at the time it becomes a Subsidiary (and not created, assumed or incurred by such Person in contemplation of such event);

(d) Liens for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(e) Liens of carriers, warehousemen, mechanics, materialmen and landlords incurred in the ordinary course of business for sums not overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(f) Liens incurred in the ordinary course of business in connection with workmen's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, leases and contracts (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(g) judgment Liens in existence less than 30 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by insurance maintained with responsible insurance companies;

(h) other Liens incidental to the conduct of the Borrower's or any of its Subsidiaries' businesses (including without limitation, Liens on goods securing trade letters of credit issued in respect of the importation of goods in the ordinary course of business, or the ownership of any of the Borrower's or any Subsidiary's property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit and which do not in the aggregate materially detract from the value of the Borrower's or any of its Subsidiaries' property or assets or materially impair the use thereof in the operation of Borrower's or any of its Subsidiaries' businesses);

(i) Liens in favor of the Borrower on assets of its Subsidiaries, and Liens in favor of Subsidiaries of the Borrower on assets of the Borrower;

(j) Liens securing industrial development or pollution control bonds so long as such Liens attach solely to the property acquired, constructed or improved with the proceeds of such bonds; and

(k) any Lien not otherwise permitted by this Section 7.2.3 securing Indebtedness, provided that, immediately after giving effect thereto (and to the incurrence of such Indebtedness secured thereby), the sum of (without duplication and excluding any Indebtedness payable to the Borrower or a Subsidiary) (i) the aggregate outstanding amount of Indebtedness of the Borrower and its Subsidiaries secured by all Liens described in clauses (b), (c) and (k) of this Section 7.2.3 (excluding any such Liens described in clauses (d) through (j) of this Section 7.2.3) and (ii) the Attributable Value of all Sale-Leaseback Transactions entered into by the Borrower and its Subsidiaries in the aggregate does not exceed 15% of Consolidated Net Tangible Assets.

SECTION 7.2.4. Mergers, Asset Dispositions, etc. The Borrower will not, nor will it permit any of its Subsidiaries to, liquidate, dissolve or enter into any consolidation, merger, joint venture or any other combination or sell, lease, assign, transfer or otherwise dispose of any assets or stock, whether now owned or hereafter acquired, in a single transaction or in a series of transactions other than:

(a) sales of inventory in the ordinary course of business;

(b) the merger or consolidation of any Subsidiary with or into the Borrower or a wholly-owned Subsidiary;

(c) the merger or consolidation of any other Person with or into the Borrower or any Subsidiary, so long as, after giving effect thereto, (i) the Borrower or its Subsidiary, as the case may be, is the surviving entity and (ii) no Default or Event of Default would exist;

(d) sales of assets or stock by the Borrower or a Subsidiary to a wholly-owned Subsidiary or the Borrower; and

(e) (i) sales of assets or stock to any other Person or (ii) liquidations of Subsidiaries (other than a Principal Subsidiary) if, after giving effect thereto, the aggregate book value of such assets or stock disposed of or liquidated does not, during the most recent period of 12 consecutive months, exceed 20% of Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding Fiscal Year; and

(f) joint ventures between Subsidiaries, between one or more Subsidiaries and the Borrower, between the Borrower and other Persons and between Subsidiaries and other Persons.

SECTION 7.2.5. EBIT to Interest Expense Ratio. The Borrower will not permit the ratio of EBIT to Interest Expense to be less than 2.5:1.00. For purposes of calculating such ratio, the items included therein shall be measured on a consolidated basis for the Borrower and its Subsidiaries for the four full Fiscal Quarters immediately preceding the date of calculation.

ARTICLE VIII

EVENTS OF DEFAULT

SECTION 8.1. Listing of Events of Default. Each of the following events or occurrences described in this Section 8.1 shall constitute an "Event of Default".

SECTION 8.1.1. Non-Payment of Obligations. The Borrower shall default in the payment when due of any principal of any Loan, or the Borrower shall default (and such default shall continue unremedied for a period of three Business Days) in the payment when due of any interest on any Loan, or the

Borrower shall default after notice (including, without limitation, notice delivered by way of submission of a detailed invoice) (and such default shall continue unremedied for a period of five days) in the payment when due of any fee described in Section 3.4 or of any other Obligation, including, without limitation, fees described in the Transaction Fee Letter.

SECTION 8.1.2. Breach of Warranty. Any representation or warranty of the Borrower made or deemed to be made hereunder or in any other Loan Document or any other writing or certificate furnished by or on behalf of the Borrower to the Agent or any Lender for the purposes of or in connection with this Agreement or any such other Loan Document (including any certificates delivered pursuant to Article V) is or shall be incorrect when made in any material respect.

SECTION 8.1.3. Non-Performance of Certain Covenants and Obligations. The Borrower shall default in the due performance and observance of any of its obligations under clause (a) of Section 7.1.2 (with respect to the maintenance and preservation of the Borrower's corporate existence) or under Section 7.1.6, or the Borrower shall default in the due performance and observance of its obligations under Section 7.2, and such default (if capable of being remedied within such period) shall not be remedied within five Business Days after any officer of the Borrower obtains actual knowledge thereof.

SECTION 8.1.4. Non-Performance of Other Covenants and Obligations. The Borrower shall default in the due performance and observance of any other agreement contained herein or in any other Loan Document, and such default shall continue unremedied for a period of 30 days after notice thereof shall have been given to the Borrower by the Agent or any Lender.

SECTION 8.1.5. Default on Other Indebtedness. A default shall occur in the payment when due (subject to any applicable grace period), whether by acceleration or otherwise, of any Indebtedness (other than Indebtedness described in Section 8.1.1) of the Borrower or any of its Subsidiaries having a principal amount, individually or in the aggregate, in excess of $15,000,000, or a default shall occur in the performance or observance of any obligation or condition with respect to such Indebtedness (whether or not waived) if the effect of such default is to accelerate the maturity of any such Indebtedness or such default (whether or not waived) shall continue unremedied for any applicable period of time sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause such Indebtedness to become due and payable prior to its expressed maturity.

SECTION 8.1.6. Judgments. Any judgment or order for the payment of money in excess of $15,000,000 shall be rendered against the Borrower or any of its Subsidiaries and either

(a) enforcement proceedings shall have been commenced by any creditor upon such judgment or order; or

(b) 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.

SECTION 8.1.7. Pension Plans. Any of the following events shall occur with respect to any Pension Plan

(a) the institution of any steps by the Borrower, any member of its Controlled Group or any other Person to terminate a Pension Plan if, as a result of such termination, the Borrower or any such member could reasonably be required to make a contribution to such Pension Plan, or could reasonably expect to incur a liability or obligation to such Pension Plan, in excess of $5,000,000; or

(b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA which is not cured within 20 days from the date such contribution was due.

SECTION 8.1.8. Control of the Borrower. Any Change in Control shall occur.

SECTION 8.1.9. Bankruptcy, Insolvency, etc. The Borrower or any of its Subsidiaries that are Principal Subsidiaries shall

(a) become insolvent or generally fail to pay, or admit in writing its inability to pay, debts as they become due;

(b) apply for, consent to, or acquiesce in, the appointment of a trustee, receiver, sequestrator or other custodian for the Borrower or any of such Subsidiaries or a substantial part of any property of any thereof, or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for the Borrower or any of such Subsidiaries or for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within 60 days, provided that the Borrower and each such Subsidiary hereby expressly authorizes the Agent and each Lender to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend their rights under the Loan Documents;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of the

Borrower or any of such Subsidiaries, and, if any such case or proceeding is not commenced by the Borrower or such Subsidiary, such case or proceeding shall be consented to or acquiesced in by the Borrower or such Subsidiary or shall result in the entry of an order for relief or shall remain for 60 days undismissed, provided that the Borrower and each such Subsidiary hereby expressly authorizes the Agent and each Lender to appear in any court conducting any such case or proceeding during such 60-day period to preserve, protect and defend their rights under the Loan Documents; or

(e) take any corporate action authorizing, or in furtherance of, any of the foregoing.

SECTION 8.2. Action if Bankruptcy. If any Event of Default described in clauses (a) through (e) of Section 8.1.9 shall occur, the Commitments (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of all outstanding Loans and all other Obligations shall automatically be and become immediately due and payable, without notice or demand.

SECTION 8.3. Action if Other Event of Default. If any Event of Default (other than any Event of Default described in clauses (a) through (e) of Section 8.1.9) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Agent, upon the direction of the Required Lenders, shall by notice to the Borrower declare all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable and/or the Commitments (if not theretofore terminated) to be terminated, whereupon the full unpaid amount of such Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment and/or, as the case may be, the Commitments shall terminate.

ARTICLE IX

THE AGENT

SECTION 9.1. Appointment; Powers and Immunities. Each Lender hereby irrevocably appoints and authorizes the Agent to act as its Agent hereunder and under the other Loan Documents with such powers as are specifically delegated to the Agent by the terms hereof and thereof, together with such other powers as are reasonably incidental thereto. The Agent: (a) shall have no duties or responsibilities except as expressly set forth in this Agreement and the other Loan Documents, and shall not by reason of this Agreement or any other Loan Document be a trustee for any Lender; (b) makes no warranty or representation to any Lender and shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in this Agreement or any other Loan Document, or in any certificate or other document referred to or provided for in, or received by any Lender under, this Agreement or any other Loan Document, or for the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or any other document referred to or provided for herein or therein or for any failure by the Borrower to perform any of its obligations hereunder or thereunder; (c) shall not be required to initiate or conduct any litigation or collection proceedings hereunder or under any other Loan Document except to the extent requested by the Required Lenders, and then only on terms and conditions satisfactory to the Agent, and (d) shall not be

responsible for any action taken or omitted to be taken by it hereunder or under any other Loan Document or any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except for its own gross negligence or willful misconduct. The Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The provisions of this Article IX are solely for the benefit of the Agent and the Lenders, and the Borrower shall not have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement and under the other Loan Documents, the Agent shall act solely as Agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower. The duties of the Agent shall be ministerial and administrative in nature, and the Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender.

SECTION 9.2. Reliance by Agent. The Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopier, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants or other experts selected by the Agent. As to any matters not expressly provided for by this Agreement or any other Loan Document, the Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and thereunder in accordance with instructions signed by the Required Lenders, and such instructions of the Required Lenders in any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

SECTION 9.3. Defaults. The Agent shall not be deemed to have knowledge of the occurrence of a Default or an Event of Default (other than the nonpayment of principal of or interest on the Loans) unless the Agent has received notice from a Lender or the Borrower specifying such Default or Event of Default and stating that such notice is a “Notice of Default”. In the event that the Agent receives such a notice of the occurrence of a Default or an Event of Default, the Agent shall give prompt notice thereof to the Lenders. The Agent shall (subject to Section 10.1) take such action hereunder with respect to such Default or Event of Default as shall be directed by the Required Lenders, provided that, unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 9.4. Rights of Agent and its Affiliates as a Lender. With respect to its Commitment and the Loans made by it and any of its Affiliates, Wachovia Bank, National Association (and any successor acting as Agent hereunder) in its capacity as a Lender hereunder and any Affiliate of Wachovia Bank, National Association in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as the Agent, and the term “Lender” or “Lenders” shall, unless the context otherwise indicates, include Wachovia Bank, National Association in its individual capacity and any Affiliate of the Agent in its individual capacity. Wachovia Bank, National Association (and any successor acting as Agent hereunder) and any Affiliate thereof may (without having to account therefor to any Lender) accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with the Borrower (and any of

the Borrower’s Affiliates) as if it were not acting as the Agent, and Wachovia Bank, National Association and any Affiliate thereof may accept fees and other consideration from the Borrower or any Subsidiary or Affiliate thereof for services in connection with this Agreement or any other Loan Document or otherwise without having to account for the same to the Lenders.

SECTION 9.5. Indemnification. Each Lender severally agrees to indemnify the Agent, to the extent the Agent shall not have been reimbursed by the Borrower, ratably in accordance with its Commitment, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, counsel fees and disbursements) or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of this Agreement or any other Loan Document or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses that the Borrower is obligated to pay under Section 10.3 or any amount the Borrower is obligated to pay under Section 10.4, but excluding the normal

administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or any such other documents; provided that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Agent. If any indemnity furnished to the Agent for any purpose shall, in the opinion of the Agent, be insufficient or become impaired, the Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

SECTION 9.6. Consequential Damages. THE AGENT SHALL NOT BE RESPONSIBLE OR LIABLE TO ANY LENDER, THE BORROWER OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 9.7. Registered Holder of Loan Treated as Owner. The Agent may deem and treat each Person in whose name a Loan is registered as the owner thereof for all purposes hereof unless and until a written notice of the assignment or transfer thereof shall have been filed with the Agent and the provisions of Section 10.11.1 have been satisfied. Any requests, authority or consent of any Person who at the time of making such request or giving such authority or consent is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee or assignee of that Note or of any Note or Notes issued in exchange therefor or replacement thereof.

SECTION 9.8. Nonreliance on Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on the Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and decision to enter into this Agreement and 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 analysis and decisions in taking or not taking action under this Agreement or any of the other Loan Documents. The Agent shall not be required to keep itself (or any Lender) informed as to the performance or observance by

the Borrower of this Agreement or any of the other Loan Documents or any other document referred to or provided for herein or therein or to inspect the properties or books of the Borrower or any other Person. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Agent hereunder or under the other Loan Documents, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower or any other Person (or any of their Affiliates) which may come into the possession of the Agent or any of its Affiliates.

SECTION 9.9. Failure to Act. Except for action expressly required of the Agent hereunder or under the other Loan Documents, the Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction by the Lenders of their indemnification obligations under Section 9.5 against any and all liability and expense which may be incurred by the Agent by reason of taking, continuing to take, or failing to take any such action.

SECTION 9.10. Successor Agent. The Agent may resign at any time by giving notice thereof to the Lenders and the Borrower. Upon any such resignation, 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 notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent. Any successor Agent shall be a bank or other financial institution which has 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, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article IX shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent hereunder.

ARTICLE X

MISCELLANEOUS PROVISIONS

SECTION 10.1. Waivers, Amendments, etc. The provisions of this Agreement and of each other Loan Document may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Borrower and the Required Lenders; provided, however, that no such amendment, modification or waiver which would:

(a) modify any requirement hereunder that any particular action be taken by all the Lenders or by the Required Lenders shall be effective unless consented to by each Lender;

(b) modify this Section 10.1, change the definition of "Required Lenders", increase the Percentage or Commitment of any Lender, reduce any fees described in

Article III, or extend the Maturity Date shall be made without the consent of each Lender and each holder of a Note;

(c) extend the due date for, or reduce the amount of, any scheduled repayment of principal of or payment of interest on any Loan or fees owed hereunder (or reduce the principal amount of or rate of interest on any Loan or the fees owed hereunder) shall be made without the consent of the holder of that Note evidencing such Loan or owed such fees; or

(d) affect adversely the interests, rights or obligations of the Agent qua the Agent shall be made without consent of the Agent.

No failure or delay on the part of the Agent, any Lender or the holder of any Note in exercising any power or right under this Agreement or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on the Borrower in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Agent, any Lender or the holder of any Note under this Agreement or any other Loan Document shall, except as

may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

SECTION 10.2. Notices. All notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing or by facsimile and addressed, delivered or transmitted to such party at its address or facsimile number set forth below its signature hereto or set forth in the Lender Assignment Agreement or at such other address or facsimile number as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when transmitted.

SECTION 10.3. Payment of Costs and Expenses. The Borrower agrees to pay on demand all reasonable expenses of the Agent and the Lead Arranger (including the reasonable fees, internal charges and out-of-pocket expenses of counsel to the Agent and the Lead Arranger, which attorneys may be employees of the Agent or Lead Arranger, and of local counsel, if any, who may be retained by counsel to the Agent and the Lead Arranger) in connection with

(a) the negotiation, preparation, syndication, due diligence, execution and delivery of this Agreement and of each other Loan Document, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to this Agreement or any other Loan Document as may from time to time hereafter be required, whether or not the transactions contemplated hereby are consummated, and

(b) the preparation and review of the form of any document or instrument relevant to this Agreement or any other Loan Document;

provided, however, that the Borrower shall not be obligated to pay for expenses incurred by the Agent or a Lender in connection with the assignment of Loans to an Assignee Lender pursuant to Section 10.11.1 or the sale of Loans to a Participant pursuant to Section 10.11.2.

The Borrower further agrees to pay, and to save the Agent and the Lenders harmless from all liability for, any stamp or other taxes which may be payable in connection with the execution or delivery of this Agreement, the borrowings hereunder, or the issuance of the Notes or any other Loan Documents. The Borrower also agrees to reimburse the Agent and each Lender upon demand for all reasonable out-of-pocket expenses (including attorneys' fees and legal expenses, and the allocated costs of staff counsel) incurred by the Agent or such Lender in connection with (x) the negotiation of any restructuring or "work-out", whether or not consummated, of any Obligations and (y) the enforcement of any Obligations.

SECTION 10.4. Indemnification. In consideration of the execution and delivery of this Agreement by each Lender and the extension of Commitments, the Borrower hereby indemnifies, exonerates and holds the Agent, the Lead Arranger and each Lender and each of their respective officers, directors, employees and agents (collectively, the "Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages, and expenses incurred in connection therewith (irrespective of whether any such Indemnified Party is a party to the action for which indemnification hereunder is sought), including reasonable attorneys' fees and disbursements (collectively, the "Indemnified Liabilities") , incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to

(a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Loan;

(b) the entering into and performance of this Agreement and any other Loan Document by any of the Indemnified Parties;

(c) any investigation, litigation or proceeding related to any acquisition or proposed acquisition by the Borrower or any of its Subsidiaries of all or any portion of the stock or assets of any Person, whether or not the Agent, the Lead Arranger or such Lender is party thereto;

(d) any investigation, litigation or proceeding related to any environmental cleanup, audit, compliance or other matter relating to the protection of the environment or the Release by the Borrower or any of its Subsidiaries of any Hazardous Material; or

(e) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releases from, any real property owned or operated by the Borrower or any Subsidiary thereof of any Hazardous Material (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law), regardless of whether caused by, or within the control of, the Borrower or such Subsidiary,

except for any such Indemnified Liabilities arising by reason of the relevant Indemnified Party's gross negligence or willful misconduct. If and to the extent that the foregoing undertaking may

be unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

SECTION 10.5. Survival. The obligations of the Borrower under Sections 4.3, 4.4, 4.5, 4.6, 10.3 and 10.4, and the obligations of the Lenders under Section 9.1, shall in each case survive any termination of this Agreement and the payment in full of all Obligations and the termination of all Commitments. The representations and warranties made by the Borrower in this Agreement and in each other Loan Document shall survive the execution and delivery of this Agreement and each such other Loan Document.

SECTION 10.6. Severability. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 10.7. Headings. The various headings of this Agreement and of each other Loan Document are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or such other Loan Document or any provisions hereof or thereof.

SECTION 10.8. Execution in Counterparts, Effectiveness, etc. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be executed by the Borrower and the Agent and shall be deemed to be an original and all of which shall constitute together but one and the same Agreement. This Agreement shall become effective when counterparts hereof executed on behalf of the Borrower and each Lender (or notice thereof satisfactory to the Agent) shall have been received by the Agent and notice thereof shall have been given by the Agent to the Borrower and each Lender.

SECTION 10.9. Governing Law; Entire Agreement. **THIS AGREEMENT, THE NOTES AND EACH OTHER LOAN DOCUMENT SHALL EACH BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.** This Agreement, the Notes and the other Loan Documents constitute the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

SECTION 10.10. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that:

(a) the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Agent and all Lenders; and

(b) the rights of sale, assignment and transfer of the Lenders are subject to Section 10.11.

SECTION 10.11. Sale and Transfer of Loans and Note; Participations in Loans and Note. Each Lender may assign, or sell participations in, its Loans and Commitments to one or more other Persons in accordance with this Section 10.11.

SECTION 10.11.1. Assignments. Any Lender,

(a) with the written consent of the Borrower and the Agent (which consent shall not be unreasonably delayed or withheld, and which consent, in the case of the Borrower, shall be deemed to have been given if the Borrower fails to deliver a written notice to the Agent on or before the tenth Business Day after receipt by the Borrower of the Agent's request for consent, stating, in reasonable detail, the reasons why the Borrower proposes to withhold such consent) may at any time assign and delegate to other commercial banks, other financial institutions or Approved Funds its Loans and Commitments hereunder; provided, however, that if an Event of Default has occurred and is continuing, the consent of the Borrower shall not be required; and

(b) with notice to the Borrower and the Agent, but without the consent of the Borrower or the Agent, may assign and delegate to any of its Affiliates or to any other Lender or its Affiliates all or any portion of its Loans and Commitments hereunder;

(each Person described in either of the foregoing clauses as being the Person to whom such assignment and delegation is to be made, being hereinafter referred to as an "Assignee Lender"), in a minimum aggregate amount of $10,000,000 (or such lesser amount as may be agreed to by the Borrower and the Agent, at their option) in the case of clause (a) above, and all of the Loans and Commitments of such Assignee Lender in the case of clause (b) above; provided, however, that any such Assignee Lender will comply, if applicable, with the provisions contained in the last sentence of Section 4.6 and further, provided, however, that, the Borrower and the Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned and delegated to an Assignee Lender until:

(i) written notice of such assignment and delegation, together with payment instructions, addresses and related information with respect to such Assignee Lender, shall have been given to the Borrower and the Agent by such Lender and such Assignee Lender;

(ii) such Assignee Lender shall have executed and delivered to the Borrower and the Agent a Lender Assignment Agreement, accepted by the Agent; and

(iii) the processing fees described below shall have been paid.

From and after the date that the Agent accepts such Lender Assignment Agreement, (x) the Assignee Lender thereunder shall be deemed automatically to have become a party hereto and to the extent that rights and obligations hereunder have been assigned and delegated to such Assignee Lender in connection with such Lender Assignment Agreement, shall have the rights and obligations of a Lender hereunder and under the other Loan Documents, and (y) the assignor Lender, to the extent that rights and obligations hereunder have been assigned and delegated by it in connection with such Lender Assignment Agreement, shall be released from its obligations

hereunder and under the other Loan Documents but shall continue to be entitled to the benefits of the indemnity provisions hereunder for the period prior to such assignment. Within five Business Days after its receipt of notice that the Agent has received an executed Lender Assignment Agreement, the Borrower shall execute and deliver to the Agent (for delivery to the relevant Assignee Lender) a new Note evidencing such Assignee Lender's assigned Loans and Commitments, and, if the assignor Lender has retained Loans and a Commitment hereunder, a replacement Note in the principal amount of the Loans and Commitment retained by the assignor Lender hereunder (such Note to be in exchange for, but not in payment of, that Note then held by such assignor Lender). Each such Note shall be dated the date of the predecessor Note. The assignor Lender shall mark the predecessor Note "exchanged" and deliver it to the Borrower. Accrued interest on that part of the predecessor Note evidenced by the new Note, and accrued fees, shall be paid as provided in the Lender Assignment Agreement. Accrued interest on that part of the predecessor Note evidenced by the replacement Note shall be paid to the assignor Lender. Accrued interest and accrued fees shall be paid at the same time or times provided in the predecessor Note and in this Agreement. Such assignor Lender or such Assignee Lender must also pay a processing fee to the Agent upon delivery of any Lender Assignment Agreement in the amount of $3,500 (provided, however, that such processing fee shall not be required to be paid by a Lender in the case of an assignment of such Lender's Loans and Commitments to an Affiliate or Subsidiary of such Lender). Any attempted assignment and delegation not made in accordance with this Section 10.11.1 shall be null and void. Notwithstanding anything to the contrary set forth above, any Lender may (without requesting the consent of the Borrower or the Agent) pledge its Loans to a

Federal Reserve Bank in accordance with applicable regulations. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in Section 10.1.1, any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety,

guarantee or credit or liquidity enhancement to such SPC. This section may not be amended without the written consent of each Granting Lender, all or any of whose Loans are being funded by an SPC at the time of such amendment. It is understood and acknowledged that the Granting Lender shall for all purposes, including, without limitation, the approval of any amendment or waiver of any provision of any Loan Document or the obligation to pay any amount otherwise payable by the Granting Lender under the Loan Documents, continue to be the Lender of record hereunder.

As used herein, (i) the term "Approved Fund" means any Fund that is administered or managed by (A) a Lender, (B) an Affiliate of a Lender or (C) an entity or an Affiliate of any entity that administers or manages a Lender and (ii) the term "Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

SECTION 10.11.2. Participations. Any Lender may at any time sell to one or more commercial banks or other Persons (each of such commercial banks and other Persons being herein called a "Participant") participating interests in any of the Loans, its Commitment, or other interests of such Lender hereunder; provided, however, that

(a) no participation contemplated in this Section 10.11 shall relieve such Lender from its Commitment or its other obligations hereunder or under any other Loan Document;

(b) such Lender shall remain solely responsible for the performance of its Commitment and such other obligations;

(c) the Borrower and the Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents;

(d) no Participant, unless such Participant is an Affiliate of such Lender, or is itself a Lender, shall be entitled to require such Lender to take or refrain from taking any action hereunder or under any other Loan Document, except that such Lender may agree with any Participant that such Lender will not, without such Participant's consent, take any actions of the type described in clause (b) or (c) of Section 10.1; and

(e) the Borrower shall not be required to pay any amounts to a Lender under Sections 4.3, 4.4, 4.5, 4.6, 4.8, 4.9, 10.3 and 10.4 or otherwise, that are greater than the amounts which it would have been required to pay to such Lender had no participating interest been sold.

SECTION 10.12. Other Transactions. Nothing contained herein shall preclude the Agent or any other Lender from engaging in any transaction, in addition to those contemplated by this Agreement or any other Loan Document, with the Borrower or any of its Affiliates in which the Borrower or such Affiliate is not restricted hereby from engaging with any other Person.

SECTION 10.13. Removal and Replacement of Lenders.

(a) Under any circumstances set forth herein providing that the Borrower shall have the right to remove or replace a Lender as a party to this Agreement, the Borrower may, upon notice to such Lender and the Agent, (i) remove such Lender by terminating such Lender's Commitment or (ii) replace such Lender by causing such Lender to assign its Commitment (without payment of any assignment fee) pursuant to Section 10.11.1 to one or more other Lenders, commercial banks, other financial institutions or Approved Funds procured by the Borrower. The Borrower shall (x) pay in full all principal, interest, fees and other amounts owing to such Lender through the date of removal or replacement (including any amounts payable pursuant to Section 4.4), and (y) release such Lender from its obligations under the Loan Documents. Any Lender being replaced shall execute and deliver a Lender Assignment Agreement with respect to such Lender's Commitment and Loans. The Agent shall distribute a schedule, which shall be deemed incorporated into this Agreement, to reflect changes in the identities of the Lenders and adjustments of their respective Commitments and/or Percentage resulting from any such removal or replacement.

(b) In order to make all the Lenders' interests in any outstanding Loans ratable in accordance with any revised Percentages after giving effect to the removal or replacement of a Lender, the Borrower shall pay or prepay, if necessary, on the effective date thereof, all outstanding Loans of all Lenders, together with any amounts due under Section 4.4. The Borrower may then request Loans from the Lenders in accordance with their revised Percentages. The Borrower may net any payments required hereunder against any funds being provided by any Lender commercial bank, other financial institution or Approved Fund replacing a terminating Lender. The effect for purposes of this Agreement shall be the same as if separate transfers of funds had been made with respect thereto.

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

SECTION 10.14. Forum Selection and Consent to Jurisdiction. **ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE AGENT, THE LENDERS OR THE BORROWER SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. THE BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL TO THE CORPORATE SECRETARY, POSTAGE PREPAID, AND WAIVES PERSONAL**

SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF THE STATE OF NEW YORK. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT THE BORROWER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OF FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE BORROWER HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 10.15. WAIVER OF JURY TRIAL. **THE AGENT, THE LENDERS AND THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE AGENT, THE LENDERS OR THE BORROWER. THE BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENT AND THE LENDERS ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT.**

[signature pages to follow]

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

McCORMICK & COMPANY, INCORPORATED

By: /s/ Francis A. Contino
Francis A. Contino
Title: Vice President &
Chief Financial Officer

By: /s/ W. Geoffrey Carpenter
W. Geoffrey Carpenter
Title: Assistant Secretary

Address: 18 Loveton Circle
Sparks, MD 21152
Facsimile No.: (410) 527-8228
Attention: Secretary

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: /s/ Trey Anglin
Trey Anglin
Title: Assistant Vice President

One Wachovia Center
301 South College Street
Mail Code: NC-0145

Charlotte, NC 28288
Attention: Trey Anglin
Facsimile No.: (704) 374-4000

SCHEDULE I

DISCLOSURE SCHEDULE

ITEM 6.7 Litigation.

[None.]

ITEM 6.8 Existing Subsidiaries as of the Effective Date.

[Attached - - Exhibit A.]

ITEM 6.11 Employee Benefit Plans.

[Attached - - Exhibit B.]

ITEM 6.12 Environmental Matters.

[None.]

ITEM 7.2.3 Existing Liens.

[Attached - - Exhibit C.]

EXHIBIT A

EXISTING SUBSIDIARIES OF McCORMICK & COMPANY, INCORPORATED

THE AMERICAS MARKET ZONE

Ampacco, Inc. (Maryland)
Han-Dee Pak, Inc. (Maryland)
McCormick de Puerto Rico, Inc. (Delaware)
Mojave Foods Corporation (Maryland)
El Guapo Foods, Inc. (California)
More For Less, Inc. (Delaware)
Produce Partners, Inc. (Illinois)
Old Bay Company, Inc. (Delaware)
McCormick Holding Company, Inc. (Delaware)
McCormick Investment Company, Inc. (Delaware)
McCormick Fresh Herbs, LLC (Delaware)
McCormick de Centro America, S.A. de C.V. (El Salvador)

EUROPEAN MARKET ZONE

McCormick Europe Ltd. (United Kingdom)
McCormick International Holdings Ltd. (United Kingdom)
McCormick France S.A.S (France)
Ducros S.A.S. (France)
Sodis S.A.S. (France)
McCormick Management Services S.A.R.L. (France)
McCormick (UK) Limited (Scotland)
Bluebroad 1 Limited (England)
McCormick Baharat de Gida Sanayi A.S. (Turkey)
McCormick South Africa (Proprietary) Ltd. (South Africa)
McCormick Kutas Food Service Ltd. (United Kingdom)
Noel Holdings Limited (England)
McCormick Foodservice Ltd. (England)
McCormick S.A. (Switzerland)

Oy McCormick Ab (Finland)

ASIAN MARKET ZONE

McCormick Foods Australia Pty. Ltd. (Australia)
Traders Pty. Ltd. (Australia)
McCormick (Guangzhou) Food Company Limited (China)
McCormick India Private Limited (India)
Shanghai McCormick Foods Company, Limited (China) (90% owned)

GLOBAL INDUSTRIAL GROUP

McCormick Ingredients Southeast Asia Private Limited
McCormick Thailand, Inc. (Delaware)
McCormick (Thailand) Ltd. (Thailand)
Classic Foods, Inc. (Connecticut)
McCormick Pesa, S.A. de C.V. (Mexico)
McCormick Uruguay Holdings, Inc. (Delaware)
McCormick Uruguay, S.A. (Uruguay)
La Cie McCormick Canada Co. (Canada)
Setco, Inc. (Delaware)
Tubed Products, Inc. (Maryland)
OG Dehydrated, Inc. (California)

MISCELLANEOUS

AH Investments, Inc. (Maryland)
Armanino Farms of California, Inc. (California)
International Ingredients, Inc. (Maryland)
McCormick Credit, Inc. (Delaware)
McCormick Delaware, Inc. (Delaware)
McCormick Foreign Sales Corporation (U.S. Virgin Islands)
McCormick Ingredientes Brasil Ltda. (Brazil)
McCormick Global Ingredients Limited (Cayman)
McCormick Cyprus Limited (Cyprus)
McCormick Hungary Group Financing Limited Liability Company (Hungary)
McCormick Europe Ltd. (United Kingdom)
McCormick (UK) Limited (Scotland)
McCormick International Holdings Ltd. (United Kingdom)
La Cie McCormick Canada Co. (Canada)
McCormick Foods Australia Pty. Ltd. (Australia)

EXHIBIT B

EMPLOYEE BENEFIT PLANS

8. PENSION AND 401(K) RETIREMENT PLANS

The Company's pension expense is as follows:

	United States			International		
(millions)	**2002**	**2001**	**2000**	**2002**	**2001**	**2000**
Defined benefit plans						
Service cost	**$ 9.6**	$ 7.7	$ 7.1	**$ 3.5**	$ 3.5	$ 2.7
Interest costs	**16.3**	14.6	13.8	**4.2**	3.6	3.3
Expected return on plan assets	**(17.8)**	(15.5)	(14.1)	**(5.9)**	(5.3)	(4.7)
Amortization of prior service costs	**—**	.1	.1	**.1**	.1	.1
Amortization of transition assets	**.2**	.2	.2	**—**	—	(.1)
Curtailment loss	**—**	—	—	**—**	(.4)	—
Recognized net actuarial loss (gain)	**3.5**	1.0	1.3	**—**	(.1)	—
Other retirement plans	**—**	—	—	**1.5**	.9	.5
	$ 11.8	$ 8.1	$ 8.4	**$ 3.4**	$ 2.3	$ 1.8

The Company's U.S. pension plans held 0.9 million shares, with a fair value of $21.9 million, of the Company's stock at November 30, 2002. Dividends paid on these shares in 2002 were $0.4 million.

Rollforwards of the benefit obligation, fair value of plan assets and a reconciliation of the pension plans' funded status at September 30, the measurement date, follow:

	United States	International

(millions)	2002	2001	2002	2001
Change in benefit obligation				
Beginning of the year	**$ 228.8**	$ 186.9	**$ 66.8**	$ 59.0
Service cost	**9.6**	7.7	**3.5**	3.5
Interest costs	**16.3**	14.6	**4.2**	3.6
Employee contributions	**—**	—	**1.5**	1.2
Plan changes and other	**—**	(.1)	**2.2**	.8
Curtailment	**—**	—	**—**	(.5)
Actuarial loss	**37.5**	28.5	**1.5**	2.0
Benefits paid	**(11.8)**	(8.8)	**(2.2)**	(2.1)
Foreign currency impact	**—**	—	**5.0**	(.7)
End of the year	**$ 280.4**	$ 228.8	**$ 82.5**	$ 66.8
Change in fair value of plan assets				
Beginning of the year	**$ 166.8**	$ 167.4	**$ 55.1**	$ 65.6
Actual return on plan assets	**(15.6)**	(9.6)	**(6.3)**	(11.4)
Other	**—**	—	**2.1**	—
Employer contributions	**20.8**	16.2	**2.8**	2.3
Employee contributions	**—**	—	**1.5**	1.2
Benefits paid	**(10.2)**	(7.2)	**(2.2)**	(2.1)
Foreign currency impact	**—**	—	**3.7**	(.5)
End of the year	**$ 161.8**	$ 166.8	**$ 56.7**	55.1
Reconciliation of funded status				
(Under)/over funded status	**$ (118.8)**	$ (62.0)	**$ (25.8)**	$ (11.7)
Unrecognized net actuarial loss	**143.7**	79.9	**25.9**	10.8
Unrecognized prior service cost	**.6**	.7	**.5**	.5
Unrecognized transition asset (liability)	**—**	.2	**(.2)**	(.2)
Employer contributions	**—**	—	**.4**	.3
	$ 25.7	$ 18.8	**$ .8**	$ (.3)

Included in the United States in the preceding table is a benefit obligation of $25.8 million and $20.0 million for 2002 and 2001, respectively, related to an unfunded pension plan. The accrued liability related to this plan was $22.4 million and $12.3 million as of November 30, 2002 and 2001, respectively. The assets related to this plan are held in a Rabbi Trust and accordingly have not been included in the preceding table. These assets were $14.3 million and $17.7 million as of November 30, 2002 and 2001, respectively.

Amounts recognized in the consolidated balance sheet consist of the following:

	United States		International	
(millions)	2002	2001	2002	2001
Prepaid pension cost	**—**	$ 18.8	**$ 2.6**	$ .9
Accrued pension liability	**$ (67.3)**	—	**(19.0)**	(1.2)
Intangible assets	**.6**	—	**.4**	—
Deferred income taxes	**35.0**	—	**5.1**	—
Accumulated other comprehensive income	**57.4**	—	**11.7**	—
	$ 25.7	$ 18.8	**$ .8**	$ (.3)

The accumulated benefit obligation for the U.S. pension plans was $229.2 million and $184.9 million as of September 30, 2002 and 2001, respectively.

As of the measurement date, the market value of the pension plan assets was below the accumulated benefit obligation, and the Company was required to record a minimum pension liability of $110.2 million ($69.1 million after tax) as calculated under SFAS No. 87. This resulted in an increase in the pension liability of $110.2 million, a decrease in other comprehensive income of $69.1 million, an increase in deferred tax assets of $40.1 million, and an increase in intangible assets of $1.0 million.

	United States		International	
	2002	2001	2002	2001
Significant assumptions				
Discount rate	**7.0%**	7.25%	**5.5-6.5%**	5.75-6.5%
Salary scale	**4.0%**	4.5%	**3.5-4.0%**	3.5-4.0%
Expected return on plan assets	**10.0%**	10.0%	**7.0-8.5%**	8.5%

As of December 1, 2002, pension expense will be calculated using a 9% expected return on plan assets.

401(k) Retirement Plan

Effective March 22, 2002, the 401(k) Retirement Plan was amended to provide that the McCormick Stock Fund investment option be designated an employee stock ownership plan (ESOP). This designation allows participants investing in McCormick stock to elect to receive, in cash, dividends that are paid on McCormick stock held in their 401(k) Retirement Plan accounts. Dividends may also continue to be reinvested.

The Company matches 100% of the participant's contribution up to the first 3% of the participant's salary, and 50% of the next 2% of a participant's salary. Company contributions charged to expense under the McCormick 401(k) Retirement Plan were $7.0 million, $6.6 million and $5.8 million in 2002, 2001 and 2000, respectively.

At the participant's election, the McCormick 401(k) Retirement Plan held 4.4 million shares, with a fair value of $105.8 million, of the Company's stock at November 30, 2002. Dividends paid on these shares in 2002 were $1.9 million.

9. OTHER POSTRETIREMENT BENEFITS

The Company's other postretirement benefit expense follows:

(millions)	2002	2001	2000
Other postretirement benefits			
Service cost	**$ 3.1**	$ 2.6	$ 2.4

Interest cost	**5.7**	5.5	5.3
Amortization of prior service cost	**(.6)**	(.7)	(.7)
Accelerated recognition of prior unrecognized service cost	**—**	—	(.6)
	$ 8.2	$ 7.4	$ 6.4

Rollforwards of the benefit obligation, fair value of plan assets and a reconciliation of the plan's funded status at November 30, the measurement date, follow:

(millions)	2002	2001
Change in benefit obligation		
Beginning of the year	**$ 81.8**	$ 71.3
Service cost	**3.1**	2.6
Interest cost	**5.7**	5.5
Employee contributions	**2.3**	2.0
Plan changes	**(9.1)**	—
Actuarial loss	**8.0**	5.6
Benefits paid	**(8.0)**	(5.2)
End of the year	**$ 83.8**	$ 81.8
Change in fair value of plan assets		
Beginning of the year	**$ —**	$ —
Employer contributions	**5.7**	3.2
Employee contributions	**2.3**	2.0
Benefits paid	**(8.0)**	(5.2)
End of the year	**$ —**	$ —
Reconciliation of funded status		
Funded status	**$ (85.8)**	$ (81.8)
Unrecognized net actuarial loss	**15.3**	7.3
Unrecognized prior service cost	**(13.7)**	(5.3)
Other postretirement benefit liability	**$ (82.2)**	$ (79.8)

The assumed weighted-average discount rates were 7.0% and 7.25% for 2002 and 2001, respectively.

The assumed annual rate of increase in the cost of convered health care benefits is 8.0% for 2002. It is assumed to decrease gradually to 4.5% in the year 2008 and remain at the level thereafter. Changing the assumed health care cost trend would have the following effect:

(millions)	1-Percentage - Point Increase	1-Percentage - Point Decrease
Effect on benefit obligation as of November 30, 2002	$ 8.1	$ (6.9)
Effect on total of service and interest cost components in 2002	$ .9	$ (.8)

During 2002 the Company changed certain postretirement benefits for employees who retire on or after January 1, 2004, Life insurance benefits will change to a fixed amount. Medicare eligible retirees will have a fixed amount for medical plan coverage, and the medical cost sharing for dependents will increase.

EXHIBIT C
EXISTING LIENS

(as of 4/3/03, in thousands)

	Current	Long Term	Total	
Capital Lease Liability				
McCormick Foods Australia	29	0	29	Autos
McCormick Pesa	102	0	102	Computers
Industrial Revenue Bonds				
Tubed Products (Oxnard, California)	0	3,050	3,050	
Mortgages				
(none outstanding)				

FORM OF NOTE

U.S.$100,000,000 May 30, 2003

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of WACHOVIA BANK, NATIONAL ASSOCIATION (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of May 30, 2003 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia Bank, National Association, as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of ONE HUNDRED MILLION UNITED STATES DOLLARS (U.S. $100,000,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY,
INCORPORATED

By: Francis A. Contino

Title: Vice President & CFO

By: W. Geoffrey Carpenter

Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

FORM OF BORROWING REQUEST

Wachovia Bank, National Association,
as Administrative Agent

Agency Servicing
301 South College Street
Mail Code: NC-0680
Charlotte, NC 28288

Attention: Roger Sherman

McCormick & Company, Incorporated

Gentlemen and Ladies:

This Borrowing Request is delivered to you pursuant to clause (b) of Section 2.1 of the 364-Day Credit Agreement, dated as of May 30, 2003 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the Lenders now or hereafter parties thereto and Wachovia Bank, National Association, as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby requests that a Loan Borrowing be made in the aggregate principal amount of [$U.S.] [£] [DM] [¥] [Euro] on , as [a Base Rate Loan] [a LIBO Rate Loan having an interest period of months].

The Borrower hereby certifies and warrants that on the date the Borrowing requested hereby is made (both before and after giving effect to such Borrowing);

(a) the representations and warranties set forth in Article VI of the Credit Agreement are and will be true and correct as if then made pursuant to Section 5.2.1 of the Credit Agreement;

(b) no Default or Event of Default has occurred and is continuing or will have occurred and be continuing; and

(c) the aggregate amount of the requested Borrowing and all other Loans outstanding on the date of the requested Borrowing does not and will not exceed the Commitment Amount.

The undersigned hereby confirms that the requested Borrowing is to be made available to it in accordance with Section 2.1 of the Credit Agreement.

The Borrower agrees that if prior to the time of the Borrowing requested hereby any matter certified to herein by it will not be true and correct at such time as if then made, it will

immediately so notify the Agent. Except to the extent, if any, that prior to the time of the Borrowing requested hereby the Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed once again to be certified an true and correct at the date of such Borrowing as if then made.

Please wire transfer the proceeds of the Borrowing to the following account of the Borrower: Account No. , (Name and address of depository bank).

The Borrower has caused this Borrowing Request to be executed and delivered, and the certificate and warranties contained herein to be made, by its duly Authorized Officer this day of , .

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

FORM OF LENDER ASSIGNMENT AGREEMENT

[Date]

TO: McCormick & Company, Incorporated
18 Loveton Circle
Sparks, Maryland 21152
Attention: Treasurer

To: Wachovia Bank, National Association,
as Administrative Agent
Agency Servicing
301 South College Street
Mail Code: NC-0680

Charlotte, NC 28288
Attention: Roger Sherman

McCormick & Company, Incorporated

Gentlemen and Ladies:

We refer to clause (d) of Section 10.11.1 of the 364-Day Credit Agreement, dated as of May 30, 2003 (as amended from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the various financial institutions as are, or shall from time to time become, parties thereto (the "Lenders") and Wachovia Bank, National Association, as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

This Agreement is delivered to you pursuant to clause (d) of Section 10.11.1 of the Credit Agreement and also constitutes notice to each of you, pursuant to clause (c) of Section 10.11.1 of the Credit Agreement, of the assignment and delegation to (the "Assignee") of % of the Loans of (the "Assignor") outstanding under the Credit Agreement on the date hereof. After giving effect to the foregoing assignment and delegation, the Assignor's and the Assignee's Percentages for the purposes of the Credit Agreement are set forth opposite such Person's name on the signature pages hereof.

[Add paragraph dealing with accrued interest and fees with respect to Loans assigned.]

The Assignee hereby acknowledges and confirms that it has received a copy of the Credit Agreement and the exhibits related thereto, together with copies of the documents which were required to be delivered under the Credit Agreement as a condition to the making of the Loans thereunder. The Assignee further confirms and agrees that in becoming a Lender and in making its Loans under the Credit Agreement, such actions have and will be made without recourse to, or representation or warranty by the Agent.

Except as otherwise provided in the Credit Agreement, effective as of the date of acceptance hereof by the Agent:

(a) the Assignee

(i) shall be deemed automatically to have become a party to the Credit Agreement, have all the rights and obligations of a "Lender" under the Credit Agreement and the other Loan Documents as if it were an original signatory thereto to the extent specified in the second paragraph hereof; and

(ii) agrees to be bound by the terms and conditions set forth in the Credit Agreement and the other Loan Documents as if it were an original signatory thereto; and

(b) the Assignor shall be released from its obligations under the Credit Agreement and the other Loan Documents to the extent specified in the second paragraph hereof but shall continue to be entitled to the benefits of the indemnity provisions set forth in the Credit Agreement for the period prior to such acceptance.

The Assignor and the Assignee hereby agree that the [Assignor] [Assignee] will pay to the Agent the processing fee referred to in Section 10.11.1 of the Credit Agreement upon the delivery hereof.

The Assignee hereby advises each of you of the following administrative details with respect to the assigned Loans and requests the Agent to acknowledge receipt of this document:

(A) Address for Notices:

Institution Name:

Attention:

Domestic Office:

Telephone:

Facsimile:

LIBOR Office:

Telephone:

Facsimile:

(B) Payment Instructions:

The Assignee agrees to furnish the tax form required by the last sentence of Section 4.6 (if so required) of the Credit Agreement no later than the date of acceptance hereof by the Agent.

This Agreement may be executed by the Assignor and Assignee in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

Adjusted Percentage

%

[ASSIGNOR]

By: _____

Title:

Percentage

%

[ASSIGNEE]

By: _____

Title:

Accepted and Acknowledged
this day of ,

McCORMICK & COMPANY, INCORPORATED

By: _____

Title:

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____

Title:

FORM OF COMPLIANCE CERTIFICATE

To each of the financial institutions party
to the Credit Agreement hereinafter
referred to and Wachovia Bank, National
Association, as Administrative Agent for
the Lenders

Re: McCormick & Company, Incorporated

Ladies and Gentlemen:

This Compliance Certificate is being delivered pursuant to the 364-Day Credit Agreement, dated as of May 30, 2003 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the various financial institutions as are or may, from time to time, become parties thereto (the "Lenders") and Wachovia Bank, National Association, as administrative agent for the Lenders (the "Agent"). Capitalized terms used herein without definition shall have the meanings assigned to such terms in Section 1.1 of the Credit Agreement. All computations performed herein shall conform to the method of computation required by the Credit Agreement.

The Borrower hereby certifies, represents and warrants that as of , (the "Computation Date"):

1. Indebtedness of the Subsidiaries did not exceed % of Consolidated Net Tangible Assets (as computed on Attachment 1 hereto).

   Under Section 7.2.2 of the Credit Agreement, Indebtedness of Subsidiaries may not exceed 25% of Consolidated Net Tangible Assets.

2. The sum of (a) Indebtedness of the Borrower and its Subsidiaries secured by Liens described in clauses (b), (c) and (k) of Section 7.2.3 of the Credit Agreement (excluding liens described in clauses (d) through (j) of Section 7.2.3) and (b) the Attributable Value of all Sale-Leaseback Transactions entered into by the Borrower and its Subsidiaries in the aggregate does not exceed % of Consolidated Net Tangible Assets (as computed on Attachment 1 hereto).

   Section 7.2.3 (k) of the Credit Agreement does not permit the sum of (i) Indebtedness of the Borrower and its Subsidiaries secured by Liens described in clauses (b), (c) and (k) of Section 7.2.3 (excluding Liens described in clauses (d) thru (j) of Section 7.2.3) and (ii) the Attributable Value of all Sale-Leaseback Transactions entered into by the Borrower and its Subsidiaries in the aggregate to exceed 15% of Consolidated Net Tangible Assets.

3. The aggregate book value of all sales of assets or stock or liquidations of Subsidiaries do not, during the most recent period of 12 consecutive months, exceed % of Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding Fiscal Year (as computed on Attachment 1 hereto).

Section 7.2.4 of the Credit Agreement prohibits sales of assets or stock to anyone other than the Borrower or wholly-owned Subsidiaries if the aggregate book value of such sales or liquidation of Subsidiaries during the most recent period of 12 consecutive months would exceed 20% of Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding fiscal year.

4. The ratio of EBIT to Interest Expense was : 1:00 (as computed on Attachment 1 hereto).

The minimum ratio of EBIT to Interest Expense permitted pursuant to Section 7.2.5 of the Credit Agreement is 2.50:1.00.

5. No Default or Event of Default has occurred and is continuing.

IN WITNESS WHEREOF, the Borrower has caused this Certificate to be executed and delivered by its duly Authorized Officer on this day of , .

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

ATTACHMENT 1

1.	Indebtedness of Subsidiaries (Section 7.2.2).		
	a.	Total Amount of Subsidiary Indebtedness	$ _____
	b.	Amount of Consolidated Net Tangible Assets	$ _____
	c.	Subsidiary Indebtedness is equal to the following percentage of Consolidated Net Tangible Assets	_____ %
2.	Liens (Section 7.2.3)		
	a.	Indebtedness of the Borrower and its Subsidiaries (other than intercompany debt) secured by Liens described in clauses (b), (c) and (k) of Section 7.2.3 (excluding Liens described in clauses (d) through (j) of Section 7.2.3	$ _____
	b.	Attributable Value of Sale-Leaseback Transactions of the Borrower and its Subsidiaries in the aggregate	$ _____
		(Sum of Items a. and b.)	$ _____
	c.	Amount of Consolidated Net Tangible Assets	$ _____
	d.	The sum of Items a. and b. is equal to the following percentage of Item c.	_____ %
3.	Sale of Assets (Section 7.2.4)		
	a.	The aggregate book value of sales of assets or stock or liquidation of Subsidiaries by the Borrower and its Subsidiaries during the immediately preceding 12 months)	$ _____
	b.	Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding Fiscal Year	$ _____
	c.	Item a. is equal to the following percentage of Item b.	_____ %
4.	EBIT to Interest Expense Ratio (Section 7.2.5)		
	a.	Net Income (excluding any one-time non-recurring charges)	$ _____
	b.	Interest Expense	$ _____
	c.	Charges for federal, state, local and foreign income taxes	$ _____
		Total for EBIT	$ _____
	d.	EBIT to Interest Expense ratio (EBIT divided by Interest Expense)	_____ :1.00

FORM OF CONTINUATION/CONVERSION NOTICE

Wachovia Bank, National Association,
as Administrative Agent
Agency Servicing
301 South College Street
Mail Code: NC-0680
Charlotte, NC 28288
Attention: Roger Sherman

Re: McCormick & Company, Incorporated

Gentlemen and Ladies:

This Continuation/Conversion Notice is delivered to you pursuant to Section 2.3 of the 364-Day Credit Agreement, dated as of May 30, 2003 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the various financial institutions from time to time parties thereto (the "Lenders") and Wachovia Bank, National Association, as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby requests that on , .

(1) [U.S.$] [£] [DM] [¥] [Euro] of the presently outstanding principal amount of the Loans originally made on , [and [U.S.$] [£] [DM] [¥] [Euro] of the presently outstanding principal amount of the Loans originally made on ,],

(2) and all presently being maintained as(1) [Base Rate Loans] [LIBO Rate Loans denominated in Dollars] [LIBO Rate Loans denominated in an Alternate Currency],

(3) be [converted into] [continued as],

(4) (2)[LIBO Rate Loans denominated in Dollars having an Interest Period of months] [LIBO Rate Loans denominated in an Alternate Currency having an Interest Period of months] [Base Rate Loans](3).

(1) Select appropriate interest rate option.
(2) Insert appropriate interest rate option.
(3) Dollars only.

The Borrower hereby:

(a) certifies and warrants that no Default has occurred and is continuing; and

(b) agrees that if prior to the time of such continuation or conversion any matter certified to herein by it will not be true and correct at such time as if then made, it will immediately so notify the Agent.

Except to the extent, if any, that prior to the time of the continuation or conversion requested hereby the Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed to be certified at the date of such continuation or conversion as if then made.

The Borrower has caused this Continuation/Conversion Notice to be executed and delivered, and the certification and warranties contained herein to be made, by its Authorized Officer this day of , .

McCORMICK & COMPANY,
INCORPORATED

By: _____
Title:

FORM OF OPINION OF COUNSEL TO THE BORROWER

To each of the Lenders party
to the Credit Agreement referred
to below, and Wachovia Bank, National Association,
as Administrative Agent

May 30, 2003

Ladies and Gentlemen:

I am General Counsel of McCormick & Company, Incorporated (the "Borrower"), a Maryland corporation, and have acted as counsel in connection with the execution and delivery of that certain 364-Day Credit Agreement, dated as of May 30, 2003 (the "Credit Agreement"), among the Borrower, Wachovia Bank, National Association, as administrative agent (the "Agent"), and the various financial institutions parties thereto (the "Lenders"). This opinion letter is delivered to you pursuant to Section 5.1.6 of the Credit Agreement. Capitalized terms used herein that are not defined herein have the respective specified meanings in the Credit Agreement.

In rendering the opinions set forth below, I or a member of my staff have examined executed originals of the Credit Agreement and the Notes (collectively, the "Subject Documents"); the Articles of Incorporation of the Borrower and all amendments thereto (the "Charter"); the Bylaws of the Borrower and all amendments thereto (the "Bylaws"); and a certificate issued by the Maryland Department of Assessments and Taxation, dated May , 2003, attesting to the continued corporate existence and good standing of the Borrower in the State of Maryland. In addition, I or a member of my staff have examined originals or photostatic or certified copies of certain of the corporate records and documents of the Borrower and its Subsidiaries, copies of public documents, certificates of officers of the Borrower and public officials, and such other documents as I have deemed necessary and appropriate as a basis for the opinions hereinafter set forth.

In my examination, I have assumed the genuineness of all signatures (other than those of the Borrower), the legal capacity of natural persons, the authenticity of all corporate records, documents, instruments and certificates submitted to us as originals and the conformity to authentic original corporate records, documents, instruments and certificates of all corporate records, documents instruments and certificates submitted to us as certified, conformed or photostatic copies. As to questions of fact material to my opinions, I have relied upon representations and warranties of the parties in the Subject Documents and the other agreements and documents contemplated therein, and on certificates of officers of the Borrower (including those delivered pursuant to the Credit Agreement) and of public officials.

I have further assumed that you have the power and authority and have taken the corporate action necessary to execute and deliver the Credit Agreement and to hold the Notes and that no approvals, waivers, filings, notices or consents, governmental or non-governmental, are required for the valid execution, delivery and performance by you of the Credit Agreement or

to hold the Notes, and that the Credit Agreement executed by you constitutes your legal, valid and binding obligation.

Based upon the foregoing and subject to the qualifications set forth above and hereinafter, I am of the opinion that:

1. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland.

2. The execution, delivery and performance by the Borrower of the Subject Documents are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not (i) contravene the Charter or the By-laws, (ii) violate any Federal or Maryland law, rule or regulation applicable to the Borrower (including, without limitation, Regulations U and X of the Board of Governors of the Federal Reserve System, insofar as the proceeds of the Loans are used solely for the purposes set forth in, and in accordance with the provisions of, the Credit Agreement) or (iii) result in any breach or violation of, or constitute a default under, any agreement or instrument set forth on the attached certificate of the Borrower. The Subject Documents have been duly executed and delivered on behalf of the Borrower.

3. Each of the Subject Documents has been duly executed by the Borrower and constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

4. No authorization or approval or other action by, and no notice to or filing with, any Federal or Maryland governmental authority or regulatory body (other than any applicable securities law filings) is required on behalf of the Borrower for the due execution, delivery or performance by the Borrower of any of the Subject Documents.

5. The Borrower is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", within the meaning of the Public Utility Company Act of 1935, as amended.

6. There is no pending or, to the best of my knowledge, threatened litigation, action, proceeding or labor controversy affecting the Borrower or any of its properties, business, assets or revenues which is likely to materially adversely affect the financial condition or operations of the Borrower and its Subsidiaries taken as a whole or which purports to affect the legality, validity or enforceability of any of the Subject Documents to which the Borrower is a party.

7. The New York governing law clauses of the Subject Documents, subjecting such Subject Documents to the law of the State of New York, are valid under the laws of the State of Maryland.

8. Under the law of the State of Maryland, the laws of the State of New York will be applied to the Subject Documents, except to the extent that any term of such documents or any provision of the law of the State of New York applicable to such documents violates an

important public policy of the State of Maryland. We have no reason to believe that any such term violates an important public policy of the State of Maryland.

The foregoing opinions are subject to the following additional qualifications:

(a) The opinions expressed herein are limited to the laws and regulations of the United States of America and the State of Maryland.

(b) My opinions regarding the enforceability of the Subject Documents are limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws or decisions affecting the enforcement of debtors' obligations and creditors' rights generally, and by general principles of equity and public policy. My opinions are also subject to the effect of certain laws and judicial decisions which may limit the enforceability of certain provisions of the Subject Documents, although such limitations do not, in my judgment, make the remedies provided therein (taken as a whole) inadequate for the practical realization of the benefits afforded thereby.

The opinions expressed herein are solely for your benefit in connection with the performance of the Subject Documents, and without my express prior written consent, this opinion letter may not be circulated or furnished to or relied upon by any other person, except that it may be circulated to any prospective Assignee Lender or Agent in accordance with the Credit Agreement and may be relied upon by any Person who, in the future, becomes a Lender or Agent under the Credit Agreement.

Very truly yours,

Robert W. Skelton
Vice President, General Counsel
& Secretary

U.S. 125,000,000

364-DAY CREDIT AGREEMENT

dated as of June 19, 2001

among

McCORMICK & COMPANY, INCORPORATED,

as the Borrower,

CERTAIN FINANCIAL INSTITUTIONS,

as the Lenders,

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

SUNTRUST BANK,
as the Syndication Agent

and

WACHOVIA, N.A.
as the Administrative Agent

BANC OF AMERICA SECURITIES LLC

and

SUNTRUST EQUITABLE SECURITIES CORPORATION
Lead Arrangers and Book Managers

TABLE OF CONTENTS

SCHEDULES AND EXHIBITS

364-DAY CREDIT AGREEMENT

THIS 364-DAY CREDIT AGREEMENT, dated as of June 19, 2001, among McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), the various financial institutions parties hereto (collectively, the "Lenders") and WACHOVIA, N.A., as the administrative agent (in such capacity, the "Agent") for the Lenders.

W I T N E S S E T H:

WHEREAS, the Borrower has requested that the Lenders provide to it a $125,000,000 364-day revolving line of credit; and the Lenders and the Agent are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Borrower, the Lenders and the Agent agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.1. Defined Terms. The following terms (whether or not underscored) when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"Affiliate" of any Person means any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person (excluding any trustee under, or any committee with responsibility for administering, any Plan). A Person shall be deemed to be "controlled by" any other Person if such other Person possesses, directly or indirectly, power

(a) to vote 25% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners; or

(b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise;

provided, however, that notwithstanding the foregoing, for purposes of Section 10.11.1, an "Affiliate" shall be a Person engaged in the business of banking who is controlled by, or under common control with, a Lender.

"Agent" is defined in the preamble and includes each other Person as shall have subsequently been appointed as the successor Agent pursuant to Section 9.4.

"Agents" means, collectively, the Agent, the Documentation Agent and the Syndication Agent.

"Agreement" means, on any date, this 364-Day Credit Agreement as originally in effect on the Effective Date and as thereafter from time to time amended, supplemented, amended and restated, or otherwise modified and in effect on such date.

"Alternate Base Rate" means, on any date and with respect to all Base Rate Loans, a fluctuating rate of interest per annum equal to the higher of

(a) the rate of interest most recently announced by Wachovia, N.A. at its Domestic Office as its prime rate, and

(b) the Federal Funds Rate most recently determined by the Agent plus 1/2 of 1% per annum.

The Alternate Base Rate is not necessarily intended to be the lowest rate of interest determined by Wachovia, N.A. in connection with extensions of credit. Changes in the rate of interest on any Loans maintained as Base Rate Loans will take effect simultaneously with each change in the Alternate Base Rate. The Agent will give notice promptly to the Borrower and the Lenders of changes in the Alternate Base Rate.

"Alternate Currency" means any Currency, other than Dollars, which the Lenders shall at any relevant time have agreed (in the manner provided for herein) to treat as an Alternate Currency for the purposes of the Commitment Amount and shall be the denomination for Alternate Currency Advances.

"Alternate Currency Advance" means a LIBO Rate Loan or a Competitive Bid Loan, as the case may be, denominated in an Alternate Currency.

"Applicable Law" shall mean, in respect of any Person, all provisions of constitutions, statutes, rules, regulations and orders of governmental bodies or regulatory agencies applicable to such Person, and all orders and decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which it is bound.

"Approved Fund" is defined in Section 10.11.1.

"Assignee Lender" is defined in Section 10.11.1.

"Associated Costs" means, with respect to any LIBO Rate Loan denominated in Sterling, a rate per annum equal to the arithmetic mean of the percentage rates applicable to the LIBOR Offices of the Reference Lenders (calculated by the Agent on the basis of the rates supplied by each Reference Lender to the Agent) according to the following formula:

$$\text{Associated Costs per annum} = \frac{BY + L(Y-X) + S(Y-Z)}{100 - (X+S)}$$

where, with respect to each Reference Lender:

B = The percentage of such Reference Lender's eligible liabilities required, on the first day of the Relevant Period, to be held in a non-interest-bearing

deposit account with the Bank of England pursuant to the cash ratio requirements of the Bank of England.

Y = The LIBO Rate at which Sterling deposits in an amount comparable to the aggregate principal amount of the relevant LIBO Rate Loan are offered by such Reference Lender to leading banks in the London interbank market at or about 11:00 a.m. (London time) on the first day of the Relevant Period for a period comparable to the Relevant Period.

L = The average percentage of eligible liabilities which the Bank of England, as at the first day of the Relevant Period, requires such Reference Lender to maintain as secured money with members of the London Discount Market Association and/or as secured call money with those money brokers and gilt-edged primary market makers recognized by the Bank of England.

X = The rate at which secured Sterling deposits in an amount comparable to the aggregate principal amount of the relevant LIBO Rate Loan may be placed by such Reference Lender with members of the London Discount Market Association and/or as secured call money with money brokers and gilt-edged primary market makers at or about 11:00 a.m. (London time) on the first day of the Relevant Period for a period comparable to the Relevant Period.

S = The percentage of such Reference Lender's eligible liabilities required on the first day of the relevant Interest Period to be placed as a special deposit with the Bank of England.

Z = The percentage interest rate per annum payable by the Bank of England on special deposits or, if lower, Y.

(a) For the purposes of this definition:

(i) "eligible liabilities" and ''special deposits" shall have the meanings ascribed to them from time to time by the Bank of England; and

(ii) "Relevant Period" means, if the Interest Period with respect to such LIBO Rate Loan is three months or less, the duration of such Interest Period or, if such Interest Period is longer than three months, each period of three months and any necessary shorter period in such Interest Period.

(b) In application of the above formula, B, Y, L, X, S and Z will be included in the formula as decimal fractions and not as percentages, e.g., if B = 0.5% and Y = 15%, BY will be calculated as 0.5 x 15 and not as 0.5% x 15%.

(c) Associated Costs shall be computed by the Agent on the first day of each Relevant Period, and shall, if necessary, be rounded upward to the nearest 1/10,000 of 1%. If there is more than one Relevant Period comprised in the relevant Interest Period,

then the Associated Costs for that Interest Period shall be the weighted average of the amounts so computed for the relevant periods comprised in that Interest Period.

(d) Calculations of Associated Costs will be made on the basis of a year of 365 days.

(e) If a Reference Lender fails to furnish a rate for the purposes of this definition, the Associated Costs shall be determined on the basis of the rates furnished by the remaining Reference Lenders. If no Reference Lender furnishes a rate for the purposes of this definition, the Associated Costs payable by the relevant Borrower in respect of any LIBO Rate Loan shall be determined by the Agent on such comparable basis as it may reasonably determine.

"Attributable Value" means, as to any particular Sale-Leaseback Transaction under which any Person is at the time liable, at any date as of which the amount thereof is to be determined (i) in the case of any such transaction involving a Capitalized Lease, the amount on such date of the Capitalized Lease

Obligation thereunder, or (ii) in the case of any other such transaction, the then present value of the minimum rental obligation under such transaction during the remaining term thereof (after giving effect to any extensions at the option of the lessor), computed by discounting the respective rental or other payments at the actual interest factor included in such payment or, if such interest factor cannot be readily determined, at the rate of 9.75% per annum, compounded annually, or calculated in such other manner as may be required by GAAP in effect at the time. The amount of any rental or other payment required to be made under any such transaction not involving a Capitalized Lease may exclude amounts required to be paid by the lessee (or equivalent party) on account of maintenance, repairs, insurance, Taxes, assessments, utilities, operating and labor costs and similar charges. In the case of any such transaction not involving a Capitalized Lease which is terminable by the lessee (or equivalent party) upon payment of a penalty, such rental or other payment may include the amount of such penalty, in which case no rental or other payment shall be considered as required to be paid under such transaction subsequent to the first date on which it may be so terminated.

"Authorized Officer" means, relative to the Borrower, those of its officers whose signatures and incumbency shall have been certified to the Agent and the Lenders pursuant to Section 5.1.1 or any successor thereto.

"Available" means, in respect of any Alternate Currency and any Lender, that such Alternate Currency is, at the relevant time, readily available to such Lender as deposits in the London or other applicable interbank market in the relevant amount and for the relevant term, is freely convertible into Dollars and is freely transferable for the purposes of this Agreement, but if, notwithstanding that each of the foregoing tests is satisfied:

(a) such Alternate Currency is, under the then current legislation or regulations of the country of such Alternate Currency (or under the policy of the central bank of such country) or of the Bank of England or F.R.S. Board, not permitted to be used for the purposes of this Agreement; or

(b) there is no, or only insignificant, investor demand for the making of advances having an interest period equivalent to that for the Alternate Currency Advance which the Borrower has requested or in respect of which the Borrower has requested offers to be made;

then such Alternate Currency may be treated by any Lender as not being Available.

"Base Rate Loan" means a Loan bearing interest at a fluctuating rate determined by reference to the Alternate Base Rate.

"Borrower" is defined in the preamble.

"Borrowing" means, as the context may require, either a Competitive Bid Loan Borrowing or a Revolving Loan Borrowing.

"Borrowing Request" means, as the context may require, either a Revolving Loan Borrowing Request or a Competitive Bid Loan Borrowing Request.

"Business Day" means

(a) any day which is neither a Saturday or Sunday nor a legal holiday on which banks are authorized or required to be closed in New York, New York; and

(b) relative to the making, continuing, prepaying or repaying of any LIBO Rate Loans, any day (i) on which dealings in the relevant currency are carried on in the London interbank market and (ii) in the case of LIBO Rate Loans denominated in a Currency other than Dollars or Sterling, on which banks in the country for which such Currency is the lawful currency are not authorized or required to be closed.

"Capitalized Leases" means all monetary obligations of the Borrower or any of its Subsidiaries under any leasing or similar arrangements which, in accordance with GAAP, would be classified as capitalized leases.

"Capitalized Lease Obligation" means, at any time, the present value of the minimum net lease payments during the term of a Capitalized Lease, computed as provided in the Statement of Financial Accounting Standards No. 13, as amended from time to time.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1990, as amended.

"CERCLIS" means the Comprehensive Environmental Response Compensation Liability Information System List.

"Change in Control" means (a) the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of 51% or more of the outstanding shares of voting stock of the Borrower after giving effect to certain provisions of the Borrower's Certificate of Incorporation with respect to the conversion of non-voting stock to

voting stock; provided, however, that acquisition by the Borrower's pension plan or profit sharing plan of 51% or more of the outstanding shares of the Borrower's voting stock shall not constitute a Change in Control; or (b) during any period of 12 consecutive months, a majority of the members of the board of directors of the Borrower cease to be composed of individuals (i) who were members of the board of directors on the first day of such period, (ii) whose election or nomination to the board of directors was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the board of directors or (iii) whose election or nomination to the board of directors was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the board of directors.

"Code" means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

"Commitment" means the commitment of each Lender to make Revolving Loans pursuant to this Agreement.

"Commitment Amount" means U.S. $125,000,000, as such amount may be reduced or adjusted from time to time in accordance with this Agreement.

"Commitment Termination Event" means

(a) the occurrence of any Event of Default described in clauses (a) through (e) of Section 8.1.9 with respect to the Borrower or any Principal Subsidiary; or

(b) the occurrence and continuance of any other Event of Default and either

(i) the declaration of the Loans to be due and payable pursuant to Section 8.3, or

(ii) in the absence of such declaration, the giving of notice by the Agent, acting at the direction of the Required Lenders pursuant to Section 8.3, to the Borrower that the Commitments have been terminated.

"Competitive Bid Loan" means a loan made by a Lender to the Borrower based on the Competitive Bid Rate as part of a Competitive Bid Loan Borrowing resulting from the procedure described in Section 2.3.

"Competitive Bid Loan Acceptance" means an acceptance by the Borrower of a Competitive Bid Loan Offer pursuant to clause (e) of Section 2.3, substantially in the form of Exhibit C-3 attached hereto.

"Competitive Bid Loan Borrowing" means Competitive Bid Loans made by each Lender whose offer to make such Competitive Bid Loans as part of such Borrowing has been accepted by the Borrower pursuant to clause (e) of Section 2.3.

"Competitive Bid Loan Borrowing Notice" means a notice by the Borrower specifying that a Competitive Bid Loan Borrowing has occurred, substantially in the form of Exhibit C-4 attached hereto.

"Competitive Bid Loan Borrowing Request" means a certificate requesting Competitive Bid Loans, duly executed by an Authorized Officer, substantially in the form of Exhibit B-2 attached hereto.

"Competitive Bid Loan Interest Payment Date" is defined in clause (a) of Section 2.3.

"Competitive Bid Loan Maturity Date" is defined in clause (a)(iii) of Section 2.3.

"Competitive Bid Loan Note" means a promissory note of the Borrower payable to any Lender, in the form of Exhibit A-2 hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from Loans outstanding from such Lender that were made as Competitive Bid Loans, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

"Competitive Bid Loan Offer" means an offer by a Lender to make a Competitive Bid Loan pursuant to clause (c) of Section 2.3, substantially in the form of Exhibit C-2 attached hereto.

"Competitive Bid Outstanding Balance" means, at any time, the then aggregate outstanding principal amount of all Competitive Bid Loans.

"Competitive Bid Rate" means (a) the LIBO Rate (plus the LIBO Rate Bid Margin) or (b) the Fixed Rate offered by a Lender in a Competitive Bid Loan Offer in respect of a Competitive Bid Rate Loan proposed pursuant to Section 2.3.

"Consolidated Net Tangible Assets" means all assets of the Borrower and its Subsidiaries appearing on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP minus goodwill and other intangible assets other than prepaid allowances.

"Contingent Liability" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount (or maximum amount, if larger) of the debt, obligation or other liability guaranteed thereby.

"Continuation/Conversion Notice" means a notice of continuation or conversion and certificate duly executed by an Authorized Officer of the Borrower, substantially in the form of Exhibit F hereto.

"Controlled Group" means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with the Borrower, are treated as a single employer under Section 414(b) or 414(c) of the Code or Section 4001 of ERISA.

"Currency" and "Currencies" means Dollars, Deutschemarks, Yen, Sterling and Euro.

"Default" means any Event of Default or condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

"Deutschemark" and "DM" mean the lawful currency of the Federal Republic of Germany.

"Disclosure Schedule" means the Disclosure Schedule attached hereto as Schedule I, as it may be amended, supplemented or otherwise modified from time to time by the Borrower with the written consent of the Agent and the Required Lenders.

"Documentation Agent" means Bank of America, N.A. in its capacity as documentation agent hereunder.

"Dollars" and the sign "$" each mean the lawful currency of the United States of America.

"Dollar Equivalent" of any amount of any Alternate Currency or Non-Major Alternate Currency on any date means the equivalent amount in Dollars, converted at the rate of exchange quoted by Wachovia, N.A. at its New York office to prime banks in New York for the spot purchase in the New York foreign exchange market of the relevant Alternate Currency or, to the extent spot quotations are available, the Non-Major Alternate Currency, in each case at approximately 11:00 a.m. (New York time) on such date in accordance with its normal practice.

"Domestic Office" means, relative to any Lender, the office of such Lender designated as such below its signature hereto or designated in the Lender Assignment Agreement or such other office of a Lender (or any successor or assign of such Lender) within the United States as may be designated from time to time by notice from such Lender, as the case may be, to each other Person party hereto.

"EBIT" means, for any period, the sum of the amounts for such period of (a) Net Income (excluding any one-time non-recurring charges), (b) Interest Expense and (c) charges for federal, state, local and foreign income taxes, all determined in accordance with GAAP.

"Euro" means the euro referred to in Council Regulation (EC) no. 1103/97 dated June 17, 1997 passed by the Council of the European Union, or, if different, the then lawful currency of the member states of the European Union that participates in the third stage of Economic and Monetary Union.

"Effective Date" shall mean the first date on which this Agreement shall have been fully signed in accordance with Section 10.8 and each of the conditions precedent set forth in Section 5.1 have been satisfied.

"Environmental Laws" means all applicable federal, state or local statutes, laws, ordinances, codes, rules and regulations (including consent decrees and administrative orders issued to the Borrower or any Subsidiary) relating to public health and safety and protection of the environment.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

"Event of Default" is defined in Section 8.1.

"Existing Credit Agreement" means that certain Amended and Restated Revolving Credit Agreement dated as of December 13, 1996 among the Borrower, certain financial institutions as lenders and Toronto Dominion (Texas), Inc., as administrative agent (such administrative agent having been replaced by First Union National Bank), as amended.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the rate of interest most recently offered to the Agent in the interbank market as the overnight federal funds rate.

"Fiscal Quarter" means any quarter of a Fiscal Year.

"Fiscal Year" means any period of twelve consecutive calendar months ending on November 30; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the "2000 Fiscal Year") refer to the Fiscal Year ending on the November 30 occurring during such calendar year.

"Fixed Rate" means, for any period with respect to Competitive Bid Loans, an absolute interest rate proposed by a Lender in a Competitive Bid Loan Offer.

"Foreign Currency Equivalent" of any amount of Dollars in any Alternate Currency or Non-Major Alternate Currency on any date means the equivalent amount in the relevant currency converted at the rate of exchange quoted under the heading "Exchange Rates — Currency per U.S. $" in The Wall Street Journal for the immediately preceding Business Day for such Alternate Currency or Non-Major Alternate Currency.

"F.R.S. Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"GAAP" is defined in Section 1.4.

"Granting Lender" is defined in Section 10.1.1.

"Hazardous Material" means

(a) any "hazardous substance", as defined by CERCLA;

(b) any "hazardous waste", as defined by the Resource Conservation and Recovery Act, as amended;

(c) any petroleum product; or

(d) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders issued to the Borrower or any Subsidiary) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended.

"herein," "hereof," "hereto," "hereunder" and similar terms contained in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular Section, paragraph or provision of this Agreement or such other Loan Document.

"Impermissible Qualification" means, relative to the opinion or certification of any independent public accountant as to any financial statement of the Borrower, any qualification or exception to such opinion or certification

(a) which is of a "going concern" or similar nature;

(b) which relates to the limited scope of examination of matters relevant to such financial statement; or

(c) which relates to the treatment or classification of any item in such financial statement and which, as a condition to its removal, would require an adjustment to such item the effect of which would be to cause the Borrower to be in default of any of its obligations under Section 7.2.4.

"including" means including without limiting the generality of any description preceding such term, and, for purposes of this Agreement and each other Loan Document, the parties hereto agree that the rule of ejusdem generis shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned.

"Indebtedness" of any Person means, without duplication, any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money which would be regarded as indebtedness in accordance with GAAP, including all Contingent Liabilities of such Person in respect of any such obligations.

For all purposes of this Agreement, the Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner; provided, however, that the Indebtedness of any Person shall not include any obligation of a partnership in which such Person is a general partner to the extent that such obligation (including any Contingent Liability) is limited by its terms.

"Indemnified Liabilities" is defined in Section 10.4.

"Indemnified Parties" is defined in Section 10.4.

"Interest Expense" means, for any period, all as determined in accordance with GAAP, total interest expense, whether paid or accrued (without duplication) (including the interest component of Capitalized Lease Obligations), of the Borrower and its Subsidiaries on a consolidated basis, including, without limitation, all bank fees, commissions, discounts and other fees and charges owed with respect to letters of credit, but excluding, however, amortization of discount, interest paid in property other than cash or any other interest expense not payable in cash.

"Interest Period" means, relative to any LIBO Rate Loans, the period beginning on (and including) the date on which such LIBO Rate Loans are made or continued as, or converted into, LIBO Rate Loans pursuant to Section 2.1 or 2.4 and shall end on (but exclude) the day which numerically corresponds to such date one, two, three or six months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month), the Borrower may select in its relevant notice pursuant to Section 2.3 or 2.4; provided, however, that

(a) the Borrower shall not be permitted to select Interest Periods to be in effect at any one time which have expiration dates occurring on more than five different dates;

(b) Interest Periods commencing on the same date for Loans comprising part of the same Borrowing shall be of the same duration;

(c) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless, such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day); and

(d) no Interest Period may end later than the Maturity Date.

"Lead Arrangers" means, collectively, Banc of America Securities LLC and SunTrust Equitable Securities Corporation.

"Lender Assignment Agreement" means a Lender Assignment Agreement substantially in the form of Exhibit D hereto.

"Lenders" has the meaning specified in the preamble.

"LIBO Alternate Rate" is defined in Section 3.3.1.

"LIBO Rate" is defined in Section 3.3.1.

"LIBO Rate Bid Margin" means, in respect of Competitive Bid Loans, the margin above (or below) the applicable LIBO Rate offered for each such Competitive Bid Loan, expressed as a percentage (rounded to the nearest 1/10, 000th of 1%) to be added to, or subtracted from, such rate.

"LIBO Rate Loan" means a Revolving Loan or a Competitive Bid Rate Loan, as the case may be, bearing interest, at all times during an Interest Period applicable to such Revolving Loan or Competitive Bid Rate Loan, at a fixed rate of interest determined by reference to the LIBO Rate (Reserve Adjusted).

"LIBO Rate (Reserve Adjusted)" is defined in Section 3.3.1.

"LIBOR Office" means, relative to any Lender, the office of such Lender designated as such below its signature hereto or designated in the Lender Assignment Agreement or such other office of a Lender as designated from time to time by notice from such Lender to the Borrower and the Agent, whether or not outside the United States, which shall be making or maintaining LIBO Rate Loans of such Lender hereunder.

"LIBOR Reserve Percentage" is defined in Section 3.3.1.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property to secure payment of a debt or performance of an obligation or other priority or preferential arrangement of any kind or nature whatsoever.

"Loans" means the Competitive Bid Loans and the Revolving Loans made on a Business Day by each Lender to the Borrower pursuant to such Lender's Commitment during the period commencing on the Effective Date until (but not including) the Maturity Date. The aggregate principal amount at any time outstanding of all Loans made by the Lenders shall not exceed the Commitment Amount.

"Loan Document" means this Agreement, the Notes, the Transaction Fee Letter and each other document and agreement delivered to the Agent in connection herewith or therewith.

"Material Adverse Effect" means any event which will, or is reasonably likely to, have a material adverse effect on (i) the financial condition, assets, liabilities, operations or business of the Borrower and its Subsidiaries taken as a whole or (ii) the Borrower's ability to perform and comply with its monetary obligations under this Agreement, the Notes and each other Loan Document.

"Maturity Date" means the earlier to occur of

(a) June 18, 2002, as such date may be extended from time to time in accordance with the terms hereof;

(b) the date on which the Commitment Amount is terminated in full or reduced to zero pursuant to Section 2.2; and

(c) immediately and without further notice upon the occurrence of any Commitment Termination Event.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Net Income" means, for any period, with respect to the Borrower and its Subsidiaries, income from continuing operations of the Borrower and its Subsidiaries during such period, determined in accordance with GAAP.

"Non-Major Alternate Currencies" means all currencies other than the Alternate Currencies and Dollars.

"Note" means, as the context may require, a Competitive Bid Loan Note or a Revolving Loan Note.

"Obligations" means all obligations (monetary or otherwise) of the Borrower arising under or in connection with this Agreement, the Notes and each other Loan Document.

"Organic Document" means, (a) relative to the Borrower, its certificate of incorporation, its by-laws and all shareholder agreements, voting trusts and similar arrangements applicable to any of its authorized shares of capital stock and (b) relative to any Subsidiary, its applicable corporate, partnership, joint venture or limited liability company organizational and governing documents and all arrangements applicable to any of its equity, ownership or membership interests.

"Other Credit Agreement" means that certain five year Revolving Credit Agreement dated as of the date hereof among the Borrower, the lenders named therein and Wachovia, N.A., as administrative agent, as from time to time amended, supplemented, amended and restated, or otherwise modified and in effect.

"Other Loans" means, collectively, all "Loans" under and as defined in the Other Credit Agreement.

"Participant" is defined in Section 10.11.

"PBGC" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"Pension Plan" means a "pension plan," as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a multiemployer plan as defined in Section 4001(a)(3) of ERISA), and to which the Borrower or any corporation, trade or business that is, along with the Borrower, a member of a Controlled Group, may have liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Percentage" means, relative to any Lender, the percentage set forth opposite its signature hereto or set forth in the Lender Assignment Agreement, as such percentage may be adjusted from time to time pursuant to Lender Assignment Agreement(s) executed by such Lender and its Assignee Lender(s) and delivered pursuant to Section 10.11.

"Person" means any individual, trustee, corporation, general partnership, limited partnership, limited liability company, joint stock company, firm, business association, trust, unincorporated organization, bank, joint venture, government, governmental authority or any other entity, whether acting in an individual, fiduciary or other capacity.

"Plan" means any Pension Plan or Welfare Plan.

"Principal Subsidiary" means a Subsidiary (i) whose total assets or net sales (each such amount expressed on a consolidated basis in the case of a Subsidiary which itself has Subsidiaries) represent, respectively, not less than 15% of either the consolidated total assets or consolidated net sales of the Borrower and its Subsidiaries, all as calculated annually by reference to the immediately preceding Fiscal Year-end financial data (consolidated or unconsolidated, as the case may be) of such Subsidiary and the then latest Fiscal Year-end audited consolidated financial statements of the Borrower, or (ii) to which is transferred all or substantially all of the assets or undertakings of a Principal Subsidiary. A certificate by an Authorized Officer of the Borrower as to whether a Subsidiary is or is not or was or was not a Principal Subsidiary at a specified date shall, in the absence of manifest error, be conclusive and binding.

"Quarterly Payment Date" means the last day of each calendar quarter or, if any such day is not a Business Day, the next succeeding Business Day.

"Reference Lenders" means Bank of America, N.A. and SunTrust Ban**k**.

"Related Person" means, with respect to any Person, the outstanding capital stock of which is at least 25%, but not more than 50% beneficially owned by the Borrower or its Subsidiaries.

"Release" means a "release," as such term is defined in CERCLA.

"Required Lenders" means, at any time,

(a) except as otherwise provided in clause (c) hereof, with respect to any provision of this Agreement other than the declaration of the acceleration of the maturity of all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable pursuant to Section 8.3, Lenders having greater than 50% of the Commitment Amount,

(b) except as otherwise provided in clause (c) hereof, with respect to the declaration of the acceleration of the maturity of all or any portion of the outstanding principal amount of the Loans and other obligations to be due and payable pursuant to Section 8.3, Lenders holding Loans representing greater than 50% of the aggregate principal amount of the Loans outstanding, or

(c) with respect to any waiver of a Default or any amendment or modification of any provision of this Agreement or any other Loan Document which would have the effect of waiving a Default, Lenders having greater than (i) 50% of the Commitment Amount or (ii) if the Commitments have been terminated, 50% of the aggregate principal amount of the Loans outstanding.

"Resource Conservation and Recovery Act" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 690, et seq., as in effect from time to time.

"Revolving Commitment Amount" means, on any date, relative to any Lender, the amount equal to such Lender's Percentage multiplied by the Commitment Amount.

"Revolving Loan" means a Loan made by a Lender to the Borrower pursuant to Section 2.1.

"Revolving Loan Borrowing" means Revolving Loans of the same type made by all Lenders on the same Business Day in accordance with Section 2.1.

"Revolving Loan Borrowing Request" means a certificate requesting Revolving Loans, duly executed by an Authorized Officer, substantially in the form of Exhibit B-1 attached hereto.

"Revolving Loan Commitment" means a Lender's obligation to make Revolving Loans pursuant to Section 2.1.

"Revolving Loan Note" means a promissory note of the Borrower payable to any Lender, in the form of Exhibit A-1 hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from Revolving Loans outstanding from such Lender, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

"Sale-Leaseback Transaction" means any arrangement, directly or indirectly, with any Person whereby a seller or transferor shall sell or otherwise transfer any real or personal property if, as part of the same transaction or series of transactions, the seller or transferor shall then or thereafter lease as lessee, or similarly acquire the right to possession or use of, such sold or transferred property, or property which it intends to use substantially to the same extent or for the same purpose as such sold or transferred property, in any such case under any lease, agreement or other arrangement, whether or not involving a Capitalized Lease, with the Person to whom such property was sold or transferred (other than any such lease, agreement or arrangement having a term, including renewals, not exceeding three years) which obligates the seller or transferor to pay rent as lessee or make any other payment to such Person for such possession or use.

"Senior Debt Rating" means the Borrower's senior, unsecured non-credit-enhanced long term debt rating, as determined by S&P and Moody's.

"S&P" means Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc. and any successor thereto.

"SPC" is defined in Section 10.1.1.

"Sterling" and "£" mean the lawful currency of the United Kingdom of Great Britain and Northern Ireland.

"Subsidiary" means, with respect to any Person, any corporation, partnership, joint venture, limited liability company or other business entity of which more than 50% of the outstanding capital stock or other interests having ordinary voting power to elect a majority of the board of directors or other governing body of such entity (irrespective of whether at the time securities or interests of any other class or classes of such entity shall or might have voting power upon the occurrence of any contingency) is at the time, directly or indirectly, beneficially owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person. Unless otherwise indicated, when used in this Agreement, the term "Subsidiary" shall refer to a Subsidiary of the Borrower.

"Syndication Agent" means SunTrust Bank in its capacity as syndication agent hereunder.

"Taxes" is defined in Section 4.6.

"Telerate Page 3750" means the display designated as "Page 3750" on the Telerate Service (or such other page as may replace Page 3750 on the service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association interest settlement rates for Deutschemark, U.S. Dollar, Sterling or Yen deposits)

"Transaction Fee Letter" means the confidential letter agreement, dated May __, 2001, by and between the Agents, the Lead Arrangers and the Borrower.

"type" means, relative to any Revolving Loan, the portion thereof being maintained as a Base Rate Loan or a LIBO Rate Loan.

"United States" or "U.S." means the United States of America, its fifty States and the District of Columbia.

"Utilization Fee Rate" means, at any time, the percentage rate per annum at which utilization fees are accruing pursuant to Section 3.4.2 at such time as set forth within such Section.

"Welfare Plan" means a "welfare plan," as such term is defined in Section 3(l) of ERISA.

"Yen" and "¥" means the lawful currency of Japan.

SECTION 1.2. Use of Defined Terms. Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in the Disclosure Schedule and in each Note, Loan Document, Borrowing Request, Continuation/Conversion Notice, notice, request and other communication delivered from time to time in connection with this Agreement or any other Loan Document.

SECTION 1.3. Cross-References. Unless otherwise specified, references in this Agreement and in each other Loan Document to any Article or Section are references to such Article or Section of this Agreement or such other Loan Document, as the case may be, and, unless otherwise specified, references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition.

SECTION 1.4. Accounting and Financial Determinations. Unless otherwise specified, all accounting terms used herein or in any other Loan Document shall be interpreted, all accounting determinations and computations hereunder or thereunder (including under Sections 7.2.2 and 7.2.4) shall be made in accordance with generally accepted accounting principles ("GAAP") as in effect on the Effective Date of this Agreement, and all financial statements required to be delivered hereunder or thereunder shall be prepared in accordance with GAAP as in effect on the date of, or for the period covered by, such financial statements, and applied in the preparation of the financial statements referred to in Section 6.5.

ARTICLE II

MAKING THE LOANS

SECTION 2.1. Revolving Loan Commitments and Borrowing Procedure.

(a) Commitments. Subject to the terms and conditions of this Agreement (including Article V), each Lender severally and for itself alone agrees that it will make Revolving Loans pursuant to its Revolving Loan Commitment described in this Section 2.1. From time to time, on any Business Day occurring prior to the Maturity Date, each Lender will make Revolving Loans to the Borrower equal to such Lender's Percentage of the aggregate amount of the Revolving Loan Borrowing requested by the Borrower to be made by all Lenders on such day. No Lender shall be required to make any Revolving Loan if, after giving effect thereto,

(i) the aggregate outstanding principal amount of all Loans (determined in the case of Loans denominated in a currency other than Dollars on the basis of the Dollar Equivalent thereof) of all Lenders would exceed the Commitment Amount, or

(ii) the sum of the

(A) then aggregate outstanding principal amount of all Revolving Loans (determined in the case of Loans denominated in a currency other than Dollars on the basis of the Dollar Equivalent thereof) of such Lender

plus

(B) an amount equal to (1) such Lender's Percentage multiplied by (2) the then Competitive Bid Outstanding Balance (determined in the case of Loans denominated in a currency other than Dollars on the basis of

the Dollar Equivalent thereof) would exceed such Lender's Revolving Commitment Amount.

Subject to the terms hereof, the Borrower may from time to time borrow, repay and reborrow Revolving Loans under this Agreement. The Commitment Amount shall be deemed to be used from time to time to the extent of the Competitive Bid Outstanding Balance, and such deemed use of the Commitment Amount shall be allocated to the Lenders' Revolving Commitment Amounts according to their respective Percentages.

(b) Borrowing Procedure. By delivering a Revolving Loan Borrowing Request to the Agent on a Business Day on or before 10:00 a.m. (New York City time), the Borrower may from time to time irrevocably request a Loan to be made (a) (i) in respect of any Borrowing comprised of Revolving Loans denominated in Dollars bearing interest at the LIBO Rate, on not less than three nor more than five Business Days' notice, and in respect of any Borrowing comprised of (ii) Revolving Loans denominated in an Alternate Currency bearing interest at the LIBO Rate, on not less than five nor more than ten Business Days, notice and (b) in respect of any Borrowing comprised of Revolving Loans denominated in Dollars bearing interest at the Alternate Base Rate, on not less than one Business Day's notice. Each Revolving Loan Borrowing Request must be in an aggregate minimum amount of $10,000,000 and in integral multiples of $1,000,000, or the Foreign Currency Equivalent thereof in the case of Revolving Loans made in an Alternate Currency. Subject to the terms and conditions of this Agreement, each Revolving Loan Borrowing shall be made on the Business Day specified in the Revolving Loan Borrowing Request therefor. On such Business Day, each Lender shall deposit in an account maintained with the Agent same day funds, on or before 11:00 a.m. (New York City time) (or, in the case of Loans denominated in a currency other than Dollars, on or before a mutually agreed upon time), in an amount equal to such Lender's Percentage of the requested Revolving Loan Borrowing in the relevant currency, such deposit to be made to such account as the Agent shall specify from time to time by notice to the Lenders. No Lender's obligation to make any Loan shall be affected by any other Lender's failure to make any Loan.

SECTION 2.2. Reduction of the Commitment Amount. The Commitment Amount is subject to reduction from time to time pursuant to this Section. The Borrower may, from time to time on any Business Day voluntarily reduce the Commitment Amount; provided, however, that all such reductions under this Section shall be subject to Section 3.2(b), require at least three Business Days' prior notice to the Agent, be permanent, be applied to the Lenders' Revolving Commitment Amounts pro rata in accordance with their respective Percentages, and any partial reduction of the Commitment Amount shall be in a minimum amount of $10,000,000 and in an integral multiple of $5,000,000.

SECTION 2.3. Competitive Bid Loans. Subject to the terms and conditions of this Agreement (including Article V), each Lender severally agrees that the Borrower may request that Competitive Bid Loan Borrowings under this Section 2.3 be made from time to time on any Business Day prior to the date occurring one month prior to the Maturity Date in the manner set forth below; provided, however, that following the making of each Competitive Bid Loan Borrowing, the aggregate amount of all Loans then outstanding (which, in the case of Loans

denominated in a currency other than Dollars, shall be the Dollar Equivalent thereof) shall not exceed the Commitment Amount (and, subject to Section 4.4, the Borrower hereby agrees to make a mandatory prepayment of Revolving Loans to the extent necessary to reduce the outstanding principal amount of all Loans (after giving effect to such Competitive Bid Loan Borrowing) to an amount not in excess of the Commitment Amount).

(a) Competitive Bid Loan Borrowing Request. The Borrower may request Competitive Bid Loan Borrowings under this Section 2.3 by delivering to the Agent not later than 10:00 a.m. (New York City time) at least five Business Days, prior to the date of the proposed Competitive Bid Loan Borrowing, a Competitive Bid Loan Borrowing Request (which shall constitute an invitation to the Lenders to extend Competitive Bid Loan quotes to the Borrower, and which may contain requests for up to three different Competitive Bid Loans), specifying

(i) the amount and Currency or Non-Major Alternate Currency of the Competitive Bid Loan,

(ii) the proposed date (which shall be a Business Day) and aggregate principal amount or amounts of each Competitive Bid Loan to be made as part of such proposed Competitive Bid Loan Borrowing (which shall be in a minimum principal amount of $5,000,000 and in an integral multiple of $1,000,000 or the Foreign Currency Equivalent thereof) (and, subject to the first sentence of this Section, which principal amount may exceed the Commitment Amount then available to be borrowed),

(iii) the proposed maturity date or dates (each a "Competitive Bid Loan Maturity Date") for repayment of each Competitive Bid Loan to be made as part of such Competitive Bid Loan Borrowing (which maturity date or dates may not be earlier than the date occurring seven days after the date of such Competitive Bid Loan Borrowing or later than the earlier of the date occurring (A) one hundred eighty-three days after the date of such Competitive Bid Loan Borrowing or (B) the Maturity Date), and

(iv) the interest payment date or dates (which interest payment dates shall be the Competitive Bid Loan Maturity Date applicable thereto and, if such Competitive Bid Loan Maturity Date occurs more than three months after the date of such Competitive Bid Loan Borrowing, the date occurring on each Quarterly Payment Date after the date of such Competitive Bid Loan Borrowing; each such interest payment date, a "Competitive Bid Loan Interest Payment Date") relating thereto.

The Borrower shall not request any Competitive Bid Loan Borrowing within three Business Days' after any other Competitive Bid Loan Request.

(b) Invitation for Bid Loan Quotes. Promptly upon receipt of a Competitive Bid Loan Borrowing Request but in no event later than 4:00 p.m. (New York City time) on the date of such receipt, the Agent shall send to the Lenders by telecopy an "Invitation

for Bid Loan Quotes" substantially in the form of Exhibit C-1 attached hereto, which shall constitute an invitation by the Borrower to each Lender to submit Competitive Bid Loan quotes offering to make the Competitive Bid Loans to which such Competitive Bid Loan Borrowing Request relates in accordance with this Section.

(c) Submission and Contents of Bid Loan Quotes.

(i) If any Lender, in its sole discretion, elects to offer to make a Competitive Bid Loan to the Borrower as part of such proposed Competitive Bid Loan Borrowing at a rate of interest specified by such Lender in its sole discretion, it shall deliver to the Agent not later than 11:00 a.m. (New York City time) on the fourth Business Day prior to the proposed date of Borrowing, and in the case of a Competitive Bid Loan Borrowing in an Alternate Currency or Non-Major Alternate Currency, no later than 11:00 a.m. (New York City time) on the fifth Business Day prior to the proposed date of Borrowing, a Competitive Bid Loan Offer, which must comply with the requirements of this clause, substantially in the form of Exhibit C-2 hereto; provided, that Competitive Bid Loan quotes submitted by the Agent (or any affiliate of the Agent) in the capacity of a Lender may be submitted, and may only be submitted, if the Agent or such affiliate notifies the Borrower of the terms of the offer or offers contained therein not later than 10:00 a.m. (New York City time) on the fourth Business Day prior to the proposed date of borrowing. Such Competitive Bid Loan Offer shall specify

(A) the Currency or Non-Major Alternate Currency of the Competitive Bid Loans,

(B) the proposed date of Borrowing, which shall be the same as that set forth in the applicable Invitation for Bid Loan Quotes,

(C) the principal amount of the Competitive Bid Loan which such Lender would be willing to make as part of such proposed Competitive Bid Loan Borrowing (which amount shall be in a minimum principal amount of $5,000,000 and in an integral multiple of $1,000,000, or the Foreign Currency Equivalent thereof, and may, subject to the proviso to the first sentence of this Section 2.3, exceed such Lender's Revolving Commitment Amount),

(D) the Fixed Rate or the LIBO Rate Bid Margin therefor. A Competitive Bid Loan Offer submitted by a Lender pursuant to this clause (c) shall be irrevocable, except with the written consent of the Agent given on the instructions of the Borrower, and

(E) the identity of the quoting Lender.

(ii) Any Competitive Bid Loan quote that:

(A) is not substantially in the form of Exhibit C-2 hereto or does not specify all of the information required in clause (c) of this Section;

(B) contains qualifying, conditional or similar language;

(C) contains proposed terms other than or in addition to those set forth in the applicable Invitation for Bid Loan Quotes; or

(D) arrives after the time set forth in clause (c) of this Section shall be disregarded by the Agent.

(d) Notice to Borrower. The Agent shall (by telephone confirmed by telecopy), by 4:00 p.m. (New York City time) on the fourth Business Day prior to the proposed date of Borrowing, notify the Borrower of the terms of any Competitive Bid Loan quote submitted by a Lender that is in accordance with clause (c) of this Section. The Agent's notice to the Borrower shall specify (A) the Currency or Non-Major Alternate Currency of the Competitive Bid Loan, (B) the aggregate principal amount of Competitive Bid Loans for which offers have been received specified in the related Competitive Bid Loan Borrowing Request, (c) the principal amounts and LIBO Rate Bid Margins or Fixed Rates so offered, and (D) the identity of such quoting Lenders.

(e) Competitive Bid Loan Acceptance. The Borrower shall, in turn, by telephone confirmed by telecopy before 11:00 a.m. (New York City time) on the third Business Day prior to the proposed date of such proposed Competitive Bid Loan Borrowing, either

(i) irrevocably cancel the Competitive Bid Loan Borrowing Request that requested such Competitive Bid Loan Borrowing by giving the Agent (which shall promptly notify each Lender) telephonic notice (promptly confirmed in writing) to that effect (and, for purposes of this Section, a failure on the part of the Borrower to timely notify the Agent under the terms of this clause shall be deemed to be non-acceptance of all offers so notified to it pursuant to clause (d), above), or

(ii) irrevocably accept one or more of the offers made by any Lender or Lenders pursuant to clause (d) above, in its sole discretion, by giving the Agent telephonic notice (and the Agent shall, promptly upon receiving such telephonic notice from the Borrower, notify each Lender whose Competitive Bid Loan quote has been accepted) (promptly confirmed in writing by delivery to the Agent of a Competitive Bid Loan Borrowing Notice) of

(A) the Currency or Non-Major Alternate Currency of the Competitive Bid Loan Borrowing to be made,

(B) the amount of the Competitive Bid Loan Borrowing to be made on such date, and

(C) the amount of the Competitive Bid Loan (which amount shall not be greater than the amount offered by such Lender for such Competitive Bid Loan pursuant to clause (d) above) to be made by such Lender as part of such Competitive Bid Loan Borrowing, and reject any remaining offers made by Lenders pursuant to clause (d) above by giving the Agent (which shall promptly give to the Lenders) notice to that effect;

provided, however, that

(D) the Borrower shall not accept an offer made at a particular Competitive Bid Rate if the Borrower has decided to reject an offer made in respect of the same Competitive Bid Loan with the same Competitive Bid Loan Maturity Date at a lower Competitive Bid Rate of the type requested by the Borrower,

(E) the aggregate principal amount of the Competitive Bid Loan Offers accepted by the Borrower shall not exceed the principal amount specified in the Competitive Bid Loan Borrowing Request,

(F) if the Borrower shall accept an offer or offers made at a particular Competitive Bid Rate but the amount of such offer or offers shall cause the total amount of offers to be accepted by the Borrower to exceed the amount specified in the Competitive Bid Loan Borrowing Request, then the Borrower shall (notwithstanding the minimum offer acceptance amount required by clause (G) below)

(1) accept a portion of such offer or offers in an aggregate amount equal to the amount specified in the Competitive Bid Loan Borrowing Request less the amount of all other offers accepted with respect to such Competitive Bid Loan Borrowing Request, and

(2) allocate the Competitive Bid Loans in respect of which such offers are accepted among the Lenders submitting such offers as nearly as possible in proportion to the aggregate amount of such offers made by each Lender (provided that if the available principal amount of Competitive Bid Loans to be so allocated is not sufficient to enable Competitive Bid Loans to be so allocated to each such Lender in a minimum principal amount of $5,000,000 and in integral multiples of $1,000,000, or the Foreign Currency Equivalent thereof, the Borrower shall select the Lenders to be allocated such Competitive Bid Loans in a minimum principal amount of $1,000,000 and round allocations up to the next higher multiple of $1,000,000 (or the Foreign Currency Equivalent thereof) if necessary; provided, further, however, that no Lender shall be required to make a Competitive Bid Loan if, as a result of such allocation, the principal amount of such Lender's Competitive

Bid Loan would be less than $5,000,000 (or the Foreign Currency Equivalent thereof), unless otherwise agreed to by such Lender),

(G) no bid shall be accepted for a Competitive Bid Loan unless such Competitive Bid Loan is in a minimum principal amount of $5,000,000 (except as provided in clause (F) above) and an integral multiple of $1,000,000 and is part of a Competitive Bid Loan Borrowing in a minimum principal amount of $5,000,000 (or, in each case, the Foreign Currency Equivalent thereof), and

(H) the Borrower may not accept any offer that is described in clause (c)(ii) of this Section, or that otherwise fails to comply with the requirements of this Agreement.

A notice given by the Borrower pursuant to this clause (e)(ii) shall be irrevocable.

(f) Funding of Competitive Bid Loans. Not later than 11:00 a.m. (New York City time) on the date specified for each Competitive Bid Loan hereunder, each Lender participating therein shall make available the amount of the Competitive Bid Loan to be made by it on such date to Agent in immediately available funds, for the account of the Borrower, such deposit to be made to an account maintained by the Agent, as the Agent shall specify from time to time by notice to the Lenders. The amount so received by the Agent shall be made available to the Borrower not later than 2:00 p.m. (New York City time) on the date of the requested Borrowing by depositing the same in immediately available funds in an account of the Borrower's notified to the Agent in writing. Promptly after each Competitive Bid Loan Borrowing, but no later than the immediately succeeding Business Day, the Borrower will deliver to each Lender a Competitive Bid Loan Borrowing Notice, specifying the amount of the Competitive Bid Loan Borrowing, the amounts and Currencies or Non-Major Alternate Currencies of the Competitive Bid Loans which comprise such Borrowing, the applicable Competitive Bid Rates accepted, the consequent Competitive Bid Outstanding Balance, the date on which such Competitive Bid Loan Borrowing was made and the corresponding Competitive Bid Loan Maturity Date applicable to all Competitive Bid Loans that are part of such Competitive Bid Loan Borrowing.

SECTION 2.4. Continuation and Conversion Elections. By delivering a Continuation/Conversion Notice to the Agent on or before 11:00 a.m. (New York City time) on a Business Day, the Borrower may from time to time irrevocably elect, on not less than three nor more than five Business Days' notice, that all, or any portion in an aggregate minimum amount of $5,000,000 and an integral multiple of $1,000,000 or the Foreign Currency Equivalent thereof, of the Revolving Loans be, (a) in the case of Base Rate Loans, converted into LIBO Rate Loans, (b) in the case of LIBO Rate Loans denominated in Dollars, be converted into Base Rate Loans or continued as LIBO Rate Loans, or (c) in the case of LIBO Rate Loans denominated in an Alternate Currency, continued as LIBO Rate Loans in the same Currency.

In the absence of delivery of a Continuation/Conversion Notice with respect to LIBO Rate Loans (which are Revolving Loans) at least three Business Days' before the last day of the then current Interest Period with respect thereto,

(a) LIBO Rate Loans denominated in Dollars shall be converted automatically on such last day to Base Rate Loans, and

(b) LIBO Rate Loans denominated in an Alternate Currency shall be continued as Loans in the relevant Alternate Currency at a rate per annum equal to the LIBO Alternate Rate for such relevant Currency plus the applicable margin for the shortest available interest period selected by the Agent in its sole discretion (but not later than the Maturity Date).

Each such conversion and continuation shall be prorated among the applicable outstanding Loans of all Lenders, and no portion of the outstanding principal amount of any Loans may be continued as, or be converted into, LIBO Rate Loans when any Default has occurred and is continuing. The Agent shall promptly notify each Lender of the applicable interest period and interest rate.

SECTION 2.5. Funding. Each Lender may, if it so elects, fulfill its obligation to make, continue or convert LIBO Rate Loans hereunder by causing one of its foreign branches or Affiliates (or an international banking facility created by such Lender) to make, continue or convert such LIBO Rate Loan; provided, however, that such LIBO Rate Loan shall nonetheless be deemed to have been made and to be held by such Lender, and the obligation of the Borrower to repay such LIBO Rate Loan shall nevertheless be to such Lender for the account of such foreign branch, Affiliate or international banking facility. In addition, the Borrower hereby consents and agrees that, for purposes of any determination to be made for purposes of Section 4.1, 4.2, 4.3 it shall be conclusively assumed that each Lender elected to fund all LIBO Rate Loans by purchasing deposits in the relevant currency in the relevant interbank eurodollar market.

SECTION 2.6. Notes. Each Lender's Loans shall be evidenced by a Note payable to the order of such Lender in a principal amount equal to:

(a) in the case of Revolving Loans, such Lender's original Revolving Commitment Amount, and

(b) in the case of Competitive Bid Loans, $125,000,000.

The Borrower hereby irrevocably authorizes each Lender to make (or cause to be made) appropriate notations on the grid attached to such Lender's Note (or on any continuation of such grid), which notations, if made, shall evidence, inter alia, the date of, the outstanding principal of, and Interest Period (in the case of Revolving Loans), or Competitive Bid Loan Maturity Dates and Competitive Bid Loan Interest Payment Dates (in the case of Competitive Bid Loans) applicable to the Loans evidenced thereby. Such notations shall constitute prima facie evidence of the accuracy of the information so recorded; provided, however, that the failure of any Lender to make any such notations shall not limit or otherwise affect any obligations of the Borrower.

SECTION 2.7. Multicurrency Loans.

SECTION 2.7.1. Notification of Request. If any Revolving Loan Borrowing Request requests a Borrowing in an Alternate Currency, the Agent shall in the notice given to the Lenders pursuant to Section 2.1 give details of such request including, without limitation, the aggregate principal amount of the Revolving Loan Borrowing in such Alternate Currency to be made by each Lender pursuant to this Agreement.

SECTION 2.7.2. Availability. Each Lender shall be treated as having confirmed that the Alternate Currency requested is Available to it unless no later than 10:00 a.m. (New York City time) on the third Business Day before the Revolving Loan Borrowing it shall have notified the Agent that such Alternate Currency is not Available.

SECTION 2.7.3. Notification of Availability. No later than 2:00 p.m. (New York City time) on the third Business Day before the proposed Borrowing the Agent shall notify the Borrower and the Lenders if it has received notification from any of the Lenders that the Alternate Currency is not Available.

SECTION 2.7.4. Consequences of Availability. If the Agent does not notify the Borrower and the Lenders that the Agent has received notification from any of the Lenders that the Alternate Currency requested is not Available, the Lenders shall, on the proposed date of the Revolving Loan Borrowing specified in the Revolving Loan Borrowing Request become obligated, subject to this Section 2.7, to make the LIBO Rate Loan in accordance with the provisions of this Agreement.

SECTION 2.7.5. Unexpected Non-Availability. If, at any time before 10:00 a.m. (New York City time) on the proposed Revolving Loan Borrowing date, any Lender shall have determined that the Alternate Currency in which it is obliged to make a LIBO Rate Loan or a Competitive Bid Loan is no longer Available to it by reason that, under the then current legislation or regulations of the country of incorporation of such Lender or the country of such Alternate Currency (or the then policy of the central bank of such country) or the Bank of England or the F.R.S. Board, such Alternate Currency is not or will not be permitted to be used for the purposes of this Agreement, then such Lender shall give notice to the Agent (and shall include in such notice a statement of which other Alternate Currencies are not Available to such Lender), and the Agent shall give notice to the Borrower, and the obligation of such Lender to make its share of such Borrowing in such Alternate Currency shall be replaced on the following basis:

(a) The Borrower shall be entitled to notify the Agent (which shall promptly notify each affected Lender) not later than 10:00 a.m. (New York City time) on the third Business Day before the proposed Borrowing, that the Borrower elects either that the said obligation of the relevant Lender shall be:

(i) replaced by an obligation to make a Loan in Dollars by that Lender having an aggregate principal amount equal to its share of such Borrowing in the Alternate Currency, rounded, if necessary, as the Agent shall decide, which such Lender would otherwise have been required to make; or

(ii) replaced by an obligation to make a LIBO Rate Loan in an Alternate Currency by that Lender in an Alternate Currency (other than any Alternate Currency which such Lender shall have stated, as provided above, is not Available to it), such Alternate Currency having an aggregate principal amount which is, on the date on which such notification is actually received by the Agent, the equivalent amount of its share of such Borrowing, rounded, if necessary, as the Agent shall decide, which such Lender would otherwise have been requested to make.

(b) For purposes of clauses (i) and (ii) of paragraph (a) of this Section, any rounding in the amount of Loans by the Agent shall not result in any Lender making Loans in an aggregate principal amount exceeding such Lender's Commitment.

(c) If the Borrower has not notified the Agent as provided in paragraph (a) above, the obligation of the Lender shall be replaced by such an obligation as is mentioned in clause 2.7.5(a)(i).

If such Lender shall be required under paragraph (a) or paragraph (b) of Section 2.7.5 to make the Loan mentioned therein, such Borrowing shall be made on the date of the proposed Borrowing, shall have the same Interest Period as the Alternate Currency Advance which it replaces and the applicable interest rate shall be calculated in accordance with Section 3.3.1 (as though such Borrowing were a separate Loan denominated in Dollars or, as the case may be, in the relevant Alternate Currency).

SECTION 2.7.6. Consequences of Non-Availability. If the Agent notifies the Borrower pursuant to Section 2.7.3 that any of the Lenders has notified the Agent that the Alternate Currency is not Available, such notification shall revoke the relevant Borrowing Request.

SECTION 2.8. Extension of Maturity Date.

(a) Not earlier than 60 days prior to, nor later than 30 days prior to, each anniversary of the Effective Date, the Borrower may, upon notice to the Agent (who shall promptly notify the Lenders), request a one year extension of the Maturity Date. Within 15 days of delivery of such notice, each Lender shall notify the Agent whether or not it consents to such extension (which consent may be given or withheld in such Lender's sole and absolute discretion). Any Lender not responding within the above time period shall be deemed not to have consented to such extension. The Agent shall promptly notify the Borrower and the Lenders of the Lenders' responses. If any Lender declines, or is deemed to have declined, to consent to such extension, the Borrower may cause any such Lender to be removed or replaced as a Lender pursuant to Section 10.13.

(b) The Maturity Date shall be extended only if Lenders holding at least 62.5% of the Commitment Amount (calculated immediately prior to giving effect to any removals and/or replacements of Lenders permitted herein) and all Lenders (after giving effect to any removals and/or replacements of Lenders permitted herein) (the "Consenting Lenders") have consented thereto. If so extended, the Maturity Date, as to the Consenting Lenders, shall be extended to a date 364 days from the existing Maturity

Date, effective as of the existing Maturity Date (the "Extension Effective Date"). The Agent and the Borrower shall promptly confirm to the Lenders such extension and the Extension Effective Date. As a condition precedent to such extension, the Borrower shall deliver to the Agent a certificate dated as of the Extension Effective Date (in sufficient copies for each Lender) signed by an Authorized Officer of the Borrower (i) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such extension and (ii) certifying that, before and after giving effect to such extension, the representations and warranties contained in Article VI are true and correct on and as of the Extension Effective Date and no Default or Event of Default exists. The Agent shall distribute a schedule (which shall be deemed incorporated into this Agreement) to reflect any changes in the Commitment Amount, Lenders and Percentages. The Borrower shall prepay any Loans outstanding on the Extension Effective Date (and prepay any additional amounts required pursuant to Section 4.4) to the extent necessary to keep outstanding Loans ratable with the Percentages of all the Lenders.

(c) This Section 2.8 shall supersede any provisions in Section 10.1 to the contrary.

ARTICLE III

REPAYMENT, PREPAYMENTS, INTEREST AND FEES

SECTION 3.1. Repayment.

(a) The Borrower shall repay in full the unpaid principal amount of all Revolving Loans on the Maturity Date.

(b) The Borrower shall repay in full the unpaid principal amount of all Competitive Bid Loans on the Competitive Bid Loan Maturity Date thereof.

(c) The Borrower shall, immediately upon any acceleration of the Maturity Date of any Loans pursuant to Section 8.2 or Section 8.3, repay the aggregate unpaid principal amount of all Loans so accelerated.

SECTION 3.2. Prepayments.

(a) The Borrower may, from time to time on any Business Day, make a voluntary prepayment, in whole or in part, of the outstanding principal amount of any Revolving Loans; provided, however, that

(i) any such prepayment shall be made pro rata among Revolving Loans of the same type and, if applicable, having the same Interest Period of all Lenders,

(ii) all such voluntary prepayments shall require at least three Business Days' prior written notice to the Agent, and

(iii) all such voluntary partial prepayments shall be in an aggregate minimum amount of $5,000,000 and an integral multiple of $1,000,000 or, if denominated in a Currency other than Dollars, the Foreign Currency Equivalent thereof, rounded to the nearest one million units of such Currency.

(b) The Borrower shall, on each date when any reduction in the Commitment Amount shall become effective including pursuant to Section 2.2, make a mandatory prepayment of Loans equal to the excess, if any, of the aggregate outstanding principal amount of all Loans over the Commitment Amount as so reduced.

(c) The Borrower shall, on each date when the making of any Competitive Bid Loans would cause the aggregate outstanding principal amount of all Loans (determined, in the case of Loans denominated in a currency other than Dollars, on the basis of the Dollar Equivalent thereof) to exceed the Commitment Amount, make a mandatory prepayment of, all Revolving Loans in a principal amount equal to such excess.

(d) The Borrower shall have no right to prepay, in whole or in part, the outstanding principal amount of any Competitive Bid Loan, unless the Lender that has made such Competitive Bid Loan otherwise agrees in writing.

(e) On the date of the making of any Loan and on the date of a Continuation/Conversion Notice with respect to any Loan or at any other time periodically, the Agent shall determine that the aggregate principal amount of all Loans outstanding (after converting all Loans denominated in Alternate Currencies or Non-Major Alternate Currencies to their Dollar Equivalent on the date of calculation) is greater than 105% of the Commitment Amount then in effect, the Borrower shall, upon three Business Days, written notice from the Agent, prepay an aggregate principal amount of such Loans denominated in Alternate Currencies or Non-Major Alternate Currencies, as the case may be, such that the Dollar Equivalent of the outstanding principal amount of such Loans, when added to the aggregate principal amount of all Loans outstanding denominated in Dollars, does not exceed the Commitment Amount.

(f) Each prepayment of any Loans made pursuant to this Section shall be without premium or penalty, except as may be required by Section 4.4. No voluntary prepayment of principal of any Loans shall cause a reduction in the Commitment Amount.

SECTION 3.3. Interest Provisions. Interest on the outstanding principal amount of Loans shall accrue and be payable in accordance with this Section 3.3.

SECTION 3.3.1. Rates. Pursuant to an appropriately delivered Borrowing Request or Continuation/Conversion Notice, the Borrower may elect that the Loans accrue interest at a rate per annum:

(a) on that portion maintained from time to time as Base Rate Loans, equal to the Alternate Base Rate from time to time in effect;

(b) on that portion maintained as LIBO Rate Loans that are Revolving Loans, during each Interest Period applicable thereto, equal to the sum of the LIBO Rate (Reserve Adjusted) or the LIBO Alternate Rate, as the case may be, applicable to the relevant Currency for such Interest Period plus the margin set forth below opposite the Borrower's Senior Debt Ratings in the following table:

If the Borrower's Senior Debt Ratings are		The Applicable Margin is
S&P	**Moody's**	
A+ or above	A1 or above	15.50 b.p.
A	A2	23.00 b.p.
A-	A3	31.50 b.p.
BBB+	Baa1	39.50 b.p.
BBB	Baa2	50.00 b.p.
BBB- or below	Baa3 or below	70.00 b.p.

If, during any Interest Period, there is any change in such Senior Debt Ratings which would result in an adjustment in the Applicable Margin, such adjustment shall be effective as of the date on which such change occurs. For purposes of determining the Applicable Margin, if Moody's and S&P have split Senior Debt Ratings with a difference of only one rating tier, the higher Senior Debt Rating shall be determinative and the lower Senior Debt Rating shall be disregarded, and if Moody's and S&P have split Senior Debt Ratings with a difference of more than one rating tier, the debt rating one rating tier below the higher Senior Debt Rating will be determinative and both Senior Debt Ratings will be disregarded; and

(c) from (and including) the date any Competitive Bid Loan is made until the maturity thereof, interest shall accrue on the outstanding principal amount of such Competitive Bid Loan at a rate per annum equal to the Competitive Bid Rate specified by the Lender making such Competitive Bid Loan in its Competitive Bid Loan offer with respect thereto delivered pursuant to clause (d) of Section 2.3 above and accepted by the Borrower pursuant to clause (e) of Section 2.3;

provided, however, that if the interest rate elected by the Borrower exceeds the highest lawful rate, then the applicable interest rate per annum for any Loan shall be the highest lawful rate.

The "LIBO Alternate Rate" means, with respect to any Loan for which a Continuation/Conversion Notice has not been delivered in accordance with Section 2.4 that is denominated in any Alternate/Currency, relative to the interest period therefor selected by the Agent in its sole discretion,

(a) in the case of Loans denominated in Sterling, the sum of

(i) the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates per annum at which Sterling deposits in immediately available funds are offered to each Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. (London time) on the first day of such interest period for delivery on the first day of such interest period, and in an amount approximately equal to the relevant amount and for a period approximately equal to such interest period;

plus

(ii) Associated Costs; and

(b) in the case of Loans denominated in Alternate currencies other than Sterling, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates per annum at which the relevant Currency deposits in immediately available funds are offered to each Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. (London time) two Business Days prior to the beginning of such interest period for delivery on the first day of such interest period, and in an amount approximately equal to the relevant amount and for a period approximately equal to such interest period.

If the relevant amount is all or part of a LIBO Rate Loan in an Alternate Currency which became due and payable on a day other than the last day of the Interest Period relating thereto, the first such interest period selected by the Agent shall be of a duration equal to the unexpired portion of the such Interest Period. The LIBO Alternate Rate for any interest period for any Loan bearing interest at the LIBO Alternate Rate will be determined by the Agent on the basis of information in effect on, and the applicable rates furnished to and received by the Agent from the Reference Lenders, (x) in the case of Sterling, on the first day of such interest period, or (y) in the case of Alternate Currencies (other than Sterling), two Business Days before the first day of such interest period, subject, however, to the provisions of Section 3.3.4. If for any such interest period selected by the Agent, adequate means do not exist for the Reference Lenders to determine the LIBO Alternate Rate for any Currency as set forth above, the LIBO Alternate Rate for such Currency shall be determined by reference to the cost to each of the Reference Lenders of obtaining deposits of such Currency from such sources as each such Reference Lender may reasonably select. The Agent shall determine the LIBO Alternate Rate for each such interest period (which determination shall be conclusive in the absence of manifest error), and will promptly give notice to the Borrower and the Lenders thereof.

The "LIBO Rate (Reserve Adjusted)" means, relative to any Loan to be made, continued or maintained as, or converted into, a LIBO Rate Loan bearing interest at the LIBO Rate or the LIBO Alternate Rate, as the case may be, for any Interest Period,

(a) which is denominated in Dollars, a rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) determined pursuant to the following formula:

$$\text{LIBO Rate (Reserve Adjusted)} = \frac{\text{LIBO Rate}}{\text{1.00 - LIBOR Reserve Percentage}}$$

(b) which is denominated in Sterling, a rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) determined pursuant to the following formula:

$$\text{LIBO Rate (Reserve Adjusted)} = \text{LIBO Rate} + \text{Associated Costs}$$

(c) which is denominated in any other Alternate Currency, the relevant LIBO Rate or LIBO Alternate Rate, as the case may be, plus any applicable reserve or other funding costs incurred by the Lenders in making such Loan.

The LIBO Rate (Reserve Adjusted) for any Interest Period for LIBO Rate Loans will be determined by the Agent on the basis of the LIBOR Reserve Percentage in effect on, and the applicable rates furnished to and received by the Agent from the Reference Lenders, two Business Days before the first day of such Interest Period, subject, however, to the provisions of Section 3.3.4.

"LIBO Rate" means, relative to any Interest Period,

(a) with respect to LIBO Rate Loans denominated in Dollars, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates per annum at which Dollar deposits in immediately available funds are offered to each Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. London time two Business Days prior to the beginning of such Interest Period for delivery on the first day of such Interest Period, and in an amount approximately equal to the amount of each such Reference Lender's LIBO Rate Loan and for a period approximately equal to such Interest Period;

(b) with respect to LIBO Rate Loans denominated in any Alternate Currency, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/10,000 of 1%) for the relevant Alternate Currency for a period equal to such Interest Period which appears

(i) with respect to Sterling, on Telerate, Page 3750;

(ii) with respect to Euros, on Telerate Page 3750;

(iii) with respect to Deutschemarks, on Telerate Page 3750; and

(iv) with respect to Yen, on Telerate Page 3750;

as of 11:00 a.m. (London time) (x) in the case of Sterling, on the first day of such Interest Period, or (y) in the case of Alternate Currencies (other than Sterling), two Business Days before the first day of such Interest Period, or, if fewer than two such offered rates appear on the relevant Telerate Page, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/10,000 of 1%) of the rates per annum at which deposits in the relevant Alternate Currency in immediately available funds are offered to each Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. (London time) (x) in the case of Sterling, on the first day of such Interest Period, or (y) in the case of Alternate Currencies (other

than Sterling), two Business Days before the first day of such Interest Period for delivery on the first day of such Interest Period, and in an amount approximately equal to the amount of the Loans requested and for a period approximately equal to such Interest Period.

"LIBOR Reserve Percentages" means, relative to any Interest Period for LIBO Rate Loans, the reserve percentage (expressed as a decimal) equal to the maximum aggregate reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) specified under regulations issued from time to time by the F.R.S. Board and then applicable to assets or liabilities consisting of and including "Eurocurrency Liabilities", as currently defined in Regulation D of the F.R.S. Board, having a term approximately equal or comparable to such Interest Period.

All LIBO Rate Loans shall bear interest from and including the first day of the applicable Interest Period to (but not including) the last day of such Interest Period at the interest rate determined as applicable to such LIBO Rate Loan.

SECTION 3.3.2. Post-Maturity Rates. After the date any principal amount of any Loan is due and payable (whether on the Maturity Date, upon acceleration or otherwise), or after any other monetary Obligation shall have become due and payable, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such amounts at a rate per annum equal to the Alternate Base Rate plus a margin of 2% for Loans denominated in Dollars and, with respect to Loans denominated in an Alternate Currency, at a rate per annum equal to the LIBO Rate or LIBO Alternate Rate, as the case may be, in such Alternate Currency plus a margin of 2%.

SECTION 3.3.3. Payment Dates. Interest accrued on each Loan shall be payable, without duplication:

(a) on the Maturity Date;

(b) on the date of any payment or prepayment, in whole or in part, of principal outstanding on such Loan;

(c) on each Competitive Bid Loan Maturity Date and, with respect to Competitive Bid Loans with a Competitive Bid Loan Maturity Date in excess of three months, on each three (and integral of three) month anniversary of the making of such Loan;

(d) with respect to LIBO Rate Loans, on the last day of each applicable Interest Period (and, if such Interest Period shall exceed three months, on each three (and integral multiple of three) month anniversary of the making of such Loan);

(e) with respect to Base Rate Loans, on each Quarterly Payment Date;

(f) with respect to any Base Rate Loans converted into LIBO Rate Loans on a day when interest would not otherwise have been payable pursuant to clause (e), on the date of such conversion; and

(g) on that portion of any Loans the Maturity Date of which is accelerated pursuant to Section 8.2 or Section 8.3, immediately upon such acceleration.

Interest accrued on Loans or other monetary Obligations arising under this Agreement or any other Loan Document after the date such amount is due and payable (whether on the Maturity Date, upon acceleration or otherwise) shall be payable upon demand.

SECTION 3.3.4. Interest Rate Determination. Each Reference Lender agrees to furnish to the Agent timely information for the purpose of determining the LIBO Rate and the LIBO Alternate Rate. If any one or more of the Reference Lenders shall fail timely to furnish such information to the Agent, the Agent shall determine such interest rate on the basis of the information furnished by the remaining Reference Lenders. The Agent shall provide each Lender with the LIBO Rate applicable to each LIBO Rate Loan within two Business Days prior to the making of such LIBO Rate Loan.

SECTION 3.4. Fees. The Borrower agrees to pay the fees set forth in this Section 3.4. All such fees shall be nonrefundable.

SECTION 3.4.1. Facility Fee. The Borrower agrees to pay to the Agent for the pro rata account of each Lender, in accordance with such Lender's Percentage, an annual facility fee equal to the Commitment Amount multiplied by the fee set forth below opposite the Borrower's Senior Debt Ratings during the quarter for which the fee is calculated (any change in such Senior Debt Ratings to result in an adjustment in the applicable facility fee, such adjustment to be effective as of the date on which such change occurs):

If the Borrower's Senior Debt Ratings Are		The Facility Fee Is
S&P	Moody's	
A+ or above	A1 or above	6.00 b.p.
A	A2	7.00 b.p.
A-	A3	8.50 b.p.
BBB+	Baa1	10.50 b.p.
BBB	Baa2	12.50 b.p.
BBB- or below	Baa3 or below	17.50 b.p.

provided that, for purposes of determining the facility fee, if Moody's and S&P have split Senior Debt Ratings with a difference of only one rating tier, the higher Senior Debt Rating shall be determinative and the lower Senior Debt Rating shall be disregarded, and provided, further, if Moody's and S&P have split Senior Debt Ratings with a difference of more than one rating tier, the debt rating one rating tier below the higher Senior Debt Rating will be determinative and both Senior Debt Ratings will be disregarded.

The facility fee payable under this Section shall be based on (i) the Commitment Amount on the Effective Date, and (ii) thereafter, the Commitment Amount on each anniversary of the Effective Date (without giving effect, during the one-year period prior to each such anniversary, to any reduction in the Commitment Amount), such fee to be payable quarterly in arrears on each Quarterly Payment Date and on the Maturity Date, and regardless of the amount of Loans outstanding under this Agreement; provided, however, that in the event a Commitment Termination Event has occurred, such that the Commitments of the Lenders hereunder are terminated, the Borrower shall only be obligated to pay such facility fee to the extent that it has accrued up to the date of such Commitment Termination Event.

SECTION 3.4.2. Utilization Fee. The Borrower agrees to pay to the Agent for the pro rata account of each Lender, in accordance with such Lender's Loans, a utilization fee for each day from the date hereof to and including the Maturity Date for each day that the aggregate principal amount of Loans and Other Loans outstanding on the close of business (if a Business Day) of such day is equal to or greater than 50% of the sum of the Commitment Amount plus the "Commitment Amount" under the Other Credit Agreement. The utilization fee shall accrue at all times, including at any time during which one or more of the conditions in Article V is not met. If applicable, such utilization fee shall be equal to the aggregate principal amount of all Loans outstanding on the close of business (if a Business Day) of such day multiplied by the Utilization Fee Rate set forth below opposite the Borrower's Senior Debt Ratings during the day for which the fee is calculated (any change in such Senior Debt Ratings to result in an adjustment in the applicable utilization fee, such adjustment to be effective as of the date on which such change occurs), payable quarterly in arrears on each Quarterly Payment Date and on the Maturity Date:

If the Borrower's Senior Debt Ratings Are		Utilization Fee Rate
S&P	Moody's	
A+ or above	A1 or above	10.00 b.p.
A	A2	10.00 b.p.
A-	A3	10.00 b.p.
BBB+	Baa1	12.50 b.p.
BBB	Baa2	12.50 b.p.
BBB- or below	Baa3 or below	12.50 b.p.

provided that, for purposes of determining the utilization fee, if Moody's and S&P have split Senior Debt Ratings with a difference of only one rating tier, the higher Senior Debt Rating shall be determinative and the lower Senior Debt Rating shall be disregarded, and provided, further, if Moody's and S&P have split Senior Debt Ratings with a difference of more than one rating tier, the debt rating one rating tier below the higher Senior Debt Rating will be determinative and both Senior Debt Ratings will be disregarded.

SECTION 3.4.3. Agents' Fees. The Borrower agrees to pay to the Agents and the Lead Arrangers for their own accounts, fees in such amounts and on such dates as are set forth in the Transaction Fee Letter.

ARTICLE IV

CERTAIN LIBO RATE AND OTHER PROVISIONS

SECTION 4.1. Fixed Rate Lending Unlawful. If any Lender shall determine (which determination shall, upon notice thereof to the Borrower and the Lenders, be conclusive and binding on the Borrower) that the introduction of or any change in or in the interpretation of any law makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for such Lender to make, continue or maintain any Loan as, or to convert any Loan into, a LIBO Rate Loan (or a Competitive Bid Loan based on the LIBO Rate Bid Margin), the obligations of all Lenders to make, continue, maintain or convert any such Loans shall, upon such determination, forthwith be suspended until such Lender shall notify the Agent that the circumstances causing such suspension no longer exist, and (a) all LIBO Rate Loans (and Competitive Bid Loans based on the LIBO Rate Bid Margin) denominated in Dollars shall automatically convert into Base Rate Loans at the end of the then current Interest Periods with respect thereto or sooner, if required by such law or assertion; and (b) all LIBO Rate Loans denominated in any Alternate Currency shall automatically become due and payable at the end of the then current Interest Periods with respect thereto or sooner, if required by applicable law.

SECTION 4.2. Deposits Unavailable. If the Agent shall have determined that

(a) Dollar deposits in the relevant amount and for the relevant Interest Period are not available to the Reference Lenders (or, with respect to any Competitive Bid Loan, by the Lender which made such Competitive Bid Loan) in their (or such Competitive Bid Loan Lender's) relevant market; or

(b) by reason of circumstances affecting the Reference Lenders, relevant market, adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBO Rate Loans, then, upon notice from the Agent to the Borrower and the Lenders, the obligations of all Lenders under clause (b) of Section 2.1 or clause (f) of Section 2.3 to make or continue any Loans as, or to convert any Loans into, LIBO Rate Loans (or have such Competitive Bid Loans bear interest based on the LIBO Rate Bid Margins) shall forthwith be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

SECTION 4.3. Increased LIBO Rate Loan Costs, etc. The Borrower agrees to reimburse each Lender for any increase in the cost to such Lender of, or any reduction in the amount of any sum receivable by such Lender in respect of, making, continuing or maintaining (or of its obligation to make, continue or maintain) any Loans as, or of converting (or of its obligation to convert) any Loans into, LIBO Rate Loans, including, without limitation, by reason of any

requirements imposed by the Bank of England upon the making or funding of LIBO Rate Loans. Such Lender shall promptly notify the Agent and the Borrower in writing of the occurrence of any such event, such notice to state, in reasonable detail, the reasons therefor and the additional

amount required fully to compensate such Lender for such increased cost or reduced amount. Such additional amounts shall be payable by the Borrower directly to such Lender within five days of its receipt of such notice, and such notice shall, in the absence of manifest error, be conclusive and binding on the Borrower.

SECTION 4.4. Funding Losses. In the event any Lender shall incur any loss or expense by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to make, continue or maintain any portion of the principal amount of any Loan as, or to convert any portion of the principal amount of any Loan into, a LIBO Rate Loan as a result of (a) any repayment or prepayment of the principal amount of any LIBO Rate Loans on a date other than the scheduled last day of the Interest Period applicable thereto, whether pursuant to Section 3.1, Section 3.2 or otherwise; (b) any Loans not being made as LIBO Rate Loans in accordance with the Borrowing Request therefor; or (c) any Loans not being continued as, or converted into LIBO Rate Loans in accordance with the Continuation/Conversion Notice therefor then, upon the written notice of such Lender to the Borrower (with a copy to the Agent), the Borrower shall, within five days of its receipt thereof, pay directly to such Lender such amount as will (in the reasonable determination of such Lender) reimburse such Lender for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower.

SECTION 4.5. Increased Capital Costs. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other governmental authority after the date hereof affects or would affect the amount of capital required or expected to be maintained by any Lender, and such Lender determines (in its sole and absolute discretion) that the rate of return on its capital as a consequence of its Commitment or the Loans made by such Lender is reduced to a level below that which such Lender could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by such Lender to the Borrower, the Borrower shall immediately pay directly to such Lender additional amounts sufficient to compensate such Lender for such reduction in rate of return. A statement of such Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, such Lender may use any method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable.

SECTION 4.6. Taxes. All payments by the Borrower of principal of, and interest on, the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, but excluding franchise taxes (in lieu of net income taxes) and taxes imposed on or measured by any Lender's net income or receipts (such nonexcluded items being called "Taxes"). In the event that any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Borrower will

(a) pay directly to the relevant authority the full amount required to be so withheld or deducted;

(b) promptly forward to the Agent an official receipt or other documentation satisfactory to the Agent evidencing such payment to such authority; and

(c) pay to the Agent for the account of the Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Agent or any Lender with respect to any payment received by the Agent or such Lender hereunder, the Agent or such Lender may pay such Taxes and the Borrower will promptly pay such additional amounts (including any penalties, interest or expenses) as is necessary in order that the net amount received by such person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such person would have received had not such Taxes been asserted.

If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Agent, for the account of the respective Lenders, the required receipts or other required documentary evidence, the Borrower shall indemnify the Lenders for any incremental Taxes, interest or penalties that may become payable by any Lender as a result of any such failure. For purposes of this Section 4.6, a distribution hereunder by the Agent or any Lender to or for the account of any Lender shall be deemed a payment by the Borrower.

Upon the request of the Borrower or the Agent, each Lender and Assignee Lender that is organized under the laws of a, jurisdiction other than the United States shall, on or prior to the date hereof (in the case of each Lender that is a party hereto on the date hereof) or on or prior to the date of any assignment hereunder (in the case of an Assignee Lender) and thereafter as reasonably requested from time to time by the Borrower or Agent, execute and deliver to the Borrower and the Agent, one or more (as the Borrower or the Agent may reasonably request) United States Internal Revenue Service Forms W-8EC or Forms W-8BEN or such other forms or documents (or successor forms or documents), appropriately completed, as may be applicable to establish the extent, if any, to which a payment to such Lender is exempt from, or entitled to a reduced rate of, withholding or deduction of Taxes.

SECTION 4.7. Payments, Computations, etc.

(a) Unless otherwise expressly provided, all payments by the Borrower pursuant to this Agreement, the Notes or any other Loan Document shall be made by the Borrower to the Agent for the pro rata account of the Lenders entitled to receive such payment.

(b) All such payments required to be made to the Agent shall be made, without setoff, deduction or counterclaim, by means of wire transfer to be initiated (i) in the case of Loans denominated in Dollars, not later than 11:00 a.m. (New York City time) and (ii) in the case of Loans denominated in a currency other than Dollars, not later than the time reasonably specified by the Agent, in each case on the date due, in same day or

immediately available funds, in the applicable currency, to such account as the Agent shall specify from time to time by notice to the Borrower. Funds for which the wire transfer was initiated after the times specified in the preceding sentence shall be deemed to have been received by the Agent on the next succeeding Business Day. The Agent shall promptly remit in same day funds, in the applicable currency, to each Lender its share, if any, of such payments received by the Agent for the account of such Lender.

(c) Subject to the calculation of interest provided in the definition of "Associated Costs", all interest and fees shall be computed on the basis of the actual number of days (including the first day but excluding the last day) occurring during the period for which such interest or fees is payable over a year comprised of 360 days (or, in the case of interest on Base Rate Loans, 365 days or, if appropriate, 366 days). whenever any payment to be made shall otherwise be due on a day which is not a Business Day, such payment shall (except as otherwise required by clause (c) of the definition of the term "Interest Period") be made on the next succeeding Business Day and such extension of time shall be included in computing interest in connection with such payment.

(d) Each Lender will use its best efforts to notify the Borrower of any event that will entitle such Lender to compensation or reimbursement (including on a prospective basis) pursuant to Article IV hereof (including pursuant to Sections 4.5 and 4.6), as promptly as practicable after it obtains knowledge thereof, but the failure to give such notice shall not impair the right of such Lender to receive compensation or reimbursement under this Section.

(e) Each Lender shall determine the applicability of, and the amount due under, Article IV hereof (including Sections 4.5 and 4.6) consistent with the manner in which it applies similar provisions and calculates similar amounts payable to it by other borrowers having in their credit agreements provisions comparable to those contained in Article IV.

SECTION 4.8. Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Sections 4.3, 4.4 and 4.5) in excess of its pro rata share of payments then or therewith obtained by all Lenders, such Lender shall purchase from the other Lenders such participations in Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided, however, that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such recovery together with an amount equal to such selling Lender's ratable share (according to the proportion of

(a) the amount of such selling Lender's required repayment to the purchasing Lender

to

(b) 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 may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 4.9) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

SECTION 4.9. Setoff. Each Lender shall, upon the occurrence of any Event of Default described in clauses (a) through (d) of Section 8.1.9 or, upon the occurrence of any other Event of Default, have the right to appropriate and apply to the payment of the obligations owing to it (whether or not then due) any and all balances, credits, deposits, accounts or moneys of the Borrower then or thereafter maintained with such Lender or any Affiliate of such Lender; provided, however, that any such appropriation and application shall be subject to the provisions of Section 4.8. Each Lender agrees promptly to notify the Borrower and the Agent after any such setoff and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff under applicable law or otherwise) which such Lender may have.

SECTION 4.10. Use of Proceeds. The Borrower shall use the proceeds of the Loans to refinance existing indebtedness under the Existing Credit Agreement, for general corporate purposes and for commercial paper backup; without limiting the foregoing, no proceeds of any Loan will be used to acquire any equity security of a Person as part of a hostile takeover.

ARTICLE V

CONDITIONS PRECEDENT

SECTION 5.1. Conditions Precedent to the Obligations of the Lenders. The obligations of the Lenders under this Agreement shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 5.1.

SECTION 5.1.1. Resolutions, etc. The Agent shall have received from the Borrower a certificate, dated the same date as this Agreement, of its Secretary or Assistant Secretary as to

(a) resolutions of its Board of Directors then in full force and effect authorizing the execution, delivery and performance of this Agreement, the Notes and each other Loan Document to be executed by it,

(b) the incumbency and signatures of those of its officers authorized to act with respect to this Agreement, the Notes and each other Loan Document executed by it, upon which certificate each Lender may conclusively rely until it shall have received a

further certificate of the Secretary of the Borrower canceling or amending such prior certificate, and

(c) true and correct copies of the Organic Documents of the Borrower.

SECTION 5.1.2. Officer's Certificate. The Agent shall have received a certificate, dated the date of this Agreement, signed by an Authorized Officer of the Borrower certifying (a) that on such date (both before and after giving effect to the making of any Loans hereunder on such date) no Default or Event of Default has occurred and is continuing, (b) each of the representations and warranties set forth in Article VI of this Agreement is true and correct on and as of such date and (c) that there has been no event or circumstance since November 30, 2000 which has or could be reasonably expected to have a Material Adverse Effect.

SECTION 5.1.3. Closing Fees, Expenses, etc. The Agent shall have received for its own account, or for the account of each Lender, the Lead Arrangers and the other Agents, as the case may be, all fees, costs and expenses due and payable pursuant to Sections 3.4 and 10.3, if then invoiced.

SECTION 5.1.4. Delivery of Financial Information. The Agent shall have received, with copies for each Lender, audited consolidated balance sheets of the Borrower and its Subsidiaries as at November 30, 2000 and the related statements of earnings and cash flow, and unaudited balance sheets of the Borrower and its Subsidiaries as of the end of the Fiscal Quarter ending February 28, 2001 and consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries for such Fiscal Quarter, certified by an Authorized Officer of the Borrower.

SECTION 5.1.5. Delivery of Notes. The Agent shall have received for the account of each Lender its Revolving Loan Note and its Competitive Bid Loan Note duly executed and delivered by the Borrower with respect to such Lender's Commitment.

SECTION 5.1.6. Termination of the Existing Credit Agreement. The Agent shall have received satisfactory evidence that the Existing Credit Agreement has been terminated and all Indebtedness, liabilities and obligations outstanding thereunder has been paid in full.

SECTION 5.1.7. Opinion of Counsel. The Agent shall have received an opinion of Robert W. Skelton, General Counsel of the Borrower or any Associate General Counsel of the Borrower, dated the date of this Agreement and addressed to the Agent and all Lenders, substantially in the form of Exhibit G hereto.

SECTION 5.2. Conditions Precedent to Borrowings. The obligation of each Lender to fund any Loan on the occasion of any Borrowing (including the initial Borrowing) shall be subject to the satisfaction of each of the conditions precedent set forth in this Section 5.2.

SECTION 5.2.1. Compliance with Warranties, No Default, etc. Both before and after giving effect to any Borrowing, the following statements shall be true and correct:

(a) the representations and warranties set forth in Article VI (other than the representations and warranties set forth in Sections 6.6 and 6.7) shall be true and correct with the same effect as if then made (unless stated to relate solely to an earlier date, in

which case such representations and warranties shall be true and correct as of such earlier date); and

(b) no Default or Event of Default shall have then occurred and be continuing.

SECTION 5.2.2. Borrowing Request. The Agent shall have received a Revolving Loan Borrowing Request or a Competitive Bid Loan Borrowing Request (as the case may be) for such Borrowing. Each of the delivery of a Borrowing Request and the acceptance by the Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Borrowing (both immediately before and after giving effect to such Borrowing and the application of the proceeds thereof) the statements made in Section 5.2.1 are true and correct.

SECTION 5.2.3. Satisfactory Legal Form. All documents executed or submitted pursuant hereto by or on behalf of the Borrower shall be reasonably satisfactory in form and substance to the Agent and its counsel (and the execution of this Agreement by the Agent shall be deemed to evidence such satisfaction); the Agent and its counsel shall have received all non-confidential information, approvals, opinions, documents or instruments as the Agent or its counsel may reasonably request.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders and the Agents to enter into this Agreement and to make Loans hereunder, the Borrower represents and warrants as follows as of the Effective Date, and thereafter, as of the date of each Borrowing to the extent set forth in clause (a) of Section 5.2.1.

SECTION 6.1. Organization, etc. The Borrower and each of its Subsidiaries is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the laws of the State of its incorporation or organization, is duly qualified to do business and is in good standing in each jurisdiction where the nature of its business requires such qualification, except where the failure to so qualify will not have a Material Adverse Effect, and has full power and authority and holds all requisite governmental licenses, permits and other approvals to enter into and perform its Obligations under this Agreement, the Notes and each other Loan Document to which it is a party and to own or hold under lease its property and to conduct its business substantially as currently conducted by it.

SECTION 6.2. Due Authorization, Non-Contravention etc. The execution, delivery and performance by the Borrower of this Agreement, the Notes and each other Loan Document executed or to be executed by it, are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not

(a) contravene the Borrower's Organic Documents;

(b) contravene any contractual restriction, law or governmental regulation or court decree or order binding on or affecting the Borrower and its Subsidiaries; or

(c) result in, or require the creation or imposition of, any Lien on any of the Borrower's properties.

SECTION 6.3. Government Approval Regulation, etc. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or other Person is required for the due execution, delivery or performance by the Borrower of this Agreement, the Notes or any other Loan Document. Neither the Borrower nor any of its Subsidiaries is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", within the meaning of the Public Utility Holding Company Act of 1935, as amended.

SECTION 6.4. Validity, etc. This Agreement constitutes, and the Notes and each other Loan Document executed by the Borrower will, on the due execution and delivery thereof, constitute, the legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms, subject to the effect of bankruptcy insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally and by general principles of equity.

SECTION 6.5. Financial Information. The consolidated balance sheets of the Borrower and its Subsidiaries as at November 30, 2000, and the related consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries, copies of which have been furnished to the Agent and each Lender, have been prepared in accordance with GAAP consistently applied, and present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at the dates thereof and the results of their operations for the periods then ended.

SECTION 6.6. No Material Adverse Change. Since the date of the financial statements described in Section 6.5 (except to the extent the information disclosed therein is modified or superseded, as the case may be, by information in the Borrower's quarterly report on Form 10-Q for the quarter ended February 28, 2001) there has been no material adverse change in the financial condition, operations, assets, business or properties of the Borrower and its Subsidiaries taken as a whole.

SECTION 6.7. Litigation, Labor Controversies, etc. There is no pending or, to the knowledge of the Borrower, threatened litigation, action, proceeding, or labor controversy affecting the Borrower or any of its Subsidiaries, or any of their respective properties, businesses, assets or revenues, which will result in a Material Adverse Effect or which purports to affect the legality, validity or enforceability of this Agreement, the Notes or any other Loan Document, except as disclosed in Item 6.7 ("Litigation") of the Disclosure Schedule.

SECTION 6.8. Subsidiaries. The Borrower has no Subsidiaries, except those Subsidiaries

(a) which are identified in Item 6.8 ("Existing Subsidiaries as of the Effective Date") of the Disclosure Schedule; or

(b) which are hereafter acquired or formed.

It being understood that Subsidiaries may merge, consolidate, liquidate and sell assets as permitted pursuant to Section 7.2.4.

SECTION 6.9. Ownership of Properties. The Borrower and each of its Subsidiaries has good and marketable title to all of its tangible properties and assets, real and personal, of any nature whatsoever, free and clear of all Liens, charges or claims except as permitted pursuant to Section 7.2.3 or Liens, charges or claims that will not have a Material Adverse Effect; and the Borrower has duly registered in the U.S. all trademarks required for the conduct of its business in the U.S., other than those as to which the lack of protection, or failure to register, would not have a Material Adverse Effect.

SECTION 6.10. Taxes. The Borrower and each of its Subsidiaries has filed all federal and all other material income tax returns and reports required by law to have been filed by it and has paid all taxes and governmental charges thereby shown to be owing, except any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

SECTION 6.11. Pension and Welfare Plans. During the twelve-consecutive-month period ending immediately prior to the date of the execution and delivery of this Agreement, no Pension Plan has been terminated, or has been subject to the commencement of any termination, that could reasonably be expected to have a Material Adverse Effect, and no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which might result in the incurrence by the Borrower or any member of the Controlled Group of any liability, fine or penalty which is likely to have a Material Adverse Effect. Except for the post-retirement benefits described in Item 6.11 ("Employee Benefit Plans") of the Disclosure Schedule, the Borrower has no contingent liability with respect to post-retirement benefits provided by the Borrower and its Subsidiaries under a Welfare Plan, other than (i) liability for continuation coverage described in Part 6 of Subtitle B of Title I of ERISA and (ii) liabilities which will not, individually or in the aggregate, have a Material Adverse Effect.

SECTION 6.12. Environmental Warranties. Except as set forth in Item 6.12 ("Environmental Matters") of the Disclosure Schedule:

(a) all facilities and property (including underlying groundwater) owned or leased by the Borrower or any of its Subsidiaries have been, and continue to be, owned or leased by the Borrower and its Subsidiaries in compliance with all Environmental Laws, except for such non-compliance which, singly or in the aggregate, will not have a Material Adverse Effect;

(b) there have been no past unresolved, and there are no pending or threatened (in writing)

(i) claims, complaints, notices or requests for information received by the Borrower or any of its Subsidiaries with respect to any alleged violation of any Environmental Law, or

(ii) complaints, written notices or inquiries to the Borrower or any of its Subsidiaries regarding potential liability under any Environmental Law,

which violation or potential liability singly or in the aggregate will have a Material Adverse Effect;

(c) there have been no Releases of Hazardous Materials at, on or under any property now or to the Borrower's knowledge previously owned or leased by the Borrower or any of its Subsidiaries that, singly or in the aggregate, have, or will have a Material Adverse Effect;

(d) the Borrower and its Subsidiaries have been issued and are in compliance with all permits, certificates, approvals, licenses and other authorizations relating to environmental matters and necessary for their businesses, except for such permits, approvals, licenses and other authorizations which, if not obtained by the Borrower, or as to which the Borrower is not in compliance (in each case singly or in the aggregate), will not have a Material Adverse Effect;

(e) no property now or, to the Borrower's knowledge, previously owned or leased by the Borrower or any of its Subsidiaries is listed or with the knowledge of the Borrower, proposed for listing (with respect to owned property only) on (i) the CERCLIS or on any similar state list of sites requiring investigation or clean-up or (ii) the National Priorities List pursuant to CERCLA; other than properties as to which any such listing will not result in a Material Adverse Effect;

(f) there are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any property now or, to the Borrower's knowledge, previously owned or leased by the Borrower or any of its Subsidiaries that, singly or in the aggregate, have, or will have, a Material Adverse Effect;

(g) to the Borrower's knowledge, neither Borrower nor any Subsidiary of the Borrower has directly transported or directly arranged for the transportation of any Hazardous Material to any location which is listed or, with the knowledge of the Borrower, proposed for listing, on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list or which is the subject of federal, state or local enforcement actions or other investigations which will lead to claims against the Borrower or such Subsidiary thereof for any remedial work, damage to natural resources or personal injury, including claims under CERCLA, which will have a Material Adverse Effect; and

(h) there are no polychlorinated biphenyls or friable asbestos present at any property owned or leased by the Borrower or any Subsidiary of the Borrower that, singly or in the aggregate, have, or will have, a Material Adverse Effect.

SECTION 6.13. Regulations U and X. No proceeds of any Loans will be used for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation U or X. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and not more than 25% of the consolidated assets of the Borrower and its

Subsidiaries consists of margin stock. Terms for which meanings are provided in F.R.S. Board Regulation U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

SECTION 6.14. Accuracy of Information. Neither this Agreement nor any other document, certificate or statement furnished to the Agent or any Lender by or on behalf of the Borrower in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading, in light of the circumstances under which they were made.

SECTION 6.15. Compliance with Law; Absence of Default. The Borrower and its Subsidiaries are in compliance with all Applicable Laws the noncompliance with which would have a Material Adverse Effect and with all of the material provisions of their respective Organic Documents, and no event has occurred or has failed to occur which has not been remedies or waived, the occurrence or non-occurrence of which constitutes (i) a Default or Event of Default or (ii) a default by the Borrower or one of its Subsidiaries under any other material indenture, agreement or other instrument, or any judgment, decree, or order to which the Borrower or such Subsidiary is a party or by which the Borrower or such Subsidiary or any of their respective properties may be bound, which would have a Material Adverse Effect.

ARTICLE VII

COVENANTS

SECTION 7.1. Affirmative Covenants. The Borrower agrees with the Agents and each Lender that, until all Obligations have been paid and performed in full, the Borrower will perform the obligations set forth in this Section 7.1.

SECTION 7.1.1. Financial Information Reports, Notices, etc. The Borrower will furnish, or will cause to be furnished, to each Lender and the Agent copies of the following financial statements, reports, notices and information:

(a) as soon as available and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter and consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter, certified by an Authorized Officer of the Borrower, it being understood and agreed that the delivery of the Borrower's Form 10-Q (as filed with the Securities and Exchange Commission) shall satisfy the requirements set forth in this clause);

(b) as soon as available and in any event within 120 days after the end of each Fiscal Year of the Borrower, a copy of the annual audit report for such Fiscal Year for the Borrower and its Subsidiaries, including therein a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Year and consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries for such Fiscal

Year, in each case certified (without any Impermissible Qualification) in a manner acceptable to the Agent and the Required Lenders by Ernst & Young or other independent public accountants reasonably acceptable to the Agent and the Required Lenders (it being understood and agreed that the delivery of the Borrower's Form 10-K (as filed with the Securities and Exchange Commission) shall satisfy such delivery requirement in this clause), together with a certificate from an Authorized Officer of the Borrower containing a computation in reasonable detail of, and showing compliance with, each of the financial ratios and restrictions contained in Sections 7.2.2, 7.2.3, 7.2.4 and 7.2.5 and to the effect that, in making the examination necessary for the signing of such certificate, he has not become aware of any Default or Event of Default that has occurred and is continuing, or, if he has become aware of such Default or Event of Default, describing such Default or Event of Default and the steps, if any, being taken to cure it;

(c) as soon as available and in any event within 60 days after the end of each Fiscal Quarter, a Compliance Certificate, executed by the Treasurer or an Authorized Officer of the Borrower, showing (in reasonable detail and with appropriate calculations and computations in all respects satisfactory to the Agent) compliance with the financial covenants set forth in Sections 7.2.2, 7.2.3, 7.2.4 and 7.2.5 and representing as to the absence of any Default;

(d) as soon as possible and in any event within three Business Days upon any officer or director of the Borrower becoming aware of the occurrence of each Default or Event of Default, a statement of the Treasurer or the chief financial Authorized Officer of the Borrower setting forth details of such Default or Event of Default and the action which the Borrower has taken and proposes to take with respect thereto;

(e) as soon as possible and in any event within five Business Days after (x) the occurrence of any adverse development with respect to any litigation, action, proceeding, or labor controversy described in Section 6.7 which will result in or is likely to result in a Material Adverse Effect or (y) the commencement of any labor controversy, litigation, action, proceeding of the type described in Section 6.7, notice thereof and copies of all documentation relating thereto;

(f) promptly after the sending or filing thereof, copies of all reports which the Borrower sends to any of its security holders, and all reports and registration statements (other than on Form S-8 or any successor form) which the Borrower or any of its Subsidiaries files with the Securities and Exchange Commission or any national securities exchange;

(g) immediately upon becoming aware of the taking of any specific actions by the Borrower or any other Person to terminate any Pension Plan (other than a termination pursuant to Section 4041(b) of ERISA which can be completed without the Borrower or any Controlled Group member having to provide more than $3,000,000 in addition to the normal contribution required for the plan year in which termination occurs to make such Pension Plan sufficient), or the failure to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a Lien under section 302(f) of ERISA, or

the taking of any action with respect to a Pension Plan which would likely result in the requirement that the Borrower furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan which would likely result in the incurrence by the Borrower of any liability, fine or penalty which will have a Material Adverse Effect, or any increase in the contingent liability of the Borrower with respect to any post-retirement Welfare Plan benefit if the increase in such contingent liability will result in a Material Adverse Effect, notice thereof and copies of all documentation relating thereto;

(h) immediately upon becoming aware of any change in Borrower's Senior Debt Rating, a statement describing such change, whether such change was made by S&P, Moody's or both and the effective date of such change; and

(i) such other non-confidential information respecting the condition or operations, financial or otherwise, of the Borrower or any of its Subsidiaries as any Lender through the Agent may from time to time reasonably request.

SECTION 7.1.2. Compliance with Laws, etc. The Borrower will, and will cause each of its Subsidiaries to, comply in all respects with all Applicable Laws, except where such non-compliance would not have a Material Adverse Effect, such compliance to include (without limitation):

(a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Applicable Laws of the jurisdiction of its organization and each jurisdiction where its conduct of business requires qualification or good standing (except any Subsidiary may merge, consolidate or liquidate as permitted pursuant to Section 7.2.4), and

(b) the payment, before the same become delinquent, of all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

SECTION 7.1.3. Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, maintain, preserve, protect and keep its material properties in good repair, working order and condition, and make necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times unless the Borrower determines in good faith that the continued maintenance of any of its properties is no longer economically desirable.

SECTION 7.1.4. Insurance. The Borrower will, and will cause each of its Subsidiaries to, maintain or cause to be maintained with responsible insurance companies insurance with respect to its properties material to the business of the Borrower and its Subsidiaries against such casualties and contingencies and of such types and in such amounts as is customary in the case of similar businesses and will, upon request of the Agent, furnish to each

Lender at reasonable intervals a certificate of an Authorized Officer of the Borrower setting forth the nature and extent of all insurance maintained by the Borrower and its Subsidiaries in accordance with this Section,

provided, that the Borrower and its Subsidiaries may self-insure to the extent customary for similarly situated corporations engaged in the same or similar business.

SECTION 7.1.5. Books and Records. The Borrower will, and will cause each of its Subsidiaries to, keep books and records which accurately reflect all of its business affairs and material transactions and permit the Agent and each Lender or any of their respective representatives, at reasonable times and intervals, to visit all of its offices, to discuss its non-confidential financial matters with its officers and independent public accountant and, upon the reasonable request of the Agent or a Lender, to examine (and, at the expense of the Lenders, photocopy extracts from) any of its non-confidential books or other corporate records.

SECTION 7.1.6. Environmental Covenant. The Borrower will, and will cause each of its Subsidiaries to,

(a) use and operate all of its facilities and properties in compliance with all Environmental Laws except for such non-compliance which, singly or in the aggregate, will not have a Material Adverse Effect, keep all necessary permits, approvals, certificates, licenses and other authorizations relating to environmental matters in effect and remain in compliance therewith, except where the failure to keep such permits, approvals, certificates, licenses or other authorizations, or any non-compliance with the provisions thereof will not have a Material Adverse Effect, and handle all Hazardous Materials in compliance with all applicable Environmental Laws, except for any non-compliance that will not have a Material Adverse Effect;

(b) immediately notify the Agent and provide copies upon receipt of all written inquiries from any local, state or federal governmental agency, claims, complaints or notices relating to the condition of its facilities and properties or compliance with Environmental Laws which will have a Material Adverse Effect, and shall promptly cure and have dismissed with prejudice or contest in good faith any actions and proceedings relating to material compliance with Environmental Laws the result of which, if not contested by the Borrower, would have a Material Adverse Effect; and

(c) provide such non-confidential information and certifications which the Agent may reasonably request from time to time to evidence compliance with this Section 7.1.6.

SECTION 7.2. Negative Covenants. The Borrower agrees with the Agents and each Lender that, until all Obligations have been paid and performed in full, the Borrower will perform the obligations set forth in this Section 7.2.

SECTION 7.2.1. Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, enter into, or cause, suffer or permit to exist any material arrangement or contract with any of its other Affiliates (other than other Subsidiaries) unless such arrangement or contract is fair and equitable to the Borrower or such Subsidiary based upon the good faith judgment of the Borrower's Board of Directors.

SECTION 7.2.2. Indebtedness. The Borrower will not permit any of its Subsidiaries to create, incur, assume or suffer to exist or otherwise become or be liable in respect of any

Indebtedness if, after giving effect to the incurrence of any such Indebtedness, the aggregate outstanding amount of Indebtedness of all Subsidiaries would exceed 25% of Consolidated Net Tangible Assets.

SECTION 7.2.3. Liens. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, except:

(a) Liens securing payment of Indebtedness permitted under Section 7.2.2;

(b) Liens granted prior to the Effective Date which are identified in Item 7.2.3 ("Existing Liens") of the Disclosure Schedule;

(c) any Lien existing on the assets of any Person at the time it becomes a Subsidiary (and not created, assumed or incurred by such Person in contemplation of such event);

(d) Liens for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(e) Liens of carriers, warehousemen, mechanics, materialmen and landlords incurred in the ordinary course of business for sums not overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(f) Liens incurred in the ordinary course of business in connection with workmen's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, leases and contracts (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(g) judgment Liens in existence less than 30 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by insurance maintained with responsible insurance companies;

(h) other Liens incidental to the conduct of the Borrower's or any of its Subsidiaries' businesses (including without limitation, Liens on goods securing trade letters of credit issued in respect of the importation of goods in the ordinary course of business, or the ownership of any of the Borrower's or any Subsidiary's property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit and which do not in the aggregate materially detract from the value of the Borrower's or any of its Subsidiaries' property or assets or materially impair the use thereof in the operation of Borrower's or any of its Subsidiaries' businesses);

(i) Liens in favor of the Borrower on assets of its Subsidiaries, and Liens in favor of Subsidiaries of the Borrower on assets of the Borrower;

(j) Liens securing industrial development or pollution control bonds so long as such Liens attach solely to the property acquired, constructed or improved with the proceeds of such bonds; and

(k) any Lien not otherwise permitted by this Section 7.2.3 securing Indebtedness, provided that, immediately after giving effect thereto (and to the incurrence of such Indebtedness secured thereby), the sum of (without duplication and excluding any Indebtedness payable to the Borrower or a Subsidiary) (i) the aggregate outstanding amount of Indebtedness of the Borrower and its Subsidiaries secured by all Liens described in clauses (b), (c) and (k) of this Section 7.2.3 (excluding any such Liens described in clauses (d) through (j) of this Section 7.2.3) and (ii) the Attributable Value of all Sale-Leaseback Transactions entered into by the Borrower and its Subsidiaries in the aggregate does not exceed 15% of Consolidated Net Tangible Assets.

SECTION 7.2.4. Mergers, Asset Dispositions, etc. The Borrower will not, nor will it permit any of its Subsidiaries to, liquidate, dissolve or enter into any consolidation, merger, joint venture or any other combination or sell, lease, assign, transfer or otherwise dispose of any assets or stock, whether now owned or hereafter acquired, in a single transaction or in a series of transactions other than:

(a) sales of inventory in the ordinary course of business;

(b) the merger or consolidation of any Subsidiary with or into the Borrower or a wholly-owned Subsidiary;

(c) the merger or consolidation of any other Person with or into the Borrower or any Subsidiary, so long as, after giving effect thereto, (i) the Borrower or its Subsidiary, as the case may be, is the surviving entity and (ii) no Default or Event of Default would exist;

(d) sales of assets or stock by the Borrower or a Subsidiary to a wholly-owned Subsidiary or the Borrower; and

(e) (i) sales of assets or stock to any other Person or (ii) liquidations of Subsidiaries (other than a Principal Subsidiary) if, after giving effect thereto, the aggregate book value of such assets or stock disposed of or liquidated does not, during the most recent period of 12 consecutive months, exceed 20% of Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding Fiscal Year; and

(f) joint ventures between Subsidiaries, between one or more Subsidiaries and the Borrower, between the Borrower and other Persons and between Subsidiaries and other Persons.

SECTION 7.2.5. EBIT to Interest Expense Ratio. The Borrower will not permit the ratio of EBIT to Interest Expense to be less than 2.5:1.00. For purposes of calculating such ratio, the

items included therein shall be measured on a consolidated basis for the Borrower and its Subsidiaries for the four full Fiscal Quarters immediately preceding the date of calculation.

ARTICLE VIII

EVENTS OF DEFAULT

SECTION 8.1. Listing of Events of Default. Each of the following events or occurrences described in this Section 8.1 shall constitute an "Event of Default".

SECTION 8.1.1. Non-Payment of Obligations. The Borrower shall default in the payment when due of any principal of any Loan, or the Borrower shall default (and such default shall continue unremedied for a period of three Business Days) in the payment when due of any interest on any Loan, or the Borrower shall default after notice (including, without limitation, notice delivered by way of submission of a detailed invoice) (and such default shall continue unremedied for a period of five days) in the payment when due of any fee described in Section 3.4 or of any other Obligation, including, without limitation, fees described in the Transaction Fee Letter.

SECTION 8.1.2. Breach of Warranty. Any representation or warranty of the Borrower made or deemed to be made hereunder or in any other Loan Document or any other writing or certificate furnished by or on behalf of the Borrower to the Agent or any Lender for the purposes of or in connection with this Agreement or any such other Loan Document (including any certificates delivered pursuant to Article V) is or shall be incorrect when made in any material respect.

SECTION 8.1.3. Non-Performance of Certain Covenants and Obligations. The Borrower shall default in the due performance and observance of any of its obligations under clause (a) of Section 7.1.2 (with respect to the maintenance and preservation of the Borrower's corporate existence) or under Section 7.1.6, or the Borrower shall default in the due performance and observance of its obligations under Section 7.2, and such default (if capable of being remedied within such period) shall not be remedied within five Business Days after any officer of the Borrower obtains actual knowledge thereof.

SECTION 8.1.4. Non-Performance of Other Covenants and Obligations. The Borrower shall default in the due performance and observance of any other agreement contained herein or in any other Loan Document, and such default shall continue unremedied for a period of 30 days after notice thereof shall have been given to the Borrower by the Agent or any Lender.

SECTION 8.1.5. Default on Other Indebtedness. A default shall occur in the payment when due (subject to any applicable grace period), whether by acceleration or otherwise, of any Indebtedness (other than Indebtedness described in Section 8.1.1) of the Borrower or any of its Subsidiaries having a principal amount, individually or in the aggregate, in excess of $15,000,000, or a default shall occur in the performance or observance of any obligation or condition with respect to such Indebtedness (whether or not waived) if the effect of such default is to accelerate the maturity of any such Indebtedness or such default (whether or not waived) shall continue unremedied for any applicable period of time sufficient to permit the holder or

holders of such Indebtedness, or any trustee or agent for such holders, to cause such Indebtedness to become due and payable prior to its expressed maturity.

SECTION 8.1.6. Judgments. Any judgment or order for the payment of money in excess of $15,000,000 shall be rendered against the Borrower or any of its Subsidiaries and either

(a) enforcement proceedings shall have been commenced by any creditor upon such judgment or order; or

(b) 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.

SECTION 8.1.7. Pension Plans. Any of the following events shall occur with respect to any Pension Plan

(a) the institution of any steps by the Borrower, any member of its Controlled Group or any other Person to terminate a Pension Plan if, as a result of such termination, the Borrower or any such member could reasonably be required to make a contribution to such Pension Plan, or could reasonably expect to incur a liability or obligation to such Pension Plan, in excess of $5,000,000; or

(b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA which is not cured within 20 days from the date such contribution was due.

SECTION 8.1.8. Control of the Borrower. Any Change in Control shall occur.

SECTION 8.1.9. Bankruptcy, Insolvency, etc. The Borrower or any of its Subsidiaries that are Principal Subsidiaries shall

(a) become insolvent or generally fail to pay, or admit in writing its inability to pay, debts as they become due;

(b) apply for, consent to, or acquiesce in, the appointment of a trustee, receiver, sequestrator or other custodian for the Borrower or any of such Subsidiaries or a substantial part of any property of any thereof, or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for the Borrower or any of such Subsidiaries or for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within 60 days, provided that the Borrower and each such Subsidiary hereby expressly authorizes the Agent and each Lender to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend their rights under the Loan Documents;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of the Borrower or any of such Subsidiaries, and, if any such case or proceeding is not commenced by the Borrower or such Subsidiary, such case or proceeding shall be consented to or acquiesced in by the Borrower or such Subsidiary or shall result in the entry of an order for relief or shall remain for 60 days undismissed, provided that the Borrower and each such Subsidiary hereby expressly authorizes the Agent and each Lender to appear in any court conducting any such case or proceeding during such 60-day period to preserve, protect and defend their rights under the Loan Documents; or

(e) take any corporate action authorizing, or in furtherance of, any of the foregoing.

SECTION 8.2. Action if Bankruptcy. If any Event of Default described in clauses (a) through (e) of Section 8.1.9 shall occur, the Commitments (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of all outstanding Loans and all other Obligations shall automatically be and become immediately due and payable, without notice or demand.

SECTION 8.3. Action if Other Event of Default. If any Event of Default (other than any Event of Default described in clauses (a) through (e) of Section 8.1.9) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Agent, upon the direction of the Required Lenders, shall by notice to the Borrower declare all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable and/or the Commitments (if not theretofore terminated) to be terminated, whereupon the full unpaid amount of such Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment and/or, as the case may be, the Commitments shall terminate.

ARTICLE IX

THE AGENT

SECTION 9.1. Appointment; Powers and Immunities. Each Lender hereby irrevocably appoints and authorizes the Agent to act as its Agent hereunder and under the other Loan Documents with such powers as are specifically delegated to the Agent by the terms hereof and thereof, together with such other powers as are reasonably incidental thereto. The Agent: (a) shall have no duties or responsibilities except as expressly set forth in this Agreement and the other Loan Documents, and shall not by reason of this Agreement or any other Loan Document be a trustee for any Lender; (b) makes no warranty or representation to any Lender and shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in this Agreement or any other Loan Document, or in any certificate or other document referred to or provided for in, or received by any Lender under, this Agreement or any other Loan Document, or for the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or any other document referred to or provided for herein or therein or for any failure by the Borrower to perform any of its obligations hereunder or

thereunder; (c) shall not be required to initiate or conduct any litigation or collection proceedings hereunder or under any other Loan Document except to the extent requested by the Required Lenders, and then only on terms and conditions satisfactory to the Agent, and (d) shall not be responsible for any action taken or omitted to be taken by it hereunder or under any other Loan Document or any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except for its own gross negligence or willful misconduct. The Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The provisions of this Article IX are solely for the benefit of the Agent and the Lenders, and the Borrower shall not have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement and under the other Loan Documents, the Agent shall act solely as Agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower. The duties of the Agent shall be ministerial and administrative in nature, and the Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender.

SECTION 9.2. Reliance by Agent. The Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopier, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants or other experts selected by the Agent. As to any matters not expressly provided for by this Agreement or any other Loan Document, the Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and thereunder in accordance with instructions signed by the Required Lenders, and such instructions of the Required Lenders in any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

SECTION 9.3. Defaults. The Agent shall not be deemed to have knowledge of the occurrence of a Default or an Event of Default (other than the nonpayment of principal of or interest on the Loans) unless the Agent has received notice from a Lender or the Borrower specifying such Default or Event of Default and stating that such notice is a "Notice of Default". In the event that the Agent receives such a notice of the occurrence of a Default or an Event of Default, the Agent shall give prompt notice thereof to the Lenders. The Agent shall (subject to Section 10.1) take such action hereunder with respect to such Default or Event of Default as shall be directed by the Required Lenders, provided that, unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 9.4. Rights of Agent and its Affiliates as a Lender. With respect to its Commitment and the Loans made by it and any of its Affiliates, Wachovia, N.A. (and any successor acting as Agent hereunder) in its capacity as a Lender hereunder and any Affiliate of Wachovia, N.A. in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as the Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Wachovia, N.A. in its individual capacity and any Affiliate of the Agent in its individual capacity. Wachovia, N.A. (and any successor acting as Agent hereunder) and any Affiliate

thereof may (without having to account therefor to any Lender) accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with the Borrower (and any of the Borrower's Affiliates) as if it were not acting as the Agent, and Wachovia, N.A. and any Affiliate thereof may accept fees and other consideration from the Borrower or any Subsidiary or Affiliate thereof for services in connection with this Agreement or any other Loan Document or otherwise without having to account for the same to the Lenders.

SECTION 9.5. Indemnification. Each Lender severally agrees to indemnify the Agent, to the extent the Agent shall not have been reimbursed by the Borrower, ratably in accordance with its Commitment, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, counsel fees and disbursements) or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of this Agreement or any other Loan Document or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses that the Borrower is obligated to pay under Section 10.3 or any amount the Borrower is obligated to pay under Section 10.4, but excluding the normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or any such other documents; provided that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Agent. If any indemnity furnished to the Agent for any purpose shall, in the opinion of the Agent, be insufficient or become impaired, the Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

SECTION 9.6. Consequential Damages. THE AGENT SHALL NOT BE RESPONSIBLE OR LIABLE TO ANY LENDER, THE BORROWER OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 9.7. Registered Holder of Loan Treated as Owner. The Agent may deem and treat each Person in whose name a Loan is registered as the owner thereof for all purposes hereof unless and until a written notice of the assignment or transfer thereof shall have been filed with the Agent and the provisions of Section 10.11.1 have been satisfied. Any requests, authority or consent of any Person who at the time of making such request or giving such authority or consent is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee or assignee of that Note or of any Note or Notes issued in exchange therefor or replacement thereof.

SECTION 9.8. Nonreliance on Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on the Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and decision to enter into this Agreement and 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 analysis and decisions in taking or

not taking action under this Agreement or any of the other Loan Documents. The Agent shall not be required to keep itself (or any Lender) informed as to the performance or observance by the Borrower of this Agreement or any of the other Loan Documents or any other document referred to or provided for herein or therein or to inspect the properties or books of the Borrower or any other Person. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Agent hereunder or under the other Loan Documents, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower or any other Person (or any of their Affiliates) which may come into the possession of the Agent or any of its Affiliates.

SECTION 9.9. Failure to Act. Except for action expressly required of the Agent hereunder or under the other Loan Documents, the Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction by the Lenders of their indemnification obligations under Section 9.5 against any and all liability and expense which may be incurred by the Agent by reason of taking, continuing to take, or failing to take any such action.

SECTION 9.10. Successor Agent. The Agent may resign at any time by giving notice thereof to the Lenders and the Borrower. Upon any such resignation, 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 notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent. Any successor Agent shall be a bank or other financial institution which has 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, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article IX shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent hereunder.

SECTION 9.11. Other Agents. Bank of America, N.A. is hereby appointed Documentation Agent of the Lenders hereunder and under each Loan Document. SunTrust Bank is hereby appointed Syndication Agent of the Lenders hereunder and under each Loan Document. Bank of America, N.A. shall not have any duties, responsibilities or liabilities in its capacity as Documentation Agent. SunTrust Bank shall not have any duties, responsibilities or liabilities in its capacity as Syndication Agent.

ARTICLE X

MISCELLANEOUS PROVISIONS

SECTION 10.1. Waivers, Amendments, etc. The provisions of this Agreement and of each other Loan Document may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Borrower and the

Required Lenders; provided, however, that no such amendment, modification or waiver which would:

(a) modify any requirement hereunder that any particular action be taken by all the Lenders or by the Required Lenders shall be effective unless consented to by each Lender;

(b) modify this Section 10.1, change the definition of "Required Lenders", increase the Percentage or Commitment of any Lender, reduce any fees described in Article III, or extend the Maturity Date shall be made without the consent of each Lender and each holder of a Note (except for any change resulting from Section 2.8);

(c) extend the due date for, or reduce the amount of, any scheduled repayment of principal of or payment of interest on any Loan or fees owed hereunder (or reduce the principal amount of or rate of interest on any Loan or the fees owed hereunder) shall be made without the consent of the holder of that Note evidencing such Loan or owed such fees (except for any change resulting from Section 2.8); or

(d) affect adversely the interests, rights or obligations of the Agent qua the Agent shall be made without consent of the Agent.

No failure or delay on the part of the Agent, any Lender or the holder of any Note in exercising any power or right under this Agreement or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on the Borrower in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Agent, any Lender or the holder of any Note under this Agreement or any other Loan Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

SECTION 10.2. Notices. All notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing or by facsimile and addressed, delivered or transmitted to such party at its address or facsimile number set forth below its signature hereto or set forth in the Lender Assignment Agreement or at such other address or facsimile number as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when transmitted.

SECTION 10.3. Payment of Costs and Expenses. The Borrower agrees to pay on demand all reasonable expenses of the Agents and the Lead Arrangers (including the reasonable fees, internal charges and out-of-pocket expenses of counsel to the Agents and the Lead Arrangers, which attorneys may

be employees of the Agents or Lead Arrangers, and of local counsel, if any, who may be retained by counsel to the Agents and the Lead Arrangers) in connection with

(a) the negotiation, preparation, syndication, due diligence, execution and delivery of this Agreement and of each other Loan Document, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to this Agreement or any other Loan Document as may from time to time hereafter be required, whether or not the transactions contemplated hereby are consummated, and

(b) the preparation and review of the form of any document or instrument relevant to this Agreement or any other Loan Document;

provided, however, that the Borrower shall not be obligated to pay for expenses incurred by the Agent or a Lender in connection with the assignment of Loans to an Assignee Lender pursuant to Section 10.11.1 or the sale of Loans to a Participant pursuant to Section 10.11.2, and the Borrower shall only be obligated to pay to the Agent an amount equal to $100 (unless otherwise agreed to by the Agent), multiplied by the then existing number of Lenders, in respect of each Competitive Bid Loan Request submitted by the Borrower (payable on the date of submission of such request).

The Borrower further agrees to pay, and to save the Agents and the Lenders harmless from all liability for, any stamp or other taxes which may be payable in connection with the execution or delivery of this Agreement, the borrowings hereunder, or the issuance of the Notes or any other Loan Documents. The Borrower also agrees to reimburse the Agents and each Lender upon demand for all reasonable out-of-pocket expenses (including attorneys' fees and legal expenses, and the allocated costs of staff counsel) incurred by the Agents or such Lender in connection with (x) the negotiation of any restructuring or "work-out", whether or not consummated, of any Obligations and (y) the enforcement of any Obligations.

SECTION 10.4. Indemnification. In consideration of the execution and delivery of this Agreement by each Lender and the extension of Commitments, the Borrower hereby indemnifies, exonerates and holds the Agents, the Lead Arrangers and each Lender and each of their respective officers, directors, employees and agents (collectively, the "Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages, and expenses incurred in connection therewith (irrespective of whether any such Indemnified Party is a party to the action for which indemnification hereunder is sought), including reasonable attorneys' fees and disbursements (collectively, the "Indemnified Liabilities") , incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to

(a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Loan;

(b) the entering into and performance of this Agreement and any other Loan Document by any of the Indemnified Parties;

(c) any investigation, litigation or proceeding related to any acquisition or proposed acquisition by the Borrower or any of its Subsidiaries of all or any portion of the stock or assets of any Person, whether or not the Agents, the Lead Arrangers or such Lender is party thereto;

(d) any investigation, litigation or proceeding related to any environmental cleanup, audit, compliance or other matter relating to the protection of the environment or the Release by the Borrower or any of its Subsidiaries of any Hazardous Material; or

(e) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releases from, any real property owned or operated by the Borrower or any Subsidiary thereof of any Hazardous Material (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law), regardless of whether caused by, or within the control of, the Borrower or such Subsidiary,

except for any such Indemnified Liabilities arising by reason of the relevant Indemnified Party's gross negligence or willful misconduct. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

SECTION 10.5. Survival. The obligations of the Borrower under Sections 4.3, 4.4, 4.5, 4.6, 10.3 and 10.4, and the obligations of the Lenders under Section 9.1, shall in each case survive any termination of this Agreement and the payment in full of all Obligations and the termination of all Commitments. The representations and warranties made by the Borrower in this Agreement and in each other Loan Document shall survive the execution and delivery of this Agreement and each such other Loan Document.

SECTION 10.6. Severability. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 10.7. Headings. The various headings of this Agreement and of each other Loan Document are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or such other Loan Document or any provisions hereof or thereof.

SECTION 10.8. Execution in Counterparts, Effectiveness, etc. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be executed by the Borrower and the Agent and shall be deemed to be an original and all of which shall constitute together but one and the same Agreement. This Agreement shall become effective when counterparts hereof executed on behalf of the Borrower and each Lender (or notice thereof satisfactory to the Agent) shall have been received by the Agent and notice thereof shall have been given by the Agent to the Borrower and each Lender.

SECTION 10.9. Governing Law; Entire Agreement. **THIS AGREEMENT, THE NOTES AND EACH OTHER LOAN DOCUMENT SHALL EACH BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.** This Agreement, the Notes and the other Loan Documents

constitute the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

SECTION 10.10. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that:

(a) the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Agent and all Lenders; and

(b) the rights of sale, assignment and transfer of the Lenders are subject to Section 10.11.

SECTION 10.11. Sale and Transfer of Loans and Note; Participations in Loans and Note. Each Lender may assign, or sell participations in, its Loans and Commitments to one or more other Persons in accordance with this Section 10.11.

SECTION 10.11.1. Assignments. Any Lender,

(a) with the written consent of the Borrower and the Agent (which consent shall not be unreasonably delayed or withheld, and which consent, in the case of the Borrower, shall be deemed to have been given if the Borrower fails to deliver a written notice to the Agent on or before the tenth Business Day after receipt by the Borrower of the Agent's request for consent, stating, in reasonable detail, the reasons why the Borrower proposes to withhold such consent) may at any time assign and delegate to other commercial banks, other financial institutions or Approved Funds its Loans and Commitments hereunder; provided, however, that if an Event of Default has occurred and is continuing, the consent of the Borrower shall not be required; and

(b) with notice to the Borrower and the Agent, but without the consent of the Borrower or the Agent, may assign and delegate to any of its Affiliates or to any other Lender or its Affiliates all or any portion of its Loans and Commitments hereunder;

(each Person described in either of the foregoing clauses as being the Person to whom such assignment and delegation is to be made, being hereinafter referred to as an "Assignee Lender"), in a minimum aggregate amount of $10,000,000 (or such lesser amount as may be agreed to by the Borrower and the Agent, at their option) in the case of clause (a) above, and all of the Loans and Commitments of such Assignee Lender in the case of clause (b) above; provided, however, that any such Assignee Lender will comply, if applicable, with the provisions contained in the last sentence of Section 4.6 and further, provided, however, that, the Borrower and the Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned and delegated to an Assignee Lender until:

(i) written notice of such assignment and delegation, together with payment instructions, addresses and related information with respect to such Assignee Lender, shall have been given to the Borrower and the Agent by such Lender and such Assignee Lender;

(ii) such Assignee Lender shall have executed and delivered to the Borrower and the Agent a Lender Assignment Agreement, accepted by the Agent; and

(iii) the processing fees described below shall have been paid.

From and after the date that the Agent accepts such Lender Assignment Agreement, (x) the Assignee Lender thereunder shall be deemed automatically to have become a party hereto and to the extent that rights and obligations hereunder have been assigned and delegated to such Assignee Lender in connection with such Lender Assignment Agreement, shall have the rights and obligations of a Lender hereunder and under the other Loan Documents, and (y) the assignor Lender, to the extent that rights and obligations hereunder have been assigned and delegated by it in connection with such Lender Assignment Agreement, shall be released from its obligations hereunder and under the other Loan Documents but shall continue to be entitled to the benefits of the indemnity provisions hereunder for the period prior to such assignment. Within five Business Days after its receipt of notice that the Agent has received an executed Lender Assignment Agreement, the Borrower shall execute and deliver to the Agent (for delivery to the relevant Assignee Lender) a new Note evidencing such Assignee Lender's assigned Loans and Commitments, and, if the assignor Lender has retained Loans and a Commitment hereunder, a replacement Note in the principal amount of the Loans and Commitment retained by the assignor Lender hereunder (such Note to be in exchange for, but not in payment of, that Note then held by such assignor Lender). Each such Note shall be dated the date of the predecessor Note. The assignor Lender shall mark the predecessor Note "exchanged" and deliver it to the Borrower. Accrued interest on that part of the predecessor Note evidenced by the new Note, and accrued fees, shall be paid as provided in the Lender Assignment Agreement. Accrued interest on that part of the predecessor Note evidenced by the replacement Note shall be paid to the assignor Lender. Accrued interest and accrued fees shall be paid at the same time or times provided in the predecessor Note and in this Agreement. Such assignor Lender or such Assignee Lender must also pay a processing fee to the Agent upon delivery of any Lender Assignment Agreement in the amount of $3,500 (provided, however, that such processing fee shall not be required to be paid by a Lender in the case of an assignment of such Lender's Loans and Commitments to an Affiliate or Subsidiary of such Lender). Any attempted assignment and delegation not made in accordance with this Section 10.11.1 shall be null and void. Notwithstanding anything to the contrary set forth above, any Lender may (without requesting the consent of the Borrower or the Agent) pledge its Loans to a Federal Reserve Bank in accordance with applicable regulations. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party

hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in Section 10.1.1, any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This section may not be amended without the written consent of each Granting Lender, all or any of whose Loans are being funded by an SPC at the time of such amendment. It is understood and acknowledged that the Granting Lender shall for all purposes, including, without limitation, the approval of any amendment or waiver of any provision of any Loan Document or the obligation to pay any amount otherwise payable by the Granting Lender under the Loan Documents, continue to be the Lender of record hereunder.

As used herein, (i) the term "Approved Fund" means any Fund that is administered or managed by (A) a Lender, (B) an Affiliate of a Lender or (C) an entity or an Affiliate of any entity that administers or manages a Lender and (ii) the term "Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

SECTION 10.11.2. Participations. Any Lender may at any time sell to one or more commercial banks or other Persons (each of such commercial banks and other Persons being herein called a "Participant") participating interests in any of the Loans, its Commitment, or other interests of such Lender hereunder; provided, however, that

(a) no participation contemplated in this Section 10.11 shall relieve such Lender from its Commitment or its other obligations hereunder or under any other Loan Document;

(b) such Lender shall remain solely responsible for the performance of its Commitment and such other obligations;

(c) the Borrower and the Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents;

(d) no Participant, unless such Participant is an Affiliate of such Lender, or is itself a Lender, shall be entitled to require such Lender to take or refrain from taking any action hereunder or under any other Loan Document, except that such Lender may agree

with any Participant that such Lender will not, without such Participant's consent, take any actions of the type described in clause (b) or (c) of Section 10.1; and

(e) the Borrower shall not be required to pay any amounts to a Lender under Sections 4.3, 4.4, 4.5, 4.6, 4.8, 4.9, 10.3 and 10.4 or otherwise, that are greater than the amounts which it would have been required to pay to such Lender had no participating interest been sold.

SECTION 10.12. Other Transactions. Nothing contained herein shall preclude the Agent or any other Lender from engaging in any transaction, in addition to those contemplated by this Agreement or any other Loan Document, with the Borrower or any of its Affiliates in which the Borrower or such Affiliate is not restricted hereby from engaging with any other Person.

SECTION 10.13. Removal and Replacement of Lenders.

(a) Under any circumstances set forth herein providing that the Borrower shall have the right to remove or replace a Lender as a party to this Agreement, the Borrower may, upon notice to such Lender and the Agent, (i) remove such Lender by terminating such Lender's Commitment or (ii) replace such Lender by causing such Lender to assign its Commitment (without payment of any assignment fee) pursuant to Section 10.11.1 to one or more other Lenders, commercial banks, other financial institutions or Approved Funds procured by the Borrower. The Borrower shall (x) pay in full all principal, interest, fees and other amounts owing to such Lender through the date of removal or replacement (including any amounts payable pursuant to Section 4.4), (y) provide appropriate assurances and indemnities (which may include letters of credit) to the Swing Line Lender as it may reasonably require with respect to any continuing obligation to purchase participation interests in any Swing Line Loans then outstanding, and (z) release such Lender from its obligations under the Loan Documents. Any Lender being replaced shall execute and deliver a Lender Assignment Agreement with respect to such Lender's Commitment and Loans. The Agent shall distribute a schedule, which shall be deemed incorporated into this Agreement, to reflect changes in the identities of the Lenders and adjustments of their respective Commitments and/or Percentage resulting from any such removal or replacement.

(b) In order to make all the Lenders' interests in any outstanding Loans ratable in accordance with any revised Percentages after giving effect to the removal or replacement of a Lender, the Borrower shall pay or prepay, if necessary, on the effective date thereof, all outstanding Loans of all Lenders, together with any amounts due under Section 4.4. The Borrower may then request Loans from the Lenders in accordance with their revised Percentages. The Borrower may net any payments required hereunder against any funds being provided by any Lender commercial bank, other financial institution or Approved Fund replacing a terminating Lender. The effect for purposes of this Agreement shall be the same as if separate transfers of funds had been made with respect thereto.

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

SECTION 10.14. Forum Selection and Consent to Jurisdiction. **ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE AGENT, THE LENDERS OR THE BORROWER SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. THE BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL TO THE CORPORATE SECRETARY, POSTAGE PREPAID, AND WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF THE STATE OF NEW YORK. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT THE BORROWER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OF FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE BORROWER HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.**

SECTION 10.15. WAIVER OF JURY TRIAL. **THE AGENT, THE LENDERS AND THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE AGENT, THE LENDERS OR THE BORROWER. THE BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENT AND THE LENDERS ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT.**

[signature pages to follow]

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

McCORMICK & COMPANY, INCORPORATED

By: /s/ Christopher J. Kurtzman
Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. Geoffrey Carpenter
W. Geoffrey Carpenter
Title: Assistant Secretary

Address: 18 Loveton Circle
Sparks, MD 21152

Facsimile No.: (410) 527-8228

Attn: Secretary

WACHOVIA BANK, N.A.,
as Administrative Agent

By: /s/ Meg Beveridge
Meg Beveridge
Title: Vice President

191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303
Attention: Michael Adams
Facsimile No.: (404) 332-5144

PERCENTAGE

8.58%

LENDERS

WACHOVIA BANK, N.A.

By: /s/ Meg Beveridge
Printed Name: Meg Beveridge
Title: Vice President

191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303
Attention: Michael Adams
Facsimile No.: (404) 332-5144

PERCENTAGE

17.14%

LENDERS

BANK OF AMERICA, N.A.

By: /s/ William F. Sweeney
Printed Name: William F. Sweeney
Title: Managing Director

Address: 219 South LaSalle Street
Chicago, IL 60697

Facsimile No.: (312) 987-1276

Attn: William F. Sweeney

PERCENTAGE

17.14%

LENDERS

SUNTRUST BANK

By: /s/ Paul R. Beliveau
Printed Name: Paul R. Beliveau
Title: Vice President

Address: 120 East Baltimore Street

Baltimore, MD 21202

Facsimile: (410) 986-1670

Attn: Paul R. Belive\uua

PERCENTAGE

14.29%

LENDERS

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Brad Hardy
Printed Name: Brad Hardy
Title: Vice President

By: /s/ Roy H. Roberts
Printed Name: Roy Roberts
Title: Vice President

Address: 70 E. 55th Street, 11th Floor

New York, NY 10022

Facsimile No.: (212) 593-5241

Attn: Lori Ross

PERCENTAGE

LENDERS

8.58%

ALLFIRST BANK

By: /s/ Frank V. Lago
Printed Name: Frank V. Lago
Title: Vice President

Address: 25 South Charles Street
Baltimore, MD 21201

Facsimile No.: (410) 244-4294

Attn: Frank V. Lago

PERCENTAGE

LENDERS

7.14%

CREDIT SUISSE FIRST BOSTON

By: /s/ Andrea E. Shkane
Printed Name: Andrea E. Shkane
Title: Vice President

Address: Eleven Madison Avenue
New York, NY 10019

Facsimile No.: (212) 325-8320

Attn: Jay Chall

By: /s/ David Sawyer
Printed Name: David Sawyer
Title: Vice President

PERCENTAGE

LENDERS

7.14%

BNP PARIBAS

By: /s/ Nanette Baudon
Printed Name: Nanette Baudon
Title: Vice President

By: /s/ Richard Pace
Printed Name: Richard Pace
Title: VP - Corporate Banking Division

Address: 787 7th Avenue, 31st Floor
New York, NY 10019

Facsimile No.: (212) 841-3049

Attn: Nanette Baudon

PERCENTAGE

LENDERS

7.14%

THE BANK OF NEW YORK

By: /s/ Steven P. Cavaluzzo
Printed Name: Steven P. Cavaluzzo
Title: Vice President

Address: 1 Wall Street, 22nd Floor
New York, NY 10286

Facsimile No.: (212) 635-6434

Attn: Steven P. Cavaluzzo

PERCENTAGE **LENDERS**

7.14%

THE FUJI BANK, LIMITED

By: /s/ Raymond Ventura
Printed Name: Raymond Ventura
Title: Senior Vice President

Address: Two World Trade Center
New York, NY 10048-0042

Facsimile No.: (212) 321-9407

Attn: Alejandro D. Waldman

PERCENTAGE **LENDERS**

5.71%

MELLON BANK, N.A.

By: /s/ David H. Reed
Printed Name: David H. Reed
Title: First Vice President

Address: 8521 Leesberg Pike, Ste. 405
Vienna, VA 22182

Facsimile No.: (410) 778-9448

Attn: Peter Heller

SCHEDULE I

DISCLOSURE SCHEDULE

ITEM 6.7 Litigation.

None.

ITEM 6.8 Existing Subsidiaries as of the Effective Date.

Attached - Exhibit A.

ITEM 6.11 Employee Benefit Plans.

Attached - Exhibit B.

ITEM 6.12 Environmental Matters.

None.

ITEM 7.2.3 Existing Liens.

Attached - Exhibit C.

EXHIBIT A

THE AMERICAS MARKET ZONE

U.S. Consumer Products Division
- Ampacco, Inc. (Maryland)
- Han-Dee Pak, Inc. (Maryland)
- McCormick de Puerto Rico, Inc. (Delaware)
- Mojave Foods Corporation (Maryland)
  - El Guapo Foods, Inc. (California)
  - More For Less, Inc. (Delaware)
  - Produce Partners, Inc. (Illinois)
  - Old Bay Company, Inc. (Delaware)
- McCormick Holding Company, Inc. (Delaware)
  - Signature Brands, LLC (Florida)
- McCormick Investment Company, Inc. (Delaware)
  - McCormick Fresh Herbs, LLC (Delaware)

McCormick de Centro America, S.A. de C.V. (El Salvador)

EUROPEAN MARKET ZONE

McCormick Europe Ltd. (United Kingdom)
- McCormick International Holdings Ltd. (United Kingdom)
  - McCormick France S.A.S. (France)
    - Ducros S.A.S. (France)
      - Dessert Products International (France)
    - Sodis S.A.S. (France)
    - McCormick Management Services S.A.R.L. (France)
  - McCormick (U.K.) Ltd. (Scotland)
    - Bluebroad 1 Limited (England)
    - McCormick Baharat de Gida Sanay A.S. (Turkey)
    - McCormick Glentham (Pty) Limited (South Africa)
    - McCormick Kutas Food Services Ltd. (United Kingdom)
    - Noel Holdings Limited (England)
      - McCormick Foodservice Ltd. (England)

McCormick S.A. (Switzerland)

Oy McCormick Ab (Finland)

ASIAN MARKET ZONE

McCormick Foods Australia Pty. Ltd. (Australia)
- Traders Pty. Ltd. (Australia)

McCormick (Guangzhou) Food Company Limited (China)

McCormick India Private Limited (India) (100% owned subsidiary of McCormick (U.K.) Ltd.

Shanghai McCormick Foods Company, Limited (China) (90% owned)

GLOBAL INDUSTRIAL GROUP

Food Service Division

McCormick Flavor Group
- McCormick Ingredients Southeast Asia Private Limited
- Classic Foods, Inc. (Connecticut)
- McCormick Pesa, S.A. de C.V. (Mexico)
- McCormick Uruguay Holdings, Inc. (Delaware)
  - McCormick Uruguay, S.A. (Uruguay)

La Cie McCormick Canada Co

Packaging Group
Setco, Inc. (Delaware)
Tubed Products, Inc. (Maryland)
OG Dehydrated, Inc. (California)

MISCELLANEOUS

AH Investments, Inc. (Maryland)
Armanino Farms of California, Inc. (California)
International Ingredients, Inc. (Maryland)
McCormick Credit, Inc. (Delaware)
McCormick Delaware, Inc. (Delaware)
McCormick Foreign Sales Corporation (U.S. Virgin Islands)
McCormick Ingredientes Brasil Ltda. (Brazil)
McCormick Global Ingredients Limited (Cayman)
McCormick Cyprus Limited (Cyprus)
McCormick Hungary Group Financing Limited Liability Company (Hungary)
McCormick Europe Ltd. (United Kingdom)
McCormick (U.K.) Ltd. (Scotland)
McCormick International Holdings Ltd. (United Kingdom)
La Cie McCormick Canada Co. (Canada)
McCormick Foods Australia Pty. Ltd. (Australia)

REVOLVING LOAN NOTE

U.S. $21,425,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of SUNTRUST BANK (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of TWENTY-ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND AND 00/100 UNITED STATES DOLLARS (U.S. $21,425,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $21,425,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of BANK OF AMERICA, N.A. (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of TWENTY-ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND AND 00/100 UNITED STATES DOLLARS (U.S. $21,425,000) UNITED STATES DOLLARS (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $17,862,500 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of SEVENTEEN MILLION EIGHT HUNDRED SIXTY-TWO THOUSAND FIVE HUNDRED 00/100 UNITED STATES DOLLARS (U.S. $17,862,500) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $10,725,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of WACHOVIA, N.A. (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of TEN MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND AND 00/100 UNITED STATES DOLLARS (U.S. $10,725,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $10,725,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of ALLFIRST BANK (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of TEN MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND AND 00/100 UNITED STATES DOLLARS (U.S. $10,725,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

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McCORMICK & COMPANY, INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $8,925,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of CREDIT SUISSE FIRST BOSTON (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of EIGHT MILLION NINE HUNDRED TWENTY-FIVE THOUSAND 00/100 UNITED STATES DOLLARS (U.S. $8,925,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $8,925,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of BNP PARIBAS (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of EIGHT MILLION NINE HUNDRED TWENTY-FIVE THOUSAND 00/100 UNITED STATES DOLLARS (U.S. $8,925,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $8,925,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of BANK OF NEW YORK (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of EIGHT MILLION NINE HUNDRED TWENTY-FIVE THOUSAND 00/100 UNITED STATES DOLLARS (U.S. $8,925,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $8,925,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of THE FUJI BANK, LTD. (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of EIGHT MILLION NINE HUNDRED TWENTY-FIVE THOUSAND 00/100 UNITED STATES DOLLARS (U.S. $8,925,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $7,137,500 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of MELLON BANK, N.A. (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of SEVEN MILLION ONE HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED AND 00/100 UNITED STATES DOLLARS (U.S. $7,137,500) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

FORM OF COMPETITIVE BID LOAN NOTE

U.S.$125,000,000 June , 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of (the "Lender") on the earlier of (i) each Competitive Bid Loan Maturity Date (as such term is defined in that certain 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among the Borrower, Wachovia, N.A., as administrative agent (the "Agent"), and the various financial institutions, including the Lender, as are, or may from time to time become parties thereto), the aggregate unpaid principal amount of all Competitive Bid Loans made by the Lender to the Borrower pursuant to Section 2.3 of the Credit Agreement to which such Competitive Bid Loan Maturity Date applies and (ii) the Maturity Date (as defined in the Credit Agreement), the principal sum of ONE HUNDRED TWENTY-FIVE MILLION UNITED STATES DOLLARS (U.S. DOLLARS (U.S. $125,000,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the unpaid principal amount of all Competitive Bid Loans made by the Lender to the Borrower from time to time pursuant to Section 2.3 of the Credit Agreement. A notation indicating all Competitive Bid Loans made by the Lender pursuant to the Credit Agreement and all payments on account of the principal of such Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of Competitive Bid Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY, INCORPORATED

By: _____

Title: _____

By: _____

Date	Amount of Loan	Competitive Bid Loan Maturity Date	Competitive Bid Loan Interest Payment Date	Amount of Interest Payment	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

EXHIBIT B
EMPLOYEE BENEFIT PLANS

EXHIBIT B

7. PENSION AND PROFIT SHARING PLANS

The Company's pension expense is as follows:

	United States			International		
(millions)	2000	1999	1998	2000	1999	1998
Defined benefit plans						
Service cost	$ 7.1	$ 7.4	$ 6.2	$ 2.7	$ 2.8	$ 2.7
Interest costs	13.8	12.7	11.4	3.3	3.2	3.2
Expected return on plan assets	(15.5)	(13.2)	(11.2)	(4.7)	(5.2)	(4.9)
Amortization of prior service costs	.1	.1	.1	.1	.1	.1
Amortization of transition assets	.2	(.6)	(.5)	(.1)	(.1)	(.1)
Curtailment loss	—	—	—	—	.2	—
Recognized net actuarial loss (gain)	1.3	3.3	1.6	—	(.1)	(.3)
Other retirement plans	—	.1	.2	.5	.7	.8
	$ 7.0	$ 9.8	$ 7.8	$ 1.8	$ 1.6	$ 1.5

The Company's U.S. pension plans held .5 million shares, with a fair value of $17.9 million, of the Company's stock at November 30, 2000. Dividends paid on these shares in 2000 were $.4 million.

Rollforwards of the benefit obligation, fair value of plan assets and a reconciliation of the pension plans' funded status at September 30, the measurement date, follow:

	United States		International	
(millions)	2000	1999	2000	1999
Change in benefit obligation				
Beginning of the year	**$ 176.5**	$ 185.5	**$ 58.9**	$ 49.8
Service cost	**7.1**	7.4	**2.7**	2.8
Interest costs	**13.8**	12.7	**3.3**	3.2
Employee contributions	**—**	—	**1.2**	1.1
Plan changes and other	**.6**	.3	**—**	—
Curtailment	**—**	—	**—**	.4
Actuarial loss (gain)	**.6**	(17.7)	**.6**	4.2
Benefits paid	**(11.7)**	(11.7)	**(2.1)**	(2.2)
Foreign currency impact	**—**	—	**(5.6)**	(.4)
End of the year	**$ 186.9**	$ 176.5	**$ 59.0**	$ 58.9
Change in fair value of plan assets				
Beginning of the year	**$ 169.0**	$ 141.2	**$ 60.7**	$ 57.9
Actual return on plan assets	**16.6**	16.9	**10.5**	4.4
Transfer	**—**	.4	**—**	—
Employer contributions	**9.2**	22.2	**1.1**	—
Employee contributions	**—**	—	**1.2**	1.1
Benefits paid	**(11.7)**	(11.7)	**(2.1)**	(2.2)
Foreign currency impact	**—**	—	**(5.8)**	(.5)
End of the year	**$ 183.1**	$ 169.0	**$ 65.6**	$ 60.7
Reconciliation of funded status				
Funded status	**$ (3.9)**	$ (7.5)	**$ 6.6**	$ 1.8
Unrecognized net actuarial loss (gain)	**24.6**	26.2	**(7.6)**	(2.9)
Unrecognized prior service cost	**.2**	.3	**.5**	.7
Unrecognized transition asset (liability)	**.5**	.6	**(.3)**	(.4)
Employer contribution	**—**	—	**.3**	—

$ 21.4	$ 19.6	**$ (.5)**	$ (.8)

Amounts recognized in the Consolidated Balance Sheet consist of the following:

(millions)	United States		International	
	2000	1999	2000	1999
Prepaid pension cost	**$ 21.4**	$ 19.6	**$ .5**	$ .4
Accrued pension liability	**—**	—	**(1.0)**	(1.2)
	$ 21.4	$ 19.6	**$ (.5)**	$ (.8)

The accumulated benefit obligation for the U.S. pension plans was $152.4 million and $144.5 million as of September 30, 2000 and 1999, respectively.

(millions)	United States		International	
	2000	1999	2000	1999
Significant assumptions				
Discount rate	**8.0%**	8.0%	**6.0-6.5%**	6.0-6.5%
Salary scale	**4.5%**	4.5%	**3.5-4.0%**	3.5-4.0%
Expected return on plan assets	**10.0%**	10.0%	**8.5%**	8.5%

Cumulative effect of an accounting change

In 1999, the Company changed its actuarial method of calculating the market-related value of plan assets used in determining the expected return-on-asset component of annual pension expense. This modification resulted in a cumulative effect of accounting change credit of $4.8 million after-tax or $.07 per share ($7.7 million before tax) recorded in the first quarter of 1999. Under the previous method, all realized and unrealized gains and losses were gradually included in the calculated market-related value of plan assets over a five-year period. Under the new method, the total expected investment return, which anticipates realized and unrealized gains and losses on plan assets, is included in the calculated market-related value of plan assets each year. Only the difference between total actual investment return, including realized and unrealized gains and losses, and the expected investment return is gradually included in the calculated market-related value of plan assets over a five-year period.

Under the new actuarial method, the calculated market-related value of plan assets more closely approximates fair value, while still mitigating the effect of annual market value fluctuations. It also reduces the growing difference between the fair value and calculated market-related value of plan assets that has resulted from the recent accumulation of unrecognized gains and losses. While this change better represents the amount of ongoing pension expense, the new method did not have a material impact on the Company's results of operations in 2000 or 1999 and is not expected to have a material impact in future years. The pro-forma impact of applying the change to 1998 was not material.

Profit Sharing Plan

Profit sharing plan expense was $5.8 million, $6.0 million and $4.2 million in 2000, 1999 and 1998, respectively.

The Profit Sharing Plan held 2.2 million shares, with a fair value of $83.1 million, of the Company's stock at November 30, 2000. Dividends paid on these shares in 2000 were $1.7 million.

EXHIBIT B

8. OTHER POSTRETIREMENT BENEFITS

The Company's other postretirement benefit expense follows:

(millions)	2000	1999	1998
Other postretirement benefits			
Service cost	**$ 2.4**	$ 2.6	$ 2.1
Interest cost	**5.3**	4.9	4.4
Amortization of prior service cost	**(.7)**	(.1)	(.1)
Accelerated recognition of prior unrecognized service cost	**(.6)**	—	—
	$ 6.4	$ 7.4	$ 6.4

Rollforwards of the benefit obligation, fair value of plan assets and a reconciliation of the plan's funded status at November 30, the measurement date, follow:

(millions)	2000	1999
Change in benefit obligation		
Beginning of the year	**$ 65.1**	$ 69.8
Service cost	**2.4**	2.6
Interest cost	**5.3**	4.9
Employee contributions	**1.7**	1.6
Plan changes	**—**	(6.1)
Actuarial loss (gain)	**2.0**	(2.7)
Benefits paid	**(5.2)**	(5.0)
End of the year	**$ 71.3**	$ 65.1
Change in fair value of plan assets		
Beginning of the year	**$ —**	$ —
Employer contributions	**3.5**	3.4
Employee contributions	**1.7**	1.6
Benefits paid	**(5.2)**	(5.0)

End of the year	**$ —**	$ —
Reconciliation of funded status		
Funded status	**$ (71.3)**	$ (65.1)
Unrecognized net actuarial loss (gain)	**1.8**	(.2)
Unrecognized prior service cost	**(6.0)**	(7.3)
Other postretirement benefit liability	**$ (75.5)**	$ (72.6)

The assumed weighted-average discount rates were 8.0% for 2000 and 1999, respectively.

The assumed annual rate of increase in the cost of covered health care benefits is 7.65% for 2000. It is assumed to decrease gradually to 5.25% in the year 2007 and remain at that level thereafter. Changing the assumed health care cost trend would have the following effect:

(millions)	1-Percentage-Point Increase	1-Percentage-Point Decrease
Effect on benefit obligation as of November 30, 2000	$ 8.0	$ (7.0)
Effect on total of service and interest cost components in 2000	$ 1.0	$ (.8)

FORM OF REVOLVING LOAN BORROWING REQUEST

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

This Revolving Loan Borrowing Request is delivered to you pursuant to clause (b) of Section 2.1 of the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the Lenders now or hereafter parties thereto and Wachovia, N.A., as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby requests that a Revolving Loan Borrowing be made in the aggregate principal amount of [$U.S.] [£] [DM] [¥] [Euro] on , as [a Base Rate Loan] [a LIBO Rate Loan having an interest period of months].

The Borrower hereby certifies and warrants that on the date the Revolving Loan Borrowing requested hereby is made (both before and after giving effect to such Revolving Loan Borrowing);

(a) the representations and warranties set forth in Article VI of the Credit Agreement are and will be true and correct as if then made pursuant to Section 5.2.1 of the Credit Agreement;

(b) no Default or Event of Default has occurred and is continuing or will have occurred and be continuing; and

(c) the aggregate amount of the requested Revolving Loan Borrowing and all other Loans outstanding on the date of the requested Revolving Loan Borrowing does not and will not exceed the Commitment Amount.

The undersigned hereby confirms that the requested Revolving Loan Borrowing is to be made available to it in accordance with Section 2.1 of the Credit Agreement.

The Borrower agrees that if prior to the time of the Borrowing requested hereby any matter certified to herein by it will not be true and correct at such time as if then made, it will

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immediately so notify the Agent. Except to the extent, if any, that prior to the time of the Revolving Loan Borrowing requested hereby the Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed once again to be certified an true and correct at the date of such Borrowing as if then made.

Please wire transfer the proceeds of the Revolving Loan Borrowing to the following account of the Borrower: Account No. , (Name and address of depository bank).

The Borrower has caused this Revolving Loan Borrowing Request to be executed and delivered, and the certificate and warranties contained herein to be made, by its duly Authorized Officer this day of , .

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

FORM OF COMPETITIVE BID LOAN BORROWING REQUEST

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

This Competitive Bid Loan Borrowing Request is delivered to you pursuant to clause (a) of Section 2.3 of the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the Lenders now or hereafter parties thereto and Wachovia, N.A., as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby proposes that a Competitive Bid Loan Borrowing be made on the following terms:

A. 1. Date of Competitive Bid Loan Borrowing:*

2. Amount of Competitive Bid Loan Borrowing:** [U.S.$] [£] [DM] [¥] [Euro] [Non-Major Alternate Currency]

3. The Competitive Bid Loan will be based on a [LIBO Rate Bid Margin] [Fixed Rate]

4. Competitive Bid Loan Maturity Date for repayment of such Competitive Bid Loan***

5. Competitive Bid Loan Interest Payment

---

* Must be at least five Business Days after the delivery of this competitive Bid Loan Borrowing Request.
** The amount shall be in a minimum principal amount of $5,000,000 and in an integral multiple of $1,000,000.
*** Which maturity date may not be earlier than the date occurring seven days after the date of such Competitive Bid Loan Borrowing or later than the date occurring 183 days after the date of such Competitive Bid Loan Borrowing.

Date(s):

****B. 1. Date of Competitive Bid Loan Borrowing:

2. Amount of Competitive Bid Loan Borrowing: [U.S.$] [£] [DM] [¥] [Euro] [Non-Major Alternate Currency]

3. The Competitive Bid Loan will be based on a [LIBO Rate Bid Margin] [Fixed Rate]

4. Competitive Bid Loan Maturity Date for repayment of such Competitive Bid Loan:

5. Competitive Bid Loan Interest Payment Date(s):

C. 1. Date of Competitive Bid Loan Borrowing:

2. Amount of Competitive Bid Loan Borrowing:
[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency]

3. The Competitive Bid Loan will be based on a
[LIBO Rate Bid Margin] [Fixed Rate]

4. Competitive Bid Loan Maturity Date for
repayment of such Competitive Bid Loan:

5. Competitive Bid Loan Interest Payment
Date(s):

The Borrower hereby certifies and warrants that on the date the Competitive Bid Loan Borrowing proposed hereby is made (both before and after giving effect to such Borrowing):

(a) the representative and warranties set forth in Article VI of the Credit Agreement are and will be true and correct as if then made pursuant to Section 5.2.1 of the Credit Agreement;

**** Insert if more than one Competitive Bid Loan Borrowing is requested.

(b) no Default or Event of Default has occurred and is continuing or will have occurred and be continuing; and

(c) the aggregate amount of the proposed Competitive Bid Loan Borrowing and all other Loans outstanding after giving effect to such Competitive Bid Loan (and any prepayments required pursuant to Section 2.3 of the Credit Agreement) will not exceed the Commitment Amount.

The undersigned hereby confirms that the proposed Competitive Bid Loan Borrowing is to be made available to it in accordance with Section 2.3 of the Credit Agreement.

The Borrower agrees that if prior to the time of the Competitive Bid Loan Borrowing requested hereby any matter certified to herein by it will not be true and correct at such time as if then made, it will immediately so notify the Agent. Except to the extent, if any, that prior to the time of the Competitive Bid Loan Borrowing proposed hereby the Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed once again to be certified as true and correct at the date of such Borrowing as if then made.

The Borrower has caused this Competitive Bid Loan Borrowing Request to be executed and delivered, and the certification and warranties contained herein to be made, by its duly Authorized Officer this day of , .

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

EXHIBIT C
EXISTING LIENS

(as of 5/31/01, in thousands)

	Current	Long Term	Total	
Capital Lease Liability				
McCormick Foods Australia	55	98	153	Autos
McCormick Pesa	340	352	692	Computers
Industrial Revenue Bonds				
Tubed Products (Oxnard, California)	0	3,050	3,050	
Mortgages				

(none outstanding)

FORM OF INVITATION FOR BID LOAN QUOTES

[NAME OF LENDER] [DATE]

Attention:

Invitation for Bid Loan Quotes to
McCormick & Company, Incorporated (the "Borrower")

Pursuant to clause (b) of Section 2.3 of the 364-Day Credit Agreement dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement") (unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement)), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), Wachovia, N.A., as administrative agent (the "Agent") and the Lenders now or hereafter parties thereto, we are pleased on behalf of the Borrower to invite you to submit Bid Loan Quotes to the Borrower for the following proposed Competitive Bid Loan(s):

*1. Date of Proposed Competitive Bid Loan: , .

2. Principal Amount
[U.S.$] [£] [DM] [¥] [Euro] [Non-Major Alternate Currency] .

3. The Competitive Bid Loan Maturity Date will be , .

4. The Competitive Bid Loan Interest Payment Date will be , .

PLEASE RESPOND TO THIS INVITATION BY NO LATER THAN [ ] (NEW YORK CITY TIME) ON ,
.

Wachovia, N.A., as Administrative Agent

By: _____
Title:

* Information to be repeated if multiple Competitive Bid Loans have been made in respect of a single Competitive Bid Loan Borrowing Request.

FORM OF COMPETITIVE BID LOAN OFFER

Date: ,

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen:

This Competitive Bid Loan Offer in delivered to you pursuant to clause (c) of Section 2.3 of the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), Wachovia, N.A., as administrative agent (the "Agent"), and the Lenders now or hereafter parties thereto. Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The undersigned Lender hereby makes a Competitive Bid Loan offer in response to the Competitive Bid Loan Borrowing Request made by the Borrower on [,], and in that connection, sets forth the terms on which such Competitive Bid Loan Offer is made:

1*. Date of Competitive Bid Loan: ,

2. Principal amount of
Competitive Bid Loan

[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate
Currency]

3. Competitive Bid Loan
Maturity will be , **

4. Competitive Bid Loan Interest
Payment Date(s) will be , ***
,

---

* Information to be repeated if multiple Competitive Bid Loans have been made in respect of a single Competitive Bid Loan Borrowing Request.
** Insert the appropriate date specified in the Competitive Bid Loan Borrowing Request described in the second paragraph hereof.
*** Insert the appropriate date(s) specified in the Competitive Bid Loan Borrowing Request described in the second paragraph hereof.

5. Competitive Bid Rate: % per annum
[LIBO Rate Bid Margin]
[Fixed Rate]

We understand and agree that the offer(s) set forth above, subject to the satisfaction of the applicable conditions set forth in the Credit Agreement irrevocably obligates us to make the Competitive Bid Loan(s) for which any offer(s) are accepted, in whole or in part.

[NAME OF LENDER]

By: _____
Name:
Title:

FORM OF COMPETITIVE BID LOAN ACCEPTANCE

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

This Competitive Bid Loan Acceptance is delivered to you pursuant to clause (e) of Section 2.3 of the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated a Maryland corporation (the "Borrower"), Wachovia, N.A., as administrative agent (the "Agent") and the Lenders now or hereafter parties thereto. Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

*The Borrower hereby accepts the Competitive Bid Loan Offer, dated , , made by [NAME OF LENDER] on the following terms:

1. Date of Competitive Bid Loan:** ,

2. Principal amount of Competitive Bid Loan
[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency]

3. Competitive Bid Loan Maturity Date:

4. Competitive Bid Rate:
[LIBO Rate Bid Margin Rate % per annum]
[Fixed Rate % per annum]

5. Competitive Bid Loan Interest Payment
Date(s): ** ,
,

---

* Repeat this paragraph (and information contained therein) for each Lender whose Competitive Bid Loan Offer is accepted by the Borrower or for multiple Competitive Bid Loans.
** Terms must conform to the Competitive Bid Loan Borrowing Request referred to in the Competitive Bid Loan Offer relating to such Borrowing.

We undersigned hereby confirms that it accepted such Competitive Bid Loan Offer in accordance with clause (e)(ii) of Section 2.3 of the Credit Agreement.

The Borrower hereby certifies and warrants that on the date the Competitive Bid Loan Borrowing proposed hereby is made (both before and after giving effect to such Borrowing):

(a) the representative and warranties set forth in Article VI of the Credit Agreement are and will be true and correct as if then made pursuant to Section 5.2.1 of the Credit Agreement;

(b) no Default or Event of Default has occurred and is continuing or will have occurred and be continuing; and

(c) the aggregate amount of the proposed Competitive Bid Loan Borrowing and all other Loans outstanding after giving effect to such Competitive Bid Loan (and any prepayments required pursuant to Section 2.3 of the Credit Agreement) will not exceed the Commitment Amount.

Please wire transfer the proceeds of the Competitive Bid Loan(s) to the following account of the Borrower: Account No. [name and address of depository bank].

The Borrower has caused this Competitive Bid Loan Acceptance to be executed and delivered, and the certification and warranties contained herein to be made, by its duly Authorized Officer this day of , .

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

FORM OF COMPETITIVE BID LOAN BORROWING NOTICE

[Date]

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

This Competitive Bid Loan Borrowing Notice is delivered to you pursuant to clause (f) of Section 2.3 of the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), Wachovia, N.A., as administrative agent (the "Agent"), and the Lenders now or hereafter parties thereto. Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower delivered to the Agent a Competitive Bid Loan Borrowing Request on [,]. In that connection, a Competitive Bid Loan Borrowing was made on , (the "Competitive Bid Loan Borrowing Date") with the following terms:

*1. Principal amount of Competitive Bid Loan Borrowing:

[Name of Lender]

[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency]

[Name of Lender]

[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency]

2. Amount of, and Competitive Bid Rate for [LIBO Rate Bid Margin] [Fixed Rate], each Competitive Bid Loan in such Competitive Bid Loan Borrowing:

---

* Information to be repeated if multiple Competitive Bid Loans have been made in respect of a single Competitive Bid Loan Borrowing Request.

[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency] at %
per annum in respect of Competitive
Bid Loan made by [Name of Lender]

[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency] at %

per annum in respect of competitive
Bid Loan made by [Name of Lender]

3. Competitive Bid Loan Maturity Date: ,

4. Competitive Bid Loan Interest ,
Payment Date(s): ,

5. Competitive Bid Outstanding
Balance **

The Borrower hereby confirms to the Agent that the Competitive Bid Loan Offer received by the Borrower in connection with the above-described Competitive Bid Loan Borrowing Request were accepted or rejected in accordance with clause (e) of Section 2.3 of the Credit Agreement.

McCORMICK & COMPANY, INCORPORATED

By: _____
Name:
Title:

** Insert the aggregate principal amount of all outstanding Competitive Bid Loans immediately after giving effect to the Competitive Bid Loan Borrowing.

FORM OF LENDER ASSIGNMENT AGREEMENT

[Date]

TO: McCormick & Company, Incorporated
18 Loveton Circle
Sparks, Maryland 21152
Attention: Treasurer

To: Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303
Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

We refer to clause (d) of Section 10.11.1 of the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the various financial institutions as are, or shall from time to time become, parties thereto (the "Lenders") and Wachovia, N.A., as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

This Agreement is delivered to you pursuant to clause (d) of Section 10.11.1 of the Credit Agreement and also constitutes notice to each of you, pursuant to clause (c) of Section 10.11.1 of the Credit Agreement, of the assignment and delegation to (the "Assignee") of % of

the Revolving Loans and % of the Competitive Bid Loans of (the "Assignor") outstanding under the Credit Agreement on the date hereof. After giving effect to the foregoing assignment and delegation, the Assignor's and the Assignee's Percentages for the purposes of the Credit Agreement are set forth opposite such Person's name on the signature pages hereof.

[Add paragraph dealing with accrued interest and fees with respect to Loans assigned.]

The Assignee hereby acknowledges and confirms that it has received a copy of the Credit Agreement and the exhibits related thereto, together with copies of the documents which were required to be delivered under the Credit Agreement as a condition to the making of the Loans thereunder. The Assignee further confirms and agrees that in becoming a Lender and in making its Loans under the Credit Agreement, such actions have and will be made without recourse to, or representation or warranty by the Agent.

Except as otherwise provided in the Credit Agreement, effective as of the date of acceptance hereof by the Agent:

(a) the Assignee

(i) shall be deemed automatically to have become a party to the Credit Agreement, have all the rights and obligations of a "Lender" under the Credit Agreement and the other Loan Documents as if it were an original signatory thereto to the extent specified in the second paragraph hereof; and

(ii) agrees to be bound by the terms and conditions set forth in the Credit Agreement and the other Loan Documents as if it were an original signatory thereto; and

(b) the Assignor shall be released from its obligations under the Credit Agreement and the other Loan Documents to the extent specified in the second paragraph hereof but shall continue to be entitled to the benefits of the indemnity provisions set forth in the Credit Agreement for the period prior to such acceptance.

The Assignor and the Assignee hereby agree that the [Assignor] [Assignee] will pay to the Agent the processing fee referred to in Section 10.11.1 of the Credit Agreement upon the delivery hereof.

The Assignee hereby advises each of you of the following administrative details with respect to the assigned Loans and requests the Agent to acknowledge receipt of this document:

(A) Address for Notices:

Institution Name:

Attention:

Domestic Office:

Telephone:

Facsimile:

LIBOR Office:

Telephone:

Facsimile:

(B) Payment Instructions:

The Assignee agrees to furnish the tax form required by the last sentence of Section 4.6 (if so required) of the Credit Agreement no later than the date of acceptance hereof by the Agent.

This Agreement may be executed by the Assignor and Assignee in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

Adjusted Percentage

%

[ASSIGNOR]

By: _____
Title:

Percentage

[ASSIGNEE]

%

By: _____
Title:

Accepted and Acknowledged this day of
,

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

WACHOVIA, N.A., as Administrative Agent

By: _____
Title:

FORM OF COMPLIANCE CERTIFICATE

To each of the financial institutions party to the Credit Agreement hereinafter referred to and Wachovia, N.A., as Administrative Agent for the Lenders

Re: McCormick & Company, Incorporated

Ladies and Gentlemen:

This Compliance Certificate is being delivered pursuant to the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the various financial institutions as are or may, from time to time, become parties thereto (the "Lenders") and Wachovia, N.A., as administrative agent for the Lenders (the "Agent"). Capitalized terms used herein without definition shall have the meanings assigned to such terms in Section 1.1 of the Credit Agreement. All computations performed herein shall conform to the method of computation required by the Credit Agreement.

The Borrower hereby certifies, represents and warrants that as of , (the "Computation Date"):

1. Indebtedness of the Subsidiaries did not exceed % of Consolidated Net Tangible Assets (as computed on Attachment 1 hereto).

   Under Section 2.2 of the Credit Agreement, Indebtedness of Subsidiaries may not exceed 25% of Consolidated Net Tangible Assets.

2. The sum of (a) Indebtedness of the Borrower and its Subsidiaries secured by Liens described in clauses (b), (c) and (k) of Section 7.2.3 of the Credit Agreement (excluding liens described in clauses (d) through (j) of Section 7.2.3) and (b) the Attributable Value of all Sale-Leaseback Transactions entered into by the Borrower and its Subsidiaries in the aggregate does not exceed % of Consolidated Net Tangible Assets (as computed on Attachment 1 hereto).

   Section 7.2.3 (k) of the Credit Agreement does not permit the sum of (i) Indebtedness of the Borrower and its Subsidiaries secured by Liens described in clauses (b), (c) and (k) of Section 7.2.3 (excluding Liens described in clauses (d) thru (j) of Section 7.2.3) and (ii) the Attributable Value of all Sale-Leaseback Transactions entered into by the Borrower and its Subsidiaries in the aggregate to exceed 15% of Consolidated Net Tangible Assets.

3. The aggregate book value of all sales of assets or stock or liquidations of Subsidiaries do not, during the most recent period of 12 consecutive months, exceed % of Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding Fiscal Year (as computed on Attachment 1 hereto).

   Section 7.2.4 of the Credit Agreement prohibits sales of assets or stock to anyone other than the Borrower or wholly-owned Subsidiaries if the aggregate book value of such sales or liquidation of Subsidiaries during the most recent period of 12 consecutive months would exceed 20% of Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding fiscal year.

4. The ratio of EBIT to Interest Expense was : 1:00 (as computed on Attachment 1 hereto).

   The minimum ratio of EBIT to Interest Expense permitted pursuant to Section 7.2.5 of the Credit Agreement is 2.50:1.00.

5. No Default or Event of Default has occurred and is continuing.

IN WITNESS WHEREOF, the Borrower has caused this Certificate to be executed and delivered by its duly Authorized Officer on this day of , .

McCORMICK & COMPANY,
INCORPORATED

By: _____
Title:

ATTACHMENT 1

1.	Indebtedness of Subsidiaries (Section 7.2.2).			
	a.	Total Amount of Subsidiary Indebtedness	$	
	b.	Amount of Consolidated Net Tangible Assets	$	
	c.	Subsidiary Indebtedness is equal to the following percentage of Consolidated Net Tangible Assets	$	%
2.	Liens (Section 7.2.3)			
	a.	Indebtedness of the Borrower and its Subsidiaries (other than intercompany debt) secured by Liens described in clauses (b), (c) and (k) of Section 7.2.3 (excluding Liens described in clauses (d) through (j) of Section 7.2.3	$	
	b.	Attributable Value of Sale-Leaseback Transactions of the Borrower and its Subsidiaries in the aggregate	$	
		(Sum of Items a. and b.)	$	
	c.	Amount of Consolidated Net Tangible Assets	$	
	d.	The sum of Items a. and b. is equal to the following percentage of Item c.	$	%
3.	Sale of Assets (Section 7.2.4)			
	a.	The aggregate book value of sales of assets or stock or liquidation of Subsidiaries by the Borrower and its Subsidiaries during the immediately preceding 12 months)	$	
	b.	Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding Fiscal Year	$	
	c.	Item a. is equal to the following percentage of Item b.	$	%
4.	EBIT to Interest Expense Ratio (Section 7.2.5)			
	a.	Net Income (excluding any one-time non-recurring charges)	$	
	b.	Interest Expense	$	
	c.	Charges for federal, state, local and foreign income taxes.	$	
		Total for EBIT	$	
	d.	EBIT to Interest Expense ratio (EBIT divided by Interest Expense)		:1.00

FORM OF CONTINUATION/CONVERSION NOTICE

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303
Attention: Michael Adams

Re: McCormick & Company, Incorporated

Gentlemen and Ladies:

This Continuation/Conversion Notice is delivered to you pursuant to Section 2.4 of the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the various financial institutions from time to time parties thereto (the "Lenders") and Wachovia, N.A., as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby requests that on , .

(1) [U.S.$] [£] [DM] [¥] [Euro] of the presently outstanding principal amount of the Loans originally made on , [and [U.S.$] [£] [DM] [¥] [Euro] of the presently outstanding principal amount of the Loans originally made on ,],

(2) and all presently being maintained as (1) [Base Rate Loans] [LIBO Rate Loans denominated in Dollars] [LIBO Rate Loans denominated in an Alternate Currency],

(3) be [converted into] [continued as],

(4) (2)[LIBO Rate Loans denominated in Dollars having an Interest Period of months] [LIBO Rate Loans denominated in an Alternate Currency having an Interest Period of months] [Base Rate Loans](3).

(1) Select appropriate interest rate option.
(2) Insert appropriate interest rate option.
(3) Dollars only.

The Borrower hereby:

(a) certifies and warrants that no Default has occurred and is continuing; and

(b) agrees that if prior to the time of such continuation or conversion any matter certified to herein by it will not be true and correct at such time as if then made, it will immediately so notify the Agent.

Except to the extent, if any, that prior to the time of the continuation or conversion requested hereby the Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed to be certified at the date of such continuation or conversion as if then made.

The Borrower has caused this Continuation/Conversion Notice to be executed and delivered, and the certification and warranties contained herein to be made, by its Authorized Officer this day of , .

McCORMICK & COMPANY,
INCORPORATED

By: _____
Title:

FORM OF OPINION OF COUNSEL TO THE BORROWER

To each of the Lenders party
to the Credit Agreement referred
to below, and Wachovia, N.A.
as Administrative Agent

[Date]

Ladies and Gentlemen:

I am General Counsel of McCormick & Company, Incorporated (the "Borrower"), a Maryland corporation, and have acted as counsel in connection with the execution and delivery of that certain 364-Day Credit Agreement, dated as of June 19, 2001 (the "Credit Agreement"), among the Borrower, Wachovia, N.A., as administrative agent (the "Agent"), and the various financial institutions parties thereto (the "Lenders"). This opinion letter is delivered to you pursuant to Section 5.1.7 of the Credit Agreement. Capitalized terms used herein that are not defined herein have the respective specified meanings in the Credit Agreement.

In rendering the opinions set forth below, I or a member of my staff have examined executed originals of the Credit Agreement and the Notes (collectively, the "Subject Documents"); the Articles of Incorporation of the Borrower and all amendments thereto (the "Charter"); the Bylaws of the Borrower and all amendments thereto (the "Bylaws"); and a certificate issued by the Maryland Department of Assessments and Taxation, dated June , 2001, attesting to the continued corporate existence and good standing of the Borrower in the State of Maryland. In addition, I or a member of my staff have examined originals or photostatic or certified copies of certain of the corporate records and documents of the Borrower and its Subsidiaries, copies of public

documents, certificates of officers of the Borrower and public officials, and such other documents as I have deemed necessary and appropriate as a basis for the opinions hereinafter set forth.

In my examination, I have assumed the genuineness of all signatures (other than those of the Borrower), the legal capacity of natural persons, the authenticity of all corporate records, documents, instruments and certificates submitted to us as originals and the conformity to authentic original corporate records, documents, instruments and certificates of all corporate records, documents instruments and certificates submitted to us as certified, conformed or photostatic copies. As to questions of fact material to my opinions, I have relied upon representations and warranties of the parties in the Subject Documents and the other agreements and documents contemplated therein, and on certificates of officers of the Borrower (including those delivered pursuant to the Credit Agreement) and of public officials.

I have further assumed that you have the power and authority and have taken the corporate action necessary to execute and deliver the Credit Agreement and to hold the Notes and that no approvals, waivers, filings, notices or consents, governmental or non-governmental, are required for the valid execution, delivery and performance by you of the Credit Agreement or to hold the Notes, and that the Credit Agreement executed by you constitutes your legal, valid and binding obligation.

Based upon the foregoing and subject to the qualifications set forth above and hereinafter, I am of the opinion that:

1. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland.

2. The execution, delivery and performance by the Borrower of the Subject Documents are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not (i) contravene the Charter or the By-laws, (ii) violate any Federal or Maryland law, rule or regulation applicable to the Borrower (including, without limitation, Regulations U and X of the Board of Governors of the Federal Reserve System, insofar as the proceeds of the Loans are used solely for the purposes set forth in, and in accordance with the provisions of, the Credit Agreement) or (iii) result in any breach or violation of, or constitute a default under, any agreement or instrument set forth on the attached certificate of the Borrower. The Subject Documents have been duly executed and delivered on behalf of the Borrower.

3. Each of the Subject Documents has been duly executed by the Borrower and constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

4. No authorization or approval or other action by, and no notice to or filing with, any Federal or Maryland governmental authority or regulatory body (other than any applicable securities law filings) is required on behalf of the Borrower for the due execution, delivery or performance by the Borrower of any of the Subject Documents.

5. The Borrower is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", within the meaning of the Public Utility Company Act of 1935, as amended.

6. There is no pending or, to the best of my knowledge, threatened litigation, action, proceeding or labor controversy affecting the Borrower or any of its properties, business, assets or revenues which is likely to materially adversely affect the financial condition or operations of the Borrower and its Subsidiaries taken as a whole or which purports to affect the legality, validity or enforceability of any of the Subject Documents to which the Borrower is a party.

7. The New York governing law clauses of the Subject Documents, subjecting such Subject Documents to the law of the State of New York, are valid under the laws of the State of Maryland.

8. Under the law of the State of Maryland, the laws of the State of New York will be applied to the Subject Documents, except to the extent that any term of such documents or any provision of the law of the State of New York applicable to such documents violates an important public policy of the State of Maryland. We have no reason to believe that any such term violates an important public policy of the State of Maryland.

The foregoing opinions are subject to the following additional qualifications:

(a) The opinions expressed herein are limited to the laws and regulations of the United States of America and the State of Maryland.

(b) My opinions regarding the enforceability of the Subject Documents are limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws or decisions affecting the enforcement of debtors' obligations and creditors' rights generally, and by general principles of equity and public policy. My opinions are also subject to the effect of certain laws and judicial decisions which may limit the enforceability of certain provisions of the Subject Documents, although such limitations do not, in my judgment, make the remedies provided therein (taken as a whole) inadequate for the practical realization of the benefits afforded thereby.

The opinions expressed herein are solely for your benefit in connection with the performance of the Subject Documents, and without my express prior written consent, this opinion letter may not be circulated or furnished to or relied upon by any other person.

Very truly yours,

Robert W. Skelton

U.S. $225,000,000

REVOLVING CREDIT AGREEMENT

dated as of June 19, 2001

among

McCORMICK & COMPANY, INCORPORATED,

as the Borrower,

CERTAIN FINANCIAL INSTITUTIONS,

as the Lenders,

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

SUNTRUST BANK,
as the Syndication Agent

and

WACHOVIA, N.A.
as the Administrative Agent and Swing Line Lender

BANC OF AMERICA SECURITIES LLC

and

SUNTRUST EQUITABLE SECURITIES CORPORATION
Lead Arrangers and Book Managers

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SCHEDULES AND EXHIBITS

REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT, dated as of June 19, 2001, among McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), the various financial institutions parties hereto (collectively, the "Lenders") and WACHOVIA, N.A., as the administrative agent (in such capacity, the "Agent") for the Lenders and as Swing Line Lender.

W I T N E S S E T H:

WHEREAS, the Borrower has requested that the Lenders provide to it a $225,000,000 revolving line of credit; and the Lenders and the Agent are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Borrower, the Lenders and the Agent agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.1. Defined Terms. The following terms (whether or not underscored) when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"Affiliate" of any Person means any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person (excluding any trustee under, or any committee with responsibility for administering, any Plan). A Person shall be deemed to be "controlled by" any other Person if such other Person possesses, directly or indirectly, power

(a) to vote 25% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners; or

(b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise;

provided, however, that notwithstanding the foregoing, for purposes of Section 10.11.1, an "Affiliate" shall be a Person engaged in the business of banking who is controlled by, or under common control with, a Lender.

"Agent" is defined in the preamble and includes each other Person as shall have subsequently been appointed as the successor Agent pursuant to Section 9.4.

"Agents" means, collectively, the Agent, the Documentation Agent and the Syndication Agent.

"Agreement" means, on any date, this Revolving Credit Agreement as originally in effect on the Effective Date and as thereafter from time to time amended, supplemented, amended and restated, or otherwise modified and in effect on such date.

"Alternate Base Rate" means, on any date and with respect to all Base Rate Loans, a fluctuating rate of interest per annum equal to the higher of

(a) the rate of interest most recently announced by Wachovia, N.A. at its Domestic Office as its prime rate, and

(b) the Federal Funds Rate most recently determined by the Agent plus 1/2 of 1% per annum.

The Alternate Base Rate is not necessarily intended to be the lowest rate of interest determined by Wachovia, N.A. in connection with extensions of credit. Changes in the rate of interest on any Loans maintained as Base Rate Loans will take effect simultaneously with each change in the Alternate Base Rate. The Agent will give notice promptly to the Borrower and the Lenders of changes in the Alternate Base Rate.

"Alternate Currency" means any Currency, other than Dollars, which the Lenders shall at any relevant time have agreed (in the manner provided for herein) to treat as an Alternate Currency for the purposes of the Commitment Amount and shall be the denomination for Alternate Currency Advances.

"Alternate Currency Advance" means a LIBO Rate Loan or a Competitive Bid Loan, as the case may be, denominated in an Alternate Currency.

"Applicable Law" shall mean, in respect of any Person, all provisions of constitutions, statutes, rules, regulations and orders of governmental bodies or regulatory agencies applicable to such Person, and all orders and decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which it is bound.

"Approved Fund" is defined in Section 10.11.1.

"Assignee Lender" is defined in Section 10.11.1.

"Associated Costs" means, with respect to any LIBO Rate Loan denominated in Sterling, a rate per annum equal to the arithmetic mean of the percentage rates applicable to the LIBOR Offices of the Reference Lenders (calculated by the Agent on the basis of the rates supplied by each Reference Lender to the Agent) according to the following formula:

$$\text{Associated Costs per annum} = \frac{BY + L(Y-X) + S(Y-Z)}{100 - (X+S)}$$

where, with respect to each Reference Lender:

B = The percentage of such Reference Lender's eligible liabilities required, on the first day of the Relevant Period, to be held in a non-interest-bearing

deposit account with the Bank of England pursuant to the cash ratio requirements of the Bank of England.

Y = The LIBO Rate at which Sterling deposits in an amount comparable to the aggregate principal amount of the relevant LIBO Rate Loan are offered by such Reference Lender to leading banks in the London interbank market at or about 11:00 a.m. (London time) on the first day of the Relevant Period for a period comparable to the Relevant Period.

L = The average percentage of eligible liabilities which the Bank of England, as at the first day of the Relevant Period, requires such Reference Lender to maintain as secured money with members of the London Discount Market Association and/or as secured call money with those money brokers and gilt-edged primary market makers recognized by the Bank of England.

X = The rate at which secured Sterling deposits in an amount comparable to the aggregate principal amount of the relevant LIBO Rate Loan may be placed by such Reference Lender with members of the London Discount Market Association and/or as secured call money with money brokers and gilt-edged primary market makers at or about 11:00 a.m. (London time) on the first day of the Relevant Period for a period comparable to the Relevant Period.

S = The percentage of such Reference Lender's eligible liabilities required on the first day of the relevant Interest Period to be placed as a special deposit with the Bank of England.

Z = The percentage interest rate per annum payable by the Bank of England on special deposits or, if lower, Y.

(a) For the purposes of this definition:

(i) "eligible liabilities" and ''special deposits" shall have the meanings ascribed to them from time to time by the Bank of England; and

(ii) "Relevant Period" means, if the Interest Period with respect to such LIBO Rate Loan is three months or less, the duration of such Interest Period or, if such Interest Period is longer than three months, each period of three months and any necessary shorter period in such Interest Period.

(b) In application of the above formula, B, Y, L, X, S and Z will be included in the formula as decimal fractions and not as percentages, e.g., if B = 0.5% and Y = 15%, BY will be calculated as 0.5 x 15 and not as 0.5% x 15%.

(c) Associated Costs shall be computed by the Agent on the first day of each Relevant Period, and shall, if necessary, be rounded upward to the nearest 1/10,000 of 1%. If there is more than one Relevant Period comprised in the relevant Interest Period,

then the Associated Costs for that Interest Period shall be the weighted average of the amounts so computed for the relevant periods comprised in that Interest Period.

(d) Calculations of Associated Costs will be made on the basis of a year of 365 days.

(e) If a Reference Lender fails to furnish a rate for the purposes of this definition, the Associated Costs shall be determined on the basis of the rates furnished by the remaining Reference Lenders. If no Reference Lender furnishes a rate for the purposes of this definition, the Associated

Costs payable by the relevant Borrower in respect of any LIBO Rate Loan shall be determined by the Agent on such comparable basis as it may reasonably determine.

"Attributable Value" means, as to any particular Sale-Leaseback Transaction under which any Person is at the time liable, at any date as of which the amount thereof is to be determined (i) in the case of any such transaction involving a Capitalized Lease, the amount on such date of the Capitalized Lease Obligation thereunder, or (ii) in the case of any other such transaction, the then present value of the minimum rental obligation under such transaction during the remaining term thereof (after giving effect to any extensions at the option of the lessor), computed by discounting the respective rental or other payments at the actual interest factor included in such payment or, if such interest factor cannot be readily determined, at the rate of 9.75% per annum, compounded annually, or calculated in such other manner as may be required by GAAP in effect at the time. The amount of any rental or other payment required to be made under any such transaction not involving a Capitalized Lease may exclude amounts required to be paid by the lessee (or equivalent party) on account of maintenance, repairs, insurance, Taxes, assessments, utilities, operating and labor costs and similar charges. In the case of any such transaction not involving a Capitalized Lease which is terminable by the lessee (or equivalent party) upon payment of a penalty, such rental or other payment may include the amount of such penalty, in which case no rental or other payment shall be considered as required to be paid under such transaction subsequent to the first date on which it may be so terminated.

"Authorized Officer" means, relative to the Borrower, those of its officers whose signatures and incumbency shall have been certified to the Agent and the Lenders pursuant to Section 5.1.1 or any successor thereto.

"Available" means, in respect of any Alternate Currency and any Lender, that such Alternate Currency is, at the relevant time, readily available to such Lender as deposits in the London or other applicable interbank market in the relevant amount and for the relevant term, is freely convertible into Dollars and is freely transferable for the purposes of this Agreement, but if, notwithstanding that each of the foregoing tests is satisfied:

(a) such Alternate Currency is, under the then current legislation or regulations of the country of such Alternate Currency (or under the policy of the central bank of such country) or of the Bank of England or F.R.S. Board, not permitted to be used for the purposes of this Agreement; or

(b) there is no, or only insignificant, investor demand for the making of advances having an interest period equivalent to that for the Alternate Currency Advance which the Borrower has requested or in respect of which the Borrower has requested offers to be made;

then such Alternate Currency may be treated by any Lender as not being Available.

"Base Rate Loan" means a Loan bearing interest at a fluctuating rate determined by reference to the Alternate Base Rate or, in the case of a Swing Line Loan, as the Borrower and the Swing Line Lender may otherwise agree.

"Borrower" is defined in the preamble.

"Borrowing" means, as the context may require, either a Competitive Bid Loan Borrowing, a Revolving Loan Borrowing or a Swing Line Borrowing.

"Borrowing Request" means, as the context may require, either a Revolving Loan Borrowing Request, a Competitive Bid Loan Borrowing Request or a Swing Line Loan Notice.

"Business Day" means

(a) any day which is neither a Saturday or Sunday nor a legal holiday on which banks are authorized or required to be closed in New York, New York; and

(b) relative to the making, continuing, prepaying or repaying of any LIBO Rate Loans, any day (i) on which dealings in the relevant currency are carried on in the London interbank market and (ii) in the case of LIBO Rate Loans denominated in a Currency other than Dollars or Sterling, on which banks in the country for which such Currency is the lawful currency are not authorized or required to be closed.

"Capitalized Leases" means all monetary obligations of the Borrower or any of its Subsidiaries under any leasing or similar arrangements which, in accordance with GAAP, would be classified as capitalized leases.

"Capitalized Lease Obligation" means, at any time, the present value of the minimum net lease payments during the term of a Capitalized Lease, computed as provided in the Statement of Financial Accounting Standards No. 13, as amended from time to time.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1990, as amended.

"CERCLIS" means the Comprehensive Environmental Response Compensation Liability Information System List.

"Change in Control" means (a) the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of 51% or more of the outstanding shares of voting stock of the Borrower after giving effect to certain provisions of the

Borrower's Certificate of Incorporation with respect to the conversion of non-voting stock to voting stock; provided, however, that acquisition by the Borrower's pension plan or profit sharing plan of 51% or more of the outstanding shares of the Borrower's voting stock shall not constitute a Change in Control; or (b) during any period of 12 consecutive months, a majority of the members of the board of directors of the Borrower cease to be composed of

individuals (i) who were members of the board of directors on the first day of such period, (ii) whose election or nomination to the board of directors was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the board of directors or (iii) whose election or nomination to the board of directors was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the board of directors.

"Code" means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

"Commitment" means the commitment of each Lender to make Revolving Loans and purchase participations in Swing Line Loans pursuant to this Agreement.

"Commitment Amount" means U.S. $225,000,000, as such amount may be reduced from time to time pursuant to Section 2.2.

"Commitment Termination Event" means

(a) the occurrence of any Event of Default described in clauses (a) through (e) of Section 8.1.9 with respect to the Borrower or any Principal Subsidiary; or

(b) the occurrence and continuance of any other Event of Default and either

(i) the declaration of the Loans to be due and payable pursuant to Section 8.3, or

(ii) in the absence of such declaration, the giving of notice by the Agent, acting at the direction of the Required Lenders pursuant to Section 8.3, to the Borrower that the Commitments have been terminated.

"Competitive Bid Loan" means a loan made by a Lender to the Borrower based on the Competitive Bid Rate as part of a Competitive Bid Loan Borrowing resulting from the procedure described in Section 2.3.

"Competitive Bid Loan Acceptance" means an acceptance by the Borrower of a Competitive Bid Loan Offer pursuant to clause (e) of Section 2.3, substantially in the form of Exhibit C-3 attached hereto.

"Competitive Bid Loan Borrowing" means Competitive Bid Loans made by each Lender whose offer to make such Competitive Bid Loans as part of such Borrowing has been accepted by the Borrower pursuant to clause (e) of Section 2.3.

"Competitive Bid Loan Borrowing Notice" means a notice by the Borrower specifying that a Competitive Bid Loan Borrowing has occurred, substantially in the form of Exhibit C-4 attached hereto.

"Competitive Bid Loan Borrowing Request" means a certificate requesting Competitive Bid Loans, duly executed by an Authorized Officer, substantially in the form of Exhibit B-2 attached hereto.

"Competitive Bid Loan Interest Payment Date" is defined in clause (a) of Section 2.3.

"Competitive Bid Loan Maturity Date" is defined in clause (a)(iii) of Section 2.3.

"Competitive Bid Loan Note" means a promissory note of the Borrower payable to any Lender, in the form of Exhibit A-2 hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from Loans outstanding from such Lender that were made as Competitive Bid Loans, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

"Competitive Bid Loan Offer" means an offer by a Lender to make a Competitive Bid Loan pursuant to clause (c) of Section 2.3, substantially in the form of Exhibit C-2 attached hereto.

"Competitive Bid Outstanding Balance" means, at any time, the then aggregate outstanding principal amount of all Competitive Bid Loans.

"Competitive Bid Rate" means (a) the LIBO Rate (plus the LIBO Rate Bid Margin) or (b) the Fixed Rate offered by a Lender in a Competitive Bid Loan Offer in respect of a Competitive Bid Rate Loan proposed pursuant to Section 2.3.

"Consolidated Net Tangible Assets" means all assets of the Borrower and its Subsidiaries appearing on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP minus goodwill and other intangible assets other than prepaid allowances.

"Contingent Liability" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount (or maximum amount, if larger) of the debt, obligation or other liability guaranteed thereby.

"Continuation/Conversion Notice" means a notice of continuation or conversion and certificate duly executed by an Authorized Officer of the Borrower, substantially in the form of Exhibit F hereto.

"Controlled Group" means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with the Borrower, are treated as a single employer under Section 414(b) or 414(c) of the Code or Section 4001 of ERISA.

"Currency" and "Currencies" means Dollars, Deutschemarks, Yen, Sterling and Euro.

"Default" means any Event of Default or condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

"Deutschemark" and "DM" mean the lawful currency of the Federal Republic of Germany.

"Disclosure Schedule" means the Disclosure Schedule attached hereto as Schedule I, as it may be amended, supplemented or otherwise modified from time to time by the Borrower with the written consent of the Agent and the Required Lenders.

"Documentation Agent" means Bank of America, N.A. in its capacity as documentation agent hereunder.

"Dollars" and the sign "$" each mean the lawful currency of the United States of America.

"Dollar Equivalent" of any amount of any Alternate Currency or Non-Major Alternate Currency on any date means the equivalent amount in Dollars, converted at the rate of exchange quoted by Wachovia, N.A. at its New York office to prime banks in New York for the spot purchase in the New York foreign exchange market of the relevant Alternate Currency or, to the extent spot quotations are available, the Non-Major Alternate Currency, in each case at approximately 11:00 a.m. (New York time) on such date in accordance with its normal practice.

"Domestic Office" means, relative to any Lender, the office of such Lender designated as such below its signature hereto or designated in the Lender Assignment Agreement or such other office of a Lender (or any successor or assign of such Lender) within the United States as may be designated from time to time by notice from such Lender, as the case may be, to each other Person party hereto.

"EBIT" means, for any period, the sum of the amounts for such period of (a) Net Income (excluding any one-time non-recurring charges), (b) Interest Expense and (c) charges for federal, state, local and foreign income taxes, all determined in accordance with GAAP.

"Euro" means the euro referred to in Council Regulation (EC) no. 1103/97 dated June 17, 1997 passed by the Council of the European Union, or, if different, the then lawful currency of the member states of the European Union that participates in the third stage of Economic and Monetary Union.

"Effective Date" shall mean the first date on which this Agreement shall have been fully signed in accordance with Section 10.8 and each of the conditions precedent set forth in Section 5.1 have been satisfied.

"Environmental Laws" means all applicable federal, state or local statutes, laws, ordinances, codes, rules and regulations (including consent decrees and administrative orders issued to the Borrower or any Subsidiary) relating to public health and safety and protection of the environment.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

"Event of Default" is defined in Section 8.1.

"Existing Credit Agreement" means that certain Amended and Restated Revolving Credit Agreement dated as of December 13, 1996 among the Borrower, certain financial institutions as lenders and Toronto Dominion (Texas), Inc., as administrative agent (such administrative agent having been replaced by First Union National Bank), as amended.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the rate of interest most recently offered to the Agent in the interbank market as the overnight federal funds rate.

"Fiscal Quarter" means any quarter of a Fiscal Year.

"Fiscal Year" means any period of twelve consecutive calendar months ending on November 30; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the "2000 Fiscal Year") refer to the Fiscal Year ending on the November 30 occurring during such calendar year.

"Fixed Rate" means, for any period with respect to Competitive Bid Loans, an absolute interest rate proposed by a Lender in a Competitive Bid Loan Offer.

"Foreign Currency Equivalent" of any amount of Dollars in any Alternate Currency or Non-Major Alternate Currency on any date means the equivalent amount in the relevant currency converted at the rate of exchange quoted under the heading "Exchange Rates — Currency per U.S. $" in The Wall Street Journal for the immediately preceding Business Day for such Alternate Currency or Non-Major Alternate Currency.

"F.R.S. Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"GAAP" is defined in Section 1.4.

"Granting Lender" is defined in Section 10.1.1.

"Hazardous Material" means

(a) any "hazardous substance", as defined by CERCLA;

(b) any "hazardous waste", as defined by the Resource Conservation and Recovery Act, as amended;

(c) any petroleum product; or

(d) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders issued to the Borrower or any Subsidiary) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended.

"herein," "hereof," "hereto," "hereunder" and similar terms contained in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular Section, paragraph or provision of this Agreement or such other Loan Document.

"Impermissible Qualification" means, relative to the opinion or certification of any independent public accountant as to any financial statement of the Borrower, any qualification or exception to such opinion or certification

(a) which is of a "going concern" or similar nature;

(b) which relates to the limited scope of examination of matters relevant to such financial statement; or

(c) which relates to the treatment or classification of any item in such financial statement and which, as a condition to its removal, would require an adjustment to such item the effect of which would be to cause the Borrower to be in default of any of its obligations under Section 7.2.4.

"including" means including without limiting the generality of any description preceding such term, and, for purposes of this Agreement and each other Loan Document, the parties hereto agree that the rule of ejusdem generis shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned.

"Indebtedness" of any Person means, without duplication, any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money which would be regarded as indebtedness in accordance with GAAP, including all Contingent Liabilities of such Person in respect of any such obligations.

For all purposes of this Agreement, the Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner; provided, however, that the Indebtedness of any Person shall not include any obligation of a partnership in which such Person is a general partner to the extent that such obligation (including any Contingent Liability) is limited by its terms.

"Indemnified Liabilities" is defined in Section 10.4.

"Indemnified Parties" is defined in Section 10.4.

"Interest Expense" means, for any period, all as determined in accordance with GAAP, total interest expense, whether paid or accrued (without duplication) (including the interest component of Capitalized Lease Obligations), of the Borrower and its Subsidiaries on a consolidated basis, including, without limitation, all bank fees, commissions, discounts and other fees and charges owed with respect to letters of credit, but excluding, however, amortization of discount, interest paid in property other than cash or any other interest expense not payable in cash.

"Interest Period" means, relative to any LIBO Rate Loans, the period beginning on (and including) the date on which such LIBO Rate Loans are made or continued as, or converted into, LIBO Rate Loans pursuant to Section 2.1 or 2.5 and shall end on (but exclude) the day which numerically corresponds to such date one, two, three or six months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month), the Borrower may select in its relevant notice pursuant to Section 2.3 or 2.5; provided, however, that

(a) the Borrower shall not be permitted to select Interest Periods to be in effect at any one time which have expiration dates occurring on more than five different dates;

(b) Interest Periods commencing on the same date for Loans comprising part of the same Borrowing shall be of the same duration;

(c) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless, such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day); and

(d) no Interest Period may end later than the Maturity Date.

"Lead Arrangers" means, collectively, Banc of America Securities LLC and SunTrust Equitable Securities Corporation.

"Lender Assignment Agreement" means a Lender Assignment Agreement substantially in the form of Exhibit D hereto.

"Lenders" has the meaning specified in the preamble and as the context requires, includes the Swing Line Lender.

"LIBO Alternate Rate" is defined in Section 3.3.1.

"LIBO Rate" is defined in Section 3.3.1.

"LIBO Rate Bid Margin" means, in respect of Competitive Bid Loans, the margin above (or below) the applicable LIBO Rate offered for each such Competitive Bid Loan, expressed as a percentage (rounded to the nearest 1/10, 000th of 1%) to be added to, or subtracted from, such rate.

"LIBO Rate Loan" means a Revolving Loan or a Competitive Bid Rate Loan, as the case may be, bearing interest, at all times during an Interest Period applicable to such Revolving Loan or Competitive Bid Rate Loan, at a fixed rate of interest determined by reference to the LIBO Rate (Reserve Adjusted).

"LIBO Rate (Reserve Adjusted)" is defined in Section 3.3.1.

"LIBOR Office" means, relative to any Lender, the office of such Lender designated as such below its signature hereto or designated in the Lender Assignment Agreement or such other office of a Lender as designated from time to time by notice from such Lender to the Borrower and the Agent, whether or not outside the United States, which shall be making or maintaining LIBO Rate Loans of such Lender hereunder.

"LIBOR Reserve Percentage" is defined in Section 3.3.1.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property to secure payment of a debt or performance of an obligation or other priority or preferential arrangement of any kind or nature whatsoever.

"Loans" means the Competitive Bid Loans, the Revolving Loans and the Swing Line Loans made on a Business Day by each Lender to the Borrower pursuant to such Lender's Commitment during the period commencing on the Effective Date until (but not including) the Maturity Date. The aggregate principal amount at any time outstanding of all Loans made by the Lenders shall not exceed the Commitment Amount.

"Loan Document" means this Agreement, the Notes, the Transaction Fee Letter and each other document and agreement delivered to the Agent in connection herewith or therewith.

"Material Adverse Effect" means any event which will, or is reasonably likely to, have a material adverse effect on (i) the financial condition, assets, liabilities, operations or business of the Borrower and its Subsidiaries taken as a whole or (ii) the Borrower's ability to perform and comply with its monetary obligations under this Agreement, the Notes and each other Loan Document.

"Maturity Date" means the earlier to occur of

(a) June 19, 2006;

(b) the date on which the Commitment Amount is terminated in full or reduced to zero pursuant to Section 2.2; and

(c) immediately and without further notice upon the occurrence of any Commitment Termination Event.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Net Income" means, for any period, with respect to the Borrower and its Subsidiaries, income from continuing operations of the Borrower and its Subsidiaries during such period, determined in accordance with GAAP.

"Non-Major Alternate Currencies" means all currencies other than the Alternate Currencies and Dollars.

"Note" means, as the context may require, a Competitive Bid Loan Note, a Revolving Loan Note or a Swing Line Note.

"Obligations" means all obligations (monetary or otherwise) of the Borrower arising under or in connection with this Agreement, the Notes and each other Loan Document.

"Organic Document" means, (a) relative to the Borrower, its certificate of incorporation, its by-laws and all shareholder agreements, voting trusts and similar arrangements applicable to any of its authorized shares of capital stock and (b) relative to any Subsidiary, its applicable corporate, partnership, joint venture or limited liability company organizational and governing documents and all arrangements applicable to any of its equity, ownership or membership interests.

"Other Credit Agreement" means that certain 364-Day Credit Agreement dated as of the date hereof among the Borrower, the lenders named therein and Wachovia, N.A., as administrative agent, as from time to time amended, supplemented, amended and restated, or otherwise modified and in effect.

"Other Loans" means, collectively, all "Loans" under and as defined in the Other Credit Agreement.

"Participant" is defined in Section 10.11.

"PBGC" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"Pension Plan" means a "pension plan," as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a multiemployer plan as defined in Section 4001(a)(3) of ERISA), and to which the Borrower or any corporation, trade or business that is, along with the Borrower, a member of a Controlled Group, may have liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Percentage" means, relative to any Lender, the percentage set forth opposite its signature hereto or set forth in the Lender Assignment Agreement, as such percentage may be adjusted from time to time pursuant to Lender Assignment Agreement(s) executed by such Lender and its Assignee Lender(s) and delivered pursuant to Section 10.11.

"Person" means any individual, trustee, corporation, general partnership, limited partnership, limited liability company, joint stock company, firm, business association, trust, unincorporated organization, bank, joint venture, government, governmental authority or any other entity, whether acting in an individual, fiduciary or other capacity.

"Plan" means any Pension Plan or Welfare Plan.

"Principal Subsidiary" means a Subsidiary (i) whose total assets or net sales (each such amount expressed on a consolidated basis in the case of a Subsidiary which itself has Subsidiaries) represent, respectively, not less than 15% of either the consolidated total assets or consolidated net sales of the Borrower and its Subsidiaries, all as calculated annually by reference to the immediately preceding Fiscal Year-end financial data (consolidated or unconsolidated, as the case may be) of such Subsidiary and the then latest Fiscal Year-end audited consolidated financial statements of the Borrower, or (ii) to which is transferred all or substantially all of the assets or undertakings of a Principal Subsidiary. A certificate by an Authorized Officer of the Borrower as to whether a Subsidiary is or is not or was or was not a Principal Subsidiary at a specified date shall, in the absence of manifest error, be conclusive and binding.

"Quarterly Payment Date" means the last day of each calendar quarter or, if any such day is not a Business Day, the next succeeding Business Day.

"Reference Lenders" means Bank of America, N.A. and SunTrust Bank.

"Related Person" means, with respect to any Person, the outstanding capital stock of which is at least 25%, but not more than 50% beneficially owned by the Borrower or its Subsidiaries.

"Release" means a "release," as such term is defined in CERCLA.

"Required Lenders" means, at any time,

(a) except as otherwise provided in clause (c) hereof, with respect to any provision of this Agreement other than the declaration of the acceleration of the maturity of all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable pursuant to Section 8.3, Lenders having greater than 50% of the Commitment Amount,

(b) except as otherwise provided in clause (c) hereof, with respect to the declaration of the acceleration of the maturity of all or any portion of the outstanding principal amount of the Loans and other obligations to be due and payable pursuant to Section 8.3, Lenders holding Loans representing greater than 50% of the aggregate principal amount of the Loans outstanding, or

(c) with respect to any waiver of a Default or any amendment or modification of any provision of this Agreement or any other Loan Document which would have the effect of waiving a Default, Lenders having greater than (i) 50% of the Commitment Amount or (ii) if the Commitments have been terminated, 50% of the aggregate principal amount of the Loans outstanding.

For purposes of this definition, outstanding Swing Line Loans shall be deemed held by the Lenders ratably relating to their respective participations therein.

"Resource Conservation and Recovery Act" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 690, et seq., as in effect from time to time.

"Revolving Commitment Amount" means, on any date, relative to any Lender, the amount equal to such Lender's Percentage multiplied by the Commitment Amount.

"Revolving Loan" means a Loan made by a Lender to the Borrower pursuant to Section 2.1.

"Revolving Loan Borrowing" means Revolving Loans of the same type made by all Lenders on the same Business Day in accordance with Section 2.1.

"Revolving Loan Borrowing Request" means a certificate requesting Revolving Loans, duly executed by an Authorized Officer, substantially in the form of Exhibit B-1 attached hereto.

"Revolving Loan Commitment" means a Lender's obligation to make Revolving Loans pursuant to Section 2.1.

"Revolving Loan Note" means a promissory note of the Borrower payable to any Lender, in the form of Exhibit A-1 hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from Revolving Loans outstanding from such Lender, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

"Sale-Leaseback Transaction" means any arrangement, directly or indirectly, with any Person whereby a seller or transferor shall sell or otherwise transfer any real or personal property if, as part of the same transaction or series of transactions, the seller or transferor shall then or thereafter lease as lessee, or similarly acquire the right to possession or use of, such sold or transferred property, or property which it intends to use substantially to the same extent or for the same purpose as such sold or transferred property, in any such case under any lease, agreement or other arrangement, whether or not involving a Capitalized Lease, with the Person to whom such property was sold or transferred (other than any such lease, agreement or arrangement having a term, including renewals, not exceeding three years) which obligates the seller or transferor to pay rent as lessee or make any other payment to such Person for such possession or use.

"Senior Debt Rating" means the Borrower's senior, unsecured non-credit-enhanced long term debt rating, as determined by S&P and Moody's.

"S&P" means Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc. and any successor thereto.

"SPC" is defined in Section 10.1.1.

"Sterling" and "£" mean the lawful currency of the United Kingdom of Great Britain and Northern Ireland.

"Subsidiary" means, with respect to any Person, any corporation, partnership, joint venture, limited liability company or other business entity of which more than 50% of the outstanding capital stock or other interests having ordinary voting power to elect a majority of the board of directors or other governing body of such entity (irrespective of whether at the time securities or interests of any other class or classes of such entity shall or might have voting power upon the occurrence of any contingency) is at the time, directly or indirectly, beneficially owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person. Unless otherwise indicated, when used in this Agreement, the term "Subsidiary" shall refer to a Subsidiary of the Borrower.

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

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

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

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

"Swing Line Loan Borrowing Request" means a notice of a Swing Line Borrowing pursuant to Section 2.4(b), which, if in writing, shall be substantially in the form of Exhibit B-3.

"Swing Line Note" means a promissory note of the Borrower payable to the Swing Line Lender, in the form of Exhibit A-3 hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from Swing Line Loans outstanding from such Lender, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

"Swing Line Sublimit" means an amount equal to the lesser of (a) $15,000,000 and (b) the Commitment Amount. The Swing Line Sublimit is part of, and not in addition to, the Commitment Amount.

"Syndication Agent" means SunTrust Bank in its capacity as syndication agent hereunder.

"Taxes" is defined in Section 4.6.

"Telerate Page 3750" means the display designated as "Page 3750" on the Telerate Service (or such other page as may replace Page 3750 on the service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association interest settlement rates for Deutschemark, U.S. Dollar, Sterling or Yen deposits)

"Transaction Fee Letter" means the confidential letter agreement, dated May , 2001, by and between the Agents, the Lead Arrangers and the Borrower.

"type" means, relative to any Revolving Loan, the portion thereof being maintained as a Base Rate Loan or a LIBO Rate Loan.

"United States" or "U.S." means the United States of America, its fifty States and the District of Columbia.

"Utilization Fee Rate" means, at any time, the percentage rate per annum at which utilization fees are accruing pursuant to Section 3.4.2 at such time as set forth within such Section.

"Welfare Plan" means a "welfare plan," as such term is defined in Section 3(l) of ERISA.

"Yen" and "¥" means the lawful currency of Japan.

SECTION 1.2. Use of Defined Terms. Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in the Disclosure Schedule and in each Note, Loan Document, Borrowing Request, Continuation/Conversion Notice, notice, request and other communication delivered from time to time in connection with this Agreement or any other Loan Document.

SECTION 1.3. Cross-References. Unless otherwise specified, references in this Agreement and in each other Loan Document to any Article or Section are references to such Article or Section of this Agreement or such other Loan Document, as the case may be, and, unless otherwise specified, references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition.

SECTION 1.4. Accounting and Financial Determinations. Unless otherwise specified, all accounting terms used herein or in any other Loan Document shall be interpreted, all accounting determinations and computations hereunder or thereunder (including under Sections 7.2.2 and 7.2.4) shall be made in accordance with generally accepted accounting principles ("GAAP") as in effect on the Effective Date of this Agreement, and all financial statements required to be delivered hereunder or thereunder shall be prepared in accordance with GAAP as in effect on the date of, or for the period covered by, such financial statements, and applied in the preparation of the financial statements referred to in Section 6.5.

ARTICLE II

MAKING THE LOANS

SECTION 2.1. Revolving Loan Commitments and Borrowing Procedure.

(a) Commitments. Subject to the terms and conditions of this Agreement (including Article V), each Lender severally and for itself alone agrees that it will make Revolving Loans pursuant to its Revolving Loan Commitment described in this Section 2.1. From time to time, on any Business Day occurring prior to the Maturity Date, each Lender will make Revolving Loans to the Borrower equal to such Lender's Percentage of the aggregate amount of the Revolving Loan Borrowing requested by the Borrower to be made by all Lenders on such day. No Lender shall be required to make any Revolving Loan if, after giving effect thereto,

(i) the aggregate outstanding principal amount of all Loans (determined in the case of Loans denominated in a currency other than Dollars on the basis of the Dollar Equivalent thereof) of all Lenders would exceed the Commitment Amount, or

(ii) the sum of the

(A) then aggregate outstanding principal amount of all Revolving Loans (determined in the case of Loans denominated in a currency other than Dollars on the basis of the Dollar Equivalent thereof) of such Lender

plus

(B) an amount equal to (1) such Lender's Percentage multiplied by (2) the then Competitive Bid Outstanding Balance (determined in the case of Loans denominated in a currency other than Dollars on the basis of the Dollar Equivalent thereof)

plus

(C) an amount equal to such Lender's Percentage multiplied by the then aggregate outstanding principal amount of all Swing Line Loans would exceed such Lender's Revolving Commitment Amount.

Subject to the terms hereof, the Borrower may from time to time borrow, repay and reborrow Revolving Loans under this Agreement. The Commitment Amount shall be deemed to be used from time to time to the extent of the Competitive Bid Outstanding Balance and the aggregate outstanding principal amount of the Swing Line Loans, and such deemed use of the Commitment Amount shall be allocated to the Lenders' Revolving Commitment Amounts according to their respective Percentages.

(b) Borrowing Procedure. By delivering a Revolving Loan Borrowing Request to the Agent on a Business Day on or before 10:00 a.m. (New York City time), the Borrower may from time to time irrevocably request a Loan to be made (a) (i) in respect of any Borrowing comprised of Revolving Loans denominated in Dollars bearing interest at the LIBO Rate, on not less than three nor more than five Business Days' notice, and in respect of any Borrowing comprised of (ii) Revolving Loans denominated in an Alternate Currency bearing interest at the LIBO Rate, on not less than five nor more than ten Business Days, notice and (b) in respect of any Borrowing comprised of Revolving Loans denominated in Dollars bearing interest at the Alternate Base Rate, on not less than one Business Day's notice. Each Revolving Loan Borrowing Request must be in an aggregate minimum amount of $10,000,000 and in integral multiples of $1,000,000, or the Foreign Currency Equivalent thereof in the case of Revolving Loans made in an Alternate Currency. Subject to the terms and conditions of this Agreement, each Revolving Loan Borrowing shall be made on the Business Day specified in the Revolving Loan Borrowing Request therefor. On such Business Day, each Lender shall deposit in an account maintained with the Agent same day funds, on or before 11:00 a.m. (New York City time) (or, in the case of Loans denominated in a currency other than Dollars, on or before a mutually agreed upon time), in an amount equal to such Lender's Percentage of the requested Revolving Loan Borrowing in the relevant currency, such deposit to be made to such account as the Agent shall specify from time to time by notice to the Lenders. No Lender's obligation to make any Loan shall be affected by any other Lender's failure to make any Loan. If on the date of the Revolving Loan Borrowing there are Swing Line Loans outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such Swing Line Loans, and second, to the Borrower as provided in the Revolving Loan Borrowing Request.

SECTION 2.2. Reduction of the Commitment Amount. The Commitment Amount is subject to reduction from time to time pursuant to this Section. The Borrower may, from time to time on any Business Day voluntarily reduce the Commitment Amount; provided, however, that all such reductions under this Section shall be subject to Section 3.2(b), require at least three Business Days' prior notice to the Agent, be permanent, be applied to the Lenders' Revolving Commitment Amounts pro rata in accordance with their respective Percentages, and any partial reduction of the Commitment Amount shall be in a minimum amount of $10,000,000 and in an integral multiple of $5,000,000.

SECTION 2.3. Competitive Bid Loans. Subject to the terms and conditions of this Agreement (including Article V), each Lender severally agrees that the Borrower may request that Competitive Bid Loan Borrowings under this Section 2.3 be made from time to time on any Business Day prior to the date occurring one month prior to the Maturity Date in the manner set forth below; provided, however, that following the making of each Competitive Bid Loan Borrowing, the aggregate amount of all Loans then outstanding (which, in the case of Loans denominated in a currency other than Dollars, shall be the Dollar Equivalent thereof) shall not exceed the Commitment Amount (and, subject to Section 4.4, the Borrower hereby agrees to make a mandatory prepayment of Revolving Loans to the extent necessary to reduce the outstanding principal amount of all Loans (after giving effect to such Competitive Bid Loan Borrowing) to an amount not in excess of the Commitment Amount).

(a) Competitive Bid Loan Borrowing Request. The Borrower may request Competitive Bid Loan Borrowings under this Section 2.3 by delivering to the Agent not later than 10:00 a.m. (New York City time) at least five Business Days, prior to the date of the proposed Competitive Bid Loan Borrowing, a Competitive Bid Loan Borrowing Request (which shall constitute an invitation to the Lenders to extend Competitive Bid Loan quotes to the Borrower, and which may contain requests for up to three different Competitive Bid Loans), specifying

(i) the amount and Currency or Non-Major Alternate Currency of the Competitive Bid Loan,

(ii) the proposed date (which shall be a Business Day) and aggregate principal amount or amounts of each Competitive Bid Loan to be made as part of such proposed Competitive Bid Loan Borrowing (which shall be in a minimum principal amount of $5,000,000 and in an integral multiple of $1,000,000 or the Foreign Currency Equivalent thereof) (and, subject to the first sentence of this Section, which principal amount may exceed the Commitment Amount then available to be borrowed),

(iii) the proposed maturity date or dates (each a "Competitive Bid Loan Maturity Date") for repayment of each Competitive Bid Loan to be made as part of such Competitive Bid Loan Borrowing (which maturity date or dates may not be earlier than the date occurring seven days after the date of such Competitive Bid Loan Borrowing or later than the earlier of the date occurring (A) one hundred eighty-three days after the date of such Competitive Bid Loan Borrowing or (B) the Maturity Date), and

(iv) the interest payment date or dates (which interest payment dates shall be the Competitive Bid Loan Maturity Date applicable thereto and, if such Competitive Bid Loan Maturity Date occurs more than three months after the date of such Competitive Bid Loan Borrowing, the date occurring on each Quarterly Payment Date after the date of such Competitive Bid Loan Borrowing; each such interest payment date, a "Competitive Bid Loan Interest Payment Date") relating thereto.

The Borrower shall not request any Competitive Bid Loan Borrowing within three Business Days' after any other Competitive Bid Loan Request.

(b) Invitation for Bid Loan Quotes. Promptly upon receipt of a Competitive Bid Loan Borrowing Request but in no event later than 4:00 p.m. (New York City time) on the date of such receipt, the Agent shall send to the Lenders by telecopy an "Invitation for Bid Loan Quotes" substantially in the form of Exhibit C-1 attached hereto, which shall constitute an invitation by the Borrower to each Lender to submit Competitive Bid Loan quotes offering to make the Competitive Bid Loans to which such Competitive Bid Loan Borrowing Request relates in accordance with this Section.

(c) Submission and Contents of Bid Loan Quotes.

(i) If any Lender, in its sole discretion, elects to offer to make a Competitive Bid Loan to the Borrower as part of such proposed Competitive Bid Loan Borrowing at a rate of interest specified by such Lender in its sole discretion, it shall deliver to the Agent not later than 11:00 a.m. (New York City time) on the fourth Business Day prior to the proposed date of Borrowing, and in the case of a Competitive Bid Loan Borrowing in an Alternate Currency or Non-Major Alternate Currency, no later than 11:00 a.m. (New York City time) on the fifth Business Day prior to the proposed date of Borrowing, a Competitive Bid Loan Offer, which must comply with the requirements of this clause, substantially in the form of Exhibit C-2 hereto; provided, that Competitive Bid Loan quotes submitted by the Agent (or any affiliate of the Agent) in the capacity of a Lender may be submitted, and may only be submitted, if the Agent or such affiliate notifies the Borrower of the terms of the offer or offers contained therein not later than 10:00 a.m. (New York City time) on the fourth Business Day prior to the proposed date of borrowing. Such Competitive Bid Loan Offer shall specify

(A) the Currency or Non-Major Alternate Currency of the Competitive Bid Loans,

(B) the proposed date of Borrowing, which shall be the same as that set forth in the applicable Invitation for Bid Loan Quotes,

(C) the principal amount of the Competitive Bid Loan which such Lender would be willing to make as part of such proposed Competitive Bid Loan Borrowing (which amount shall be in a minimum principal amount of $5,000,000 and in an integral multiple of $1,000,000, or the Foreign Currency Equivalent thereof, and may, subject to the proviso to the first sentence of this Section 2.3, exceed such Lender's Revolving Commitment Amount),

(D) the Fixed Rate or the LIBO Rate Bid Margin therefor. A Competitive Bid Loan Offer submitted by a Lender pursuant to this clause (c) shall be irrevocable, except with the written consent of the Agent given on the instructions of the Borrower, and

(E) the identity of the quoting Lender.

(ii) Any Competitive Bid Loan quote that:

(A) is not substantially in the form of Exhibit C-2 hereto or does not specify all of the information required in clause (c) of this Section;

(B) contains qualifying, conditional or similar language;

(C) contains proposed terms other than or in addition to those set forth in the applicable Invitation for Bid Loan Quotes; or

(D) arrives after the time set forth in clause (c) of this Section shall be disregarded by the Agent.

(d) Notice to Borrower. The Agent shall (by telephone confirmed by telecopy), by 4:00 p.m. (New York City time) on the fourth Business Day prior to the proposed date of Borrowing, notify the Borrower of the terms of any Competitive Bid Loan quote submitted by a Lender that is in accordance with clause (c) of this Section. The Agent's notice to the Borrower shall specify (A) the Currency or Non-Major Alternate Currency of the Competitive Bid Loan, (B) the aggregate principal amount of Competitive Bid Loans for which offers have been received specified in the related Competitive Bid Loan Borrowing Request, (c) the principal amounts and LIBO Rate Bid Margins or Fixed Rates so offered, and (D) the identity of such quoting Lenders.

(e) Competitive Bid Loan Acceptance. The Borrower shall, in turn, by telephone confirmed by telecopy before 11:00 a.m. (New York City time) on the third Business Day prior to the proposed date of such proposed Competitive Bid Loan Borrowing, either

(i) irrevocably cancel the Competitive Bid Loan Borrowing Request that requested such Competitive Bid Loan Borrowing by giving the Agent (which shall promptly notify each Lender) telephonic notice (promptly confirmed in writing) to that effect (and, for purposes of this Section, a failure on the part of the Borrower to timely notify the Agent under the terms of this clause shall be deemed to be non-acceptance of all offers so notified to it pursuant to clause (d), above), or

(ii) irrevocably accept one or more of the offers made by any Lender or Lenders pursuant to clause (d) above, in its sole discretion, by giving the Agent telephonic notice (and the Agent shall, promptly upon receiving such telephonic notice from the Borrower, notify each Lender whose Competitive Bid Loan quote has been accepted) (promptly confirmed in writing by delivery to the Agent of a Competitive Bid Loan Borrowing Notice) of

(A) the Currency or Non-Major Alternate Currency of the Competitive Bid Loan Borrowing to be made,

(B) the amount of the Competitive Bid Loan Borrowing to be made on such date, and

(C) the amount of the Competitive Bid Loan (which amount shall not be greater than the amount offered by such Lender for such Competitive Bid Loan pursuant to clause (d) above) to be made by such Lender as part of such Competitive Bid Loan Borrowing, and reject any remaining offers made by Lenders pursuant to clause (d) above by giving the Agent (which shall promptly give to the Lenders) notice to that effect;

provided, however, that

(D) the Borrower shall not accept an offer made at a particular Competitive Bid Rate if the Borrower has decided to reject an offer made in respect of the same Competitive Bid Loan with the same Competitive Bid Loan Maturity Date at a lower Competitive Bid Rate of the type requested by the Borrower,

(E) the aggregate principal amount of the Competitive Bid Loan Offers accepted by the Borrower shall not exceed the principal amount specified in the Competitive Bid Loan Borrowing Request,

(F) if the Borrower shall accept an offer or offers made at a particular Competitive Bid Rate but the amount of such offer or offers shall cause the total amount of offers to be accepted by the Borrower to exceed the amount specified in the Competitive Bid Loan Borrowing Request, then the Borrower shall (notwithstanding the minimum offer acceptance amount required by clause (G) below)

(1) accept a portion of such offer or offers in an aggregate amount equal to the amount specified in the Competitive Bid Loan Borrowing Request less the amount of all other offers accepted with respect to such Competitive Bid Loan Borrowing Request, and

(2) allocate the Competitive Bid Loans in respect of which such offers are accepted among the Lenders submitting such offers as nearly as possible in proportion to the aggregate amount of such offers made by each Lender (provided that if the available principal amount of Competitive Bid Loans to be so allocated is not sufficient to enable Competitive Bid Loans to be so allocated to each such Lender in a minimum principal amount of $5,000,000 and in integral multiples of $1,000,000, or the Foreign Currency Equivalent thereof, the Borrower shall select the Lenders to be allocated such Competitive Bid Loans in a minimum principal amount of $1,000,000 and round allocations up to the next higher multiple of $1,000,000 (or the Foreign Currency Equivalent thereof) if necessary; provided, further, however, that no Lender shall be required to make a Competitive Bid Loan if, as a result of such allocation, the principal amount of such

Lender's Competitive Bid Loan would be less than $5,000,000 (or the Foreign Currency Equivalent thereof), unless otherwise agreed to by such Lender),

(G) no bid shall be accepted for a Competitive Bid Loan unless such Competitive Bid Loan is in a minimum principal amount of $5,000,000 (except as provided in clause (F) above) and an integral multiple of $1,000,000 and is part of a Competitive Bid Loan Borrowing in a minimum principal amount of $5,000,000 (or, in each case, the Foreign Currency Equivalent thereof), and

(H) the Borrower may not accept any offer that is described in clause (c)(ii) of this Section, or that otherwise fails to comply with the requirements of this Agreement.

A notice given by the Borrower pursuant to this clause (e)(ii) shall be irrevocable.

(f) Funding of Competitive Bid Loans. Not later than 11:00 a.m. (New York City time) on the date specified for each Competitive Bid Loan hereunder, each Lender participating therein shall make available the amount of the Competitive Bid Loan to be made by it on such date to Agent in immediately available funds, for the account of the Borrower, such deposit to be made to an account maintained by the Agent, as the Agent shall specify from time to time by notice to the Lenders. The amount so received by the Agent shall be made available to the Borrower not later than 2:00 p.m. (New York City time) on the date of the requested Borrowing by depositing the same in immediately available funds in an account of the Borrower's notified to the Agent in writing. Promptly after each Competitive Bid Loan Borrowing, but no later than the immediately succeeding Business Day, the Borrower will deliver to each Lender a Competitive Bid Loan Borrowing Notice, specifying the amount of the Competitive Bid Loan Borrowing, the amounts and Currencies or Non-Major Alternate Currencies of the Competitive Bid Loans which comprise such Borrowing, the applicable Competitive Bid Rates accepted, the consequent Competitive Bid Outstanding Balance, the date on which such Competitive Bid Loan Borrowing was made and the corresponding Competitive Bid Loan Maturity Date applicable to all Competitive Bid Loans that are part of such Competitive Bid Loan Borrowing.

SECTION 2.4. Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender agrees to make loans in Dollars (each such loan, a "Swing Line Loan") to the Borrower from time to time on any Business Day during the period from the Effective Date to the Maturity Date in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the aggregate outstanding principal amount of all Revolving Loans of the Swing Line Lender in its capacity as a Lender of Revolving Loans, may exceed the amount of such Lender's Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the aggregate outstanding principal amount of all Loans (determined in the case of Loans denominated in a currency other than Dollars on a the basis of the Dollar Equivalent thereof) shall not exceed the Commitment Amount, and (ii) the aggregate outstanding principal amount of all Revolving Loans (determined in the case of Loans denominated in a currency other than Dollars on a the basis of the Dollar Equivalent thereof) of any Lender, plus an amount equal to (A) such Lender's Percentage multiplied by (B) the then Competitive Bid Outstanding Balance (determined in the case of Loans denominated in a currency other than Dollars on a the basis of the Dollar Equivalent thereof) plus an amount equal to such Lender's Percentage multiplied by the then aggregate outstanding principal amount of all Swing Line Loans shall not exceed such Lender's Commitment. Within the foregoing

limits, and subject to the other terms and conditions hereof, the Borrower may from time to time borrow, repay and reborrow Swing Line Loans under this Agreement. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. (New York City time) on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $1,000,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Agent of a written Swing Line Loan Borrowing Request, appropriately completed and signed by an Authorized Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Borrowing Request, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Loan Borrowing Request and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Agent (including at the request of any Lender) prior to 2:00 p.m. (New York City time) on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.4(a), or (B) that one or more of the applicable conditions specified in Article V is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. (New York City time) on the borrowing date specified in such Swing Line Loan Borrowing Request, make the amount of its Swing Line Loan available to the Borrower.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably requests the Swing Line Lender to so request on its behalf), that each Lender make a Revolving Loan as a Base Rate Loan in an amount equal to such Lender's Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in accordance with the requirements of Section 2.1(b), without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Commitment Amount and the conditions set forth in Section 5.2. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Revolving Loan Borrowing Request promptly after delivering such

notice to the Agent. Each Lender shall make an amount equal to its Percentage of the amount specified in such Revolving Loan Borrowing Request available to the Agent in immediately available funds for the account of the Swing Line Lender at the Agent's Office

not later than 1:00 p.m. (New York City time) on the day specified in such Revolving Loan Borrowing Request, whereupon, subject to Section 2.4(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Agent shall remit the funds so received to the Swing Line Lender.

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

(iii) If any Lender fails to make available to the Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.4(c) by the time specified in Section 2.4(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Swing Line Lender submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.4(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing. Any such purchase of participations shall not relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

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

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender, each Lender shall pay to the Swing Line Lender its Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Agent will make such demand upon the request of the Swing Line Lender.

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

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

SECTION 2.5. Continuation and Conversion Elections. By delivering a Continuation/Conversion Notice to the Agent on or before 11:00 a.m. (New York City time) on a Business Day, the Borrower may from time to time irrevocably elect, on not less than three nor more than five Business Days' notice, that all, or any portion in an aggregate minimum amount of $5,000,000 and an integral multiple of $1,000,000 or the Foreign Currency Equivalent thereof, of the Revolving Loans be, (a) in the case of Base Rate Loans, converted into LIBO Rate Loans, (b) in the case of LIBO Rate Loans denominated in Dollars, be converted into Base Rate Loans or continued as LIBO Rate Loans, or (c) in the case of LIBO Rate Loans denominated in an Alternate Currency, continued as LIBO Rate Loans in the same Currency.

In the absence of delivery of a Continuation/Conversion Notice with respect to LIBO Rate Loans (which are Revolving Loans) at least three Business Days' before the last day of the then current Interest Period with respect thereto,

(a) LIBO Rate Loans denominated in Dollars shall be converted automatically on such last day to Base Rate Loans, and

(b) LIBO Rate Loans denominated in an Alternate Currency shall be continued as Loans in the relevant Alternate Currency at a rate per annum equal to the LIBO Alternate Rate for such relevant Currency plus the applicable margin for the shortest available interest period selected by the Agent in its sole discretion (but not later than the Maturity Date).

Each such conversion and continuation shall be prorated among the applicable outstanding Loans of all Lenders, and no portion of the outstanding principal amount of any Loans may be continued as, or be converted into, LIBO Rate Loans when any Default has occurred and is continuing. The Agent shall promptly notify each Lender of the applicable interest period and interest rate.

SECTION 2.6. Funding. Each Lender may, if it so elects, fulfill its obligation to make, continue or convert LIBO Rate Loans hereunder by causing one of its foreign branches or Affiliates (or an international banking facility created by such Lender) to make, continue or convert such LIBO Rate Loan; provided, however, that such LIBO Rate Loan shall nonetheless be deemed to have been made and to be held by such Lender, and the obligation of the Borrower to repay such LIBO Rate Loan shall nevertheless be to such Lender for the account of such foreign branch, Affiliate or international banking facility. In addition, the Borrower hereby consents and agrees that, for purposes of any determination to be made for purposes of Section 4.1, 4.2, 4.3 it shall be conclusively assumed that each Lender elected to fund all LIBO Rate Loans by purchasing deposits in the relevant currency in the relevant interbank eurodollar market.

SECTION 2.7. Notes. Each Lender's Loans shall be evidenced by a Note, as applicable, payable to the order of such Lender in a principal amount equal to:

(a) in the case of Revolving Loans, such Lender's original Revolving Commitment Amount,

(b) in the case of Competitive Bid Loans, $225,000,000, and

(c) in the case of Swing Line Loans, the Swing Line Sublimit payable to the Swing Line Lender.

The Borrower hereby irrevocably authorizes each Lender to make (or cause to be made) appropriate notations on the grid attached to such Lender's Note (or on any continuation of such grid), which notations, if made, shall evidence, inter alia, the date of, the outstanding principal of, and Interest Period (in the case of Revolving Loans), or Competitive Bid Loan Maturity Dates and Competitive Bid Loan Interest Payment Dates (in the case of Competitive Bid Loans) applicable to the Loans evidenced thereby. Such notations shall constitute prima facie evidence of the accuracy of the information so recorded; provided, however, that the failure of any Lender to make any such notations shall not limit or otherwise affect any obligations of the Borrower.

SECTION 2.8. Multicurrency Loans.

SECTION 2.8.1. Notification of Request. If any Revolving Loan Borrowing Request requests a Borrowing in an Alternate Currency, the Agent shall in the notice given to the Lenders pursuant to Section 2.1 give details of such request including, without limitation, the aggregate principal amount of the Revolving Loan Borrowing in such Alternate Currency to be made by each Lender pursuant to this Agreement.

SECTION 2.8.2. Availability. Each Lender shall be treated as having confirmed that the Alternate Currency requested is Available to it unless no later than 10:00 a.m. (New York City time) on the third Business Day before the Revolving Loan Borrowing it shall have notified the Agent that such Alternate Currency is not Available.

SECTION 2.8.3. Notification of Availability. No later than 2:00 p.m. (New York City time) on the third Business Day before the proposed Borrowing the Agent shall notify the

Borrower and the Lenders if it has received notification from any of the Lenders that the Alternate Currency is not Available.

SECTION 2.8.4. Consequences of Availability. If the Agent does not notify the Borrower and the Lenders that the Agent has received notification from any of the Lenders that the Alternate Currency requested is not Available, the Lenders shall, on the proposed date of the Revolving Loan Borrowing specified in the Revolving Loan Borrowing Request become obligated, subject to this Section 2.8, to make the LIBO Rate Loan in accordance with the provisions of this Agreement.

SECTION 2.8.5. Unexpected Non-Availability. If, at any time before 10:00 a.m. (New York City time) on the proposed Revolving Loan Borrowing date, any Lender shall have determined that the Alternate Currency in which it is obliged to make a LIBO Rate Loan or a Competitive Bid Loan is no longer Available to it by reason that, under the then current legislation or regulations of the country of incorporation of such Lender or the country of such Alternate Currency (or the then policy of the central bank of such country) or the Bank of England or the F.R.S. Board, such Alternate Currency is not or will not be permitted to be used for the purposes of this Agreement, then such Lender shall give notice to the Agent (and shall include in such notice a statement of which other Alternate Currencies are not Available to such Lender), and the Agent shall give notice to the Borrower, and the obligation of such Lender to make its share of such Borrowing in such Alternate Currency shall be replaced on the following basis:

(a) The Borrower shall be entitled to notify the Agent (which shall promptly notify each affected Lender) not later than 10:00 a.m. (New York City time) on the third Business Day before the proposed Borrowing, that the Borrower elects either that the said obligation of the relevant Lender shall be:

(i) replaced by an obligation to make a Loan in Dollars by that Lender having an aggregate principal amount equal to its share of such Borrowing in the Alternate Currency, rounded, if necessary, as the Agent shall decide, which such Lender would otherwise have been required to make; or

(ii) replaced by an obligation to make a LIBO Rate Loan in an Alternate Currency by that Lender in an Alternate Currency (other than any Alternate Currency which such Lender shall have stated, as provided above, is not Available to it), such Alternate Currency having an aggregate principal amount which is, on the date on which such notification is actually received by the Agent, the equivalent amount of its share of such Borrowing, rounded, if necessary, as the Agent shall decide, which such Lender would otherwise have been requested to make.

(b) For purposes of clauses (i) and (ii) of paragraph (a) of this Section, any rounding in the amount of Loans by the Agent shall not result in any Lender making Loans in an aggregate principal amount exceeding such Lender's Commitment.

(c) If the Borrower has not notified the Agent as provided in paragraph (a) above, the obligation of the Lender shall be replaced by such an obligation as is mentioned in clause 2.8.5(a)(i).

If such Lender shall be required under paragraph (a) or paragraph (b) of Section 2.8.5 to make the Loan mentioned therein, such Borrowing shall be made on the date of the proposed Borrowing, shall have the same Interest Period as the Alternate Currency Advance which it replaces and the applicable interest rate shall be calculated in accordance with Section 3.3.1 (as though such Borrowing were a separate Loan denominated in Dollars or, as the case may be, in the relevant Alternate Currency).

SECTION 2.8.6. Consequences of Non-Availability. If the Agent notifies the Borrower pursuant to Section 2.8.3 that any of the Lenders has notified the Agent that the Alternate Currency is not Available, such notification shall revoke the relevant Borrowing Request.

ARTICLE III

REPAYMENT, PREPAYMENTS, INTEREST AND FEES

SECTION 3.1. Repayment.

(a) The Borrower shall repay in full the unpaid principal amount of all Revolving Loans on the Maturity Date.

(b) The Borrower shall repay in full the unpaid principal amount of all Competitive Bid Loans on the Competitive Bid Loan Maturity Date thereof.

(c) The Borrower shall repay in full each Swing Line Loan on the earlier to occur of (i) the date five Business Days after such Loan is made and (ii) the Maturity Date.

(d) The Borrower shall, immediately upon any acceleration of the Maturity Date of any Loans pursuant to Section 8.2 or Section 8.3, repay the aggregate unpaid principal amount of all Loans so accelerated.

SECTION 3.2. Prepayments.

(a) The Borrower may, from time to time on any Business Day, make a voluntary prepayment, in whole or in part, of the outstanding principal amount of any Revolving Loans; provided, however, that

(i) any such prepayment shall be made pro rata among Revolving Loans of the same type and, if applicable, having the same Interest Period of all Lenders,

(ii) all such voluntary prepayments shall require at least three Business Days' prior written notice to the Agent, and

(iii) all such voluntary partial prepayments shall be in an aggregate minimum amount of $5,000,000 and an integral multiple of $1,000,000 or, if denominated in a Currency other than Dollars, the Foreign Currency Equivalent thereof, rounded to the nearest one million units of such Currency.

(b) The Borrower shall, on each date when any reduction in the Commitment Amount shall become effective including pursuant to Section 2.2, make a mandatory prepayment of Loans equal to the excess, if any, of the aggregate outstanding principal amount of all Loans over the Commitment Amount as so reduced.

(c) The Borrower shall, on each date when the making of any Competitive Bid Loans would cause the aggregate outstanding principal amount of all Loans (determined, in the case of Loans denominated in a currency other than Dollars, on the basis of the Dollar Equivalent thereof) to exceed the Commitment Amount, make a mandatory prepayment of, first, all Swing Line Loans in a principal amount equal to such excess, and second, all Revolving Loans in a principal amount equal to such excess.

(d) The Borrower shall have no right to prepay, in whole or in part, the outstanding principal amount of any Competitive Bid Loan, unless the Lender that has made such Competitive Bid Loan otherwise agrees in writing.

(e) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part; provided that (i) such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. (New York City time) on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein

(f) On the date of the making of any Loan and on the date of a Continuation/Conversion Notice with respect to any Loan or at any other time periodically, the Agent shall determine that the aggregate principal amount of all Loans outstanding (after converting all Loans denominated in Alternate Currencies or Non-Major Alternate Currencies to their Dollar Equivalent on the date of calculation) is greater than 105% of the Commitment Amount then in effect, the Borrower shall, upon three Business Days, written notice from the Agent, prepay an aggregate principal amount of such Loans denominated in Alternate Currencies or Non-Major Alternate Currencies, as the case may be, such that the Dollar Equivalent of the outstanding principal amount of such Loans, when added to the aggregate principal amount of all Loans outstanding denominated in Dollars, does not exceed the Commitment Amount.

(g) Each prepayment of any Loans made pursuant to this Section shall be without premium or penalty, except as may be required by Section 4.4. No voluntary prepayment of principal of any Loans shall cause a reduction in the Commitment Amount.

SECTION 3.3. Interest Provisions. Interest on the outstanding principal amount of Loans shall accrue and be payable in accordance with this Section 3.3.

SECTION 3.3.1. Rates. Pursuant to an appropriately delivered Borrowing Request or Continuation/Conversion Notice, the Borrower may elect that the Loans accrue interest at a rate per annum:

(a) on that portion maintained from time to time as Base Rate Loans (including, all Swing Line Loans), equal to the Alternate Base Rate from time to time in effect;

(b) on that portion maintained as LIBO Rate Loans that are Revolving Loans, during each Interest Period applicable thereto, equal to the sum of the LIBO Rate (Reserve Adjusted) or the LIBO Alternate Rate, as the case may be, applicable to the relevant Currency for such Interest Period plus the margin set forth below opposite the Borrower's Senior Debt Ratings in the following table:

If the Borrower's Senior Debt Ratings are		The Applicable Margin is
S&P	**Moody's**	
A+ or above	A1 or above	15.00 b.p.
A	A2	20.50 b.p.
A-	A3	29.00 b.p.
BBB+	Baa1	37.50 b.p.
BBB	Baa2	47.50 b.p.
BBB- or below	Baa3 or below	67.50 b.p.

If, during any Interest Period, there is any change in such Senior Debt Ratings which would result in an adjustment in the Applicable Margin, such adjustment shall be effective as of the date on which such change occurs. For purposes of determining the Applicable Margin, if Moody's and S&P have split Senior Debt Ratings with a difference of only one rating tier, the higher Senior Debt Rating shall be determinative and the lower Senior Debt Rating shall be disregarded, and if Moody's and S&P have split Senior Debt Ratings with a difference of more than one rating tier, the debt rating one rating tier below the higher Senior Debt Rating will be determinative and both Senior Debt Ratings will be disregarded; and

(c) from (and including) the date any Competitive Bid Loan is made until the maturity thereof, interest shall accrue on the outstanding principal amount of such Competitive Bid Loan at a rate per annum equal to the Competitive Bid Rate specified by the Lender making such Competitive Bid Loan in its Competitive Bid Loan offer with respect thereto delivered pursuant to clause (d) of Section 2.3 above and accepted by the Borrower pursuant to clause (e) of Section 2.3;

provided, however, that if the interest rate elected by the Borrower exceeds the highest lawful rate, then the applicable interest rate per annum for any Loan shall be the highest lawful rate.

The "LIBO Alternate Rate" means, with respect to any Loan for which a Continuation/Conversion Notice has not been delivered in accordance with Section 2.5 that is denominated in any Alternate/Currency, relative to the interest period therefor selected by the Agent in its sole discretion,

(a) in the case of Loans denominated in Sterling, the sum of

(i) the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates per annum at which Sterling deposits in immediately available funds are offered to each Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. (London time) on the first day of such interest period for delivery on the first day of such interest period, and in an amount approximately equal to the relevant amount and for a period approximately equal to such interest period;

plus

(ii) Associated Costs; and

(b) in the case of Loans denominated in Alternate currencies other than Sterling, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates per annum at which the relevant Currency deposits in immediately available funds are offered to each Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. (London time) two Business Days prior to the beginning of such interest period for delivery on the first day of such interest period, and in an amount approximately equal to the relevant amount and for a period approximately equal to such interest period.

If the relevant amount is all or part of a LIBO Rate Loan in an Alternate Currency which became due and payable on a day other than the last day of the Interest Period relating thereto, the first such interest period selected by the Agent shall be of a duration equal to the unexpired portion of the such Interest Period. The LIBO Alternate Rate for any interest period for any Loan bearing interest at the LIBO Alternate Rate will be determined by the Agent on the basis of information in effect on, and the applicable rates furnished to and received by the Agent from the Reference Lenders, (x) in the case of Sterling, on the first day of such interest period, or (y) in the case of Alternate Currencies (other than Sterling), two Business Days before the first day of such interest period, subject, however, to the provisions of Section 3.3.4. If for any such interest period selected by the Agent, adequate means do not exist for the Reference Lenders to determine the LIBO Alternate Rate for any Currency as set forth above, the LIBO Alternate Rate for such Currency shall be determined by reference to the cost to each of the Reference Lenders of obtaining deposits of such Currency from such sources as each such Reference Lender may reasonably select. The Agent shall determine the LIBO Alternate Rate for each such interest period (which determination shall be conclusive in the absence of manifest error), and will promptly give notice to the Borrower and the Lenders thereof.

The "LIBO Rate (Reserve Adjusted)" means, relative to any Loan to be made, continued or maintained as, or converted into, a LIBO Rate Loan bearing interest at the LIBO Rate or the LIBO Alternate Rate, as the case may be, for any Interest Period,

(a) which is denominated in Dollars, a rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) determined pursuant to the following formula:

$$\text{LIBO Rate (Reserve Adjusted)} = \frac{\text{LIBO Rate}}{1.00 - \text{LIBOR Reserve Percentage}}$$

(b) which is denominated in Sterling, a rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) determined pursuant to the following formula:

$$\text{LIBO Rate (Reserve Adjusted)} = \text{LIBO Rate} + \text{Associated Costs}$$

(c) which is denominated in any other Alternate Currency, the relevant LIBO Rate or LIBO Alternate Rate, as the case may be, plus any applicable reserve or other funding costs incurred by the Lenders in making such Loan.

The LIBO Rate (Reserve Adjusted) for any Interest Period for LIBO Rate Loans will be determined by the Agent on the basis of the LIBOR Reserve Percentage in effect on, and the applicable rates furnished to and received by the Agent from the Reference Lenders, two Business Days before the first day of such Interest Period, subject, however, to the provisions of Section 3.3.4.

"LIBO Rate" means, relative to any Interest Period,

(a) with respect to LIBO Rate Loans denominated in Dollars, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates per annum at which Dollar deposits in immediately available funds are offered to each Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. London time two Business Days prior to the beginning of such Interest Period for delivery on the first day of such Interest Period, and in an amount approximately equal to the amount of each such Reference Lender's LIBO Rate Loan and for a period approximately equal to such Interest Period;

(b) with respect to LIBO Rate Loans denominated in any Alternate Currency, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/10,000 of 1%) for the relevant Alternate Currency for a period equal to such Interest Period which appears

(i) with respect to Sterling, on Telerate, Page 3750;

(ii) with respect to Euros, on Telerate Page 3750;

(iii) with respect to Deutschemarks, on Telerate Page 3750; and

(iv) with respect to Yen, on Telerate Page 3750;

as of 11:00 a.m. (London time) (x) in the case of Sterling, on the first day of such Interest Period, or (y) in the case of Alternate Currencies (other than Sterling), two Business Days before the first day of such Interest Period, or, if fewer than two such offered rates appear on the relevant Telerate Page, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/10,000 of 1%) of the rates per annum at which deposits in the relevant Alternate Currency in immediately available funds are offered to each Reference Lender's LIBOR Office in the London interbank market as at or about 11:00 a.m. (London time) (x) in the case of Sterling, on the first day of such Interest Period, or (y) in the case of Alternate Currencies (other than Sterling), two Business Days before the first day of such Interest Period for delivery on the first day of such Interest Period, and in an amount approximately equal to the amount of the Loans requested and for a period approximately equal to such Interest Period.

"LIBOR Reserve Percentages" means, relative to any Interest Period for LIBO Rate Loans, the reserve percentage (expressed as a decimal) equal to the maximum aggregate reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) specified under regulations issued from time to time by the F.R.S. Board and then applicable to assets or liabilities consisting of and including "Eurocurrency Liabilities", as currently defined in Regulation D of the F.R.S. Board, having a term approximately equal or comparable to such Interest Period.

All LIBO Rate Loans shall bear interest from and including the first day of the applicable Interest Period to (but not including) the last day of such Interest Period at the interest rate determined as applicable to such LIBO Rate Loan.

SECTION 3.3.2. Post-Maturity Rates. After the date any principal amount of any Loan is due and payable (whether on the Maturity Date, upon acceleration or otherwise), or after any other monetary Obligation shall have become due and payable, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such amounts at a rate per annum equal to the Alternate Base Rate plus a margin of 2% for Loans denominated in Dollars and, with respect to Loans denominated in an Alternate Currency, at a rate per annum equal to the LIBO Rate or LIBO Alternate Rate, as the case may be, in such Alternate Currency plus a margin of 2%.

SECTION 3.3.3. Payment Dates. Interest accrued on each Loan shall be payable, without duplication:

(a) on the Maturity Date;

(b) on the date of any payment or prepayment, in whole or in part, of principal outstanding on such Loan;

(c) on each Competitive Bid Loan Maturity Date and, with respect to Competitive Bid Loans with a Competitive Bid Loan Maturity Date in excess of three months, on each three (and integral of three) month anniversary of the making of such Loan;

(d) with respect to LIBO Rate Loans, on the last day of each applicable Interest Period (and, if such Interest Period shall exceed three months, on each three (and integral multiple of three) month anniversary of the making of such Loan);

(e) with respect to Base Rate Loans, on each Quarterly Payment Date;

(f) with respect to any Base Rate Loans converted into LIBO Rate Loans on a day when interest would not otherwise have been payable pursuant to clause (e), on the date of such conversion; and

(g) on that portion of any Loans the Maturity Date of which is accelerated pursuant to Section 8.2 or Section 8.3, immediately upon such acceleration.

Interest accrued on Loans or other monetary Obligations arising under this Agreement or any other Loan Document after the date such amount is due and payable (whether on the Maturity Date, upon acceleration or otherwise) shall be payable upon demand.

SECTION 3.3.4. Interest Rate Determination. Each Reference Lender agrees to furnish to the Agent timely information for the purpose of determining the LIBO Rate and the LIBO Alternate Rate. If any one or more of the Reference Lenders shall fail timely to furnish such information to the Agent, the Agent shall determine such interest rate on the basis of the information furnished by the remaining Reference Lenders. The Agent shall provide each Lender with the LIBO Rate applicable to each LIBO Rate Loan within two Business Days prior to the making of such LIBO Rate Loan.

SECTION 3.4. Fees. The Borrower agrees to pay the fees set forth in this Section 3.4. All such fees shall be nonrefundable.

SECTION 3.4.1. Facility Fee. The Borrower agrees to pay to the Agent for the pro rata account of each Lender, in accordance with such Lender's Percentage, an annual facility fee equal to the Commitment Amount multiplied by the fee set forth below opposite the Borrower's Senior Debt Ratings during the quarter for which the fee is calculated (any change in such Senior Debt Ratings to result in an adjustment in the applicable facility fee, such adjustment to be effective as of the date on which such change occurs):

If the Borrower's Senior Debt Ratings Are		The Facility Fee Is
S&P	**Moody's**	
A+ or above	A1 or above	7.50 b.p.
A	A2	9.50 b.p.
A-	A3	11.00 b.p.
BBB+	Baa1	12.50 b.p.
BBB	Baa2	15.00 b.p.
BBB- or below	Baa3 or below	20.00 b.p.

provided that, for purposes of determining the facility fee, if Moody's and S&P have split Senior Debt Ratings with a difference of only one rating tier, the higher Senior Debt Rating shall be determinative and the lower Senior Debt Rating shall be disregarded, and provided, further, if Moody's and S&P have split Senior Debt Ratings with a difference of more than one rating tier, the debt rating one rating tier below the higher Senior Debt Rating will be determinative and both Senior Debt Ratings will be disregarded.

The facility fee payable under this Section shall be based on (i) the Commitment Amount on the Effective Date, and (ii) thereafter, the Commitment Amount on each anniversary of the Effective Date (without giving effect, during the one-year period prior to each such anniversary, to any reduction in the Commitment Amount), such fee to be payable quarterly in arrears on each Quarterly Payment Date and on the Maturity Date, and regardless of the amount of Loans outstanding under this Agreement; provided, however, that in the event a Commitment Termination Event has occurred, such that the Commitments of the Lenders hereunder are terminated, the Borrower shall only be obligated to pay such facility fee to the extent that it has accrued up to the date of such Commitment Termination Event.

SECTION 3.4.2. Utilization Fee. The Borrower agrees to pay to the Agent for the pro rata account of each Lender, in accordance with such Lender's Loans, a utilization fee for each day from the date hereof to and including the Maturity Date for each day that the aggregate principal amount of Loans and Other Loans outstanding on the close of business (if a Business Day) of such day is equal to or greater than 50% of the sum of the Commitment Amount plus the "Commitment Amount" under the Other Credit Agreement. The utilization fee shall accrue at all times, including at any time during which one or more of the conditions in Article V is not met. If applicable, such utilization fee shall be equal to the aggregate principal amount of all Loans outstanding on the close of business (if a Business Day) of such day multiplied by the Utilization Fee Rate set forth below opposite the Borrower's Senior Debt Ratings during the day for which the fee is calculated (any change in such Senior Debt Ratings to result in an adjustment in the applicable utilization fee, such adjustment to be effective as of the date on which such change occurs), payable quarterly in arrears on each Quarterly Payment Date and on the Maturity Date:

If the Borrower's Senior Debt Ratings Are		Utilization Fee Rate
S&P	**Moody's**	
A+ or above	A1 or above	10.00 b.p.
A	A2	10.00 b.p.
A-	A3	10.00 b.p.
BBB+	Baa1	12.50 b.p.

BBB	Baa2	12.50 b.p.
BBB- or below	Baa3 or below	12.50 b.p.

provided that, for purposes of determining the utilization fee, if Moody's and S&P have split Senior Debt Ratings with a difference of only one rating tier, the higher Senior Debt Rating shall be determinative and the lower Senior Debt Rating shall be disregarded, and provided, further, if Moody's and S&P have split Senior Debt Ratings with a difference of more than one rating tier, the debt rating one rating tier below the higher Senior Debt Rating will be determinative and both Senior Debt Ratings will be disregarded.

SECTION 3.4.3. Agents' Fees. The Borrower agrees to pay to the Agents and the Lead Arrangers for their own accounts, fees in such amounts and on such dates as are set forth in the Transaction Fee Letter.

ARTICLE IV

CERTAIN LIBO RATE AND OTHER PROVISIONS

SECTION 4.1. Fixed Rate Lending Unlawful. If any Lender shall determine (which determination shall, upon notice thereof to the Borrower and the Lenders, be conclusive and binding on the Borrower) that the introduction of or any change in or in the interpretation of any law makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for such Lender to make, continue or maintain any Loan as, or to convert any Loan into, a LIBO Rate Loan (or a Competitive Bid Loan based on the LIBO Rate Bid Margin), the obligations of all Lenders to make, continue, maintain or convert any such Loans shall, upon such determination, forthwith be suspended until such Lender shall notify the Agent that the circumstances causing such suspension no longer exist, and (a) all LIBO Rate Loans (and Competitive Bid Loans based on the LIBO Rate Bid Margin) denominated in Dollars shall automatically convert into Base Rate Loans at the end of the then current Interest Periods with respect thereto or sooner, if required by such law or assertion; and (b) all LIBO Rate Loans denominated in any Alternate Currency shall automatically become due and payable at the end of the then current Interest Periods with respect thereto or sooner, if required by applicable law.

SECTION 4.2. Deposits Unavailable. If the Agent shall have determined that

(a) Dollar deposits in the relevant amount and for the relevant Interest Period are not available to the Reference Lenders (or, with respect to any Competitive Bid Loan, by the Lender which made such Competitive Bid Loan) in their (or such Competitive Bid Loan Lender's) relevant market; or

(b) by reason of circumstances affecting the Reference Lenders, relevant market, adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBO Rate Loans, then, upon notice from the Agent to the Borrower and the

Lenders, the obligations of all Lenders under clause (b) of Section 2.1 or clause (f) of Section 2.3 to make or continue any Loans as, or to convert any Loans into, LIBO Rate Loans (or have such Competitive Bid Loans bear interest based on the LIBO Rate Bid Margins) shall forthwith be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

SECTION 4.3. Increased LIBO Rate Loan Costs, etc. The Borrower agrees to reimburse each Lender for any increase in the cost to such Lender of, or any reduction in the amount of any sum receivable by such Lender in respect of, making, continuing or maintaining (or of its obligation to make, continue or maintain) any Loans as, or of converting (or of its obligation to convert) any Loans into, LIBO Rate Loans, including, without limitation, by reason of any requirements imposed by the Bank of England upon the making or funding of LIBO Rate Loans. Such Lender shall promptly notify the Agent and the Borrower in writing of the occurrence of any such event, such notice to state, in reasonable detail, the reasons therefor and the additional amount required fully to compensate such Lender for such increased cost or reduced amount. Such additional amounts shall be payable by the Borrower directly to such Lender within five days of its receipt of such notice, and such notice shall, in the absence of manifest error, be conclusive and binding on the Borrower.

SECTION 4.4. Funding Losses. In the event any Lender shall incur any loss or expense by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to make, continue or maintain any portion of the principal amount of any Loan as, or to convert any portion of the principal amount of any Loan into, a LIBO Rate Loan as a result of (a) any repayment or prepayment of the principal amount of any LIBO Rate Loans on a date other than the scheduled last day of the Interest Period applicable thereto, whether pursuant to Section 3.1, Section 3.2 or otherwise; (b) any Loans not being made as LIBO Rate Loans in accordance with the Borrowing Request therefor; or (c) any Loans not being continued as, or converted into LIBO Rate Loans in accordance with the Continuation/Conversion Notice therefor then, upon the written notice of such Lender to the Borrower (with a copy to the Agent), the Borrower shall, within five days of its receipt thereof, pay directly to such Lender such amount as will (in the reasonable determination of such Lender) reimburse such Lender for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower.

SECTION 4.5. Increased Capital Costs. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other governmental authority after the date hereof affects or would affect the amount of capital required or expected to be maintained by any Lender, and such Lender determines (in its sole and absolute discretion) that the rate of return on its capital as a consequence of its Commitment or the Loans made by such Lender is reduced to a level below that which such Lender could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by such Lender to the Borrower, the Borrower shall immediately pay directly to such Lender additional amounts sufficient to compensate such Lender for such reduction in rate of return. A statement of such Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, such

Lender may use any method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable.

SECTION 4.6. Taxes. All payments by the Borrower of principal of, and interest on, the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, but excluding franchise taxes (in lieu of net income) and taxes imposed on or measured by any Lender's net income or receipts (such nonexcluded items being called "Taxes"). In the event that any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Borrower will

(a) pay directly to the relevant authority the full amount required to be so withheld or deducted;

(b) promptly forward to the Agent an official receipt or other documentation satisfactory to the Agent evidencing such payment to such authority; and

(c) pay to the Agent for the account of the Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Agent or any Lender with respect to any payment received by the Agent or such Lender hereunder, the Agent or such Lender may pay such Taxes and the Borrower will promptly pay such additional amounts (including any penalties, interest or expenses) as is necessary in order that the net amount received by such person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such person would have received had not such Taxes been asserted.

If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Agent, for the account of the respective Lenders, the required receipts or other required documentary evidence, the Borrower shall indemnify the Lenders for any incremental Taxes, interest or penalties that may become payable by any Lender as a result of any such failure. For purposes of this Section 4.6, a distribution hereunder by the Agent or any Lender to or for the account of any Lender shall be deemed a payment by the Borrower.

Upon the request of the Borrower or the Agent, each Lender and Assignee Lender that is organized under the laws of a, jurisdiction other than the United States shall, on or prior to the date hereof (in the case of each Lender that is a party hereto on the date hereof) or on or prior to the date of any assignment hereunder (in the case of an Assignee Lender) and thereafter as reasonably requested from time to time by the Borrower or Agent, execute and deliver to the Borrower and the Agent, one or more (as the Borrower or the Agent may reasonably request) United States Internal Revenue Service Forms W-8EC or Forms W-8BEN or such other forms or documents (or successor forms or documents), appropriately completed, as may be applicable to

establish the extent, if any, to which a payment to such Lender is exempt from, or entitled to a reduced rate of, withholding or deduction of Taxes.

SECTION 4.7. Payments, Computations, etc.

(a) Unless otherwise expressly provided, all payments by the Borrower pursuant to this Agreement, the Notes or any other Loan Document shall be made by the Borrower to the Agent for the pro rata account of the Lenders entitled to receive such payment.

(b) All such payments required to be made to the Agent shall be made, without setoff, deduction or counterclaim, by means of wire transfer to be initiated (i) in the case of Loans denominated in Dollars, not later than 11:00 a.m. (New York City time) and (ii) in the case of Loans denominated in a currency other than Dollars, not later than the time reasonably specified by the Agent, in each case on the date due, in same day or immediately available funds, in the applicable currency, to such account as the Agent shall specify from time to time by notice to the Borrower. Funds for which the wire transfer was initiated after the times specified in the preceding sentence shall be deemed to have been received by the Agent on the next succeeding Business Day. The Agent shall promptly remit in same day funds, in the applicable currency, to each Lender its share, if any, of such payments received by the Agent for the account of such Lender.

(c) Subject to the calculation of interest provided in the definition of "Associated Costs", all interest and fees shall be computed on the basis of the actual number of days (including the first day but excluding the last day) occurring during the period for which such interest or fees is payable over a year comprised of 360 days (or, in the case of interest on Base Rate Loans, 365 days or, if appropriate, 366 days). whenever any payment to be made shall otherwise be due on a day which is not a Business Day, such payment shall (except as otherwise required by clause (c) of the definition of the term "Interest Period") be made on the next succeeding Business Day and such extension of time shall be included in computing interest in connection with such payment.

(d) Each Lender will use its best efforts to notify the Borrower of any event that will entitle such Lender to compensation or reimbursement (including on a prospective basis) pursuant to Article IV hereof (including pursuant to Sections 4.5 and 4.6), as promptly as practicable after it obtains knowledge thereof, but the failure to give such notice shall not impair the right of such Lender to receive compensation or reimbursement under this Section.

(e) Each Lender shall determine the applicability of, and the amount due under, Article IV hereof (including Sections 4.5 and 4.6) consistent with the manner in which it applies similar provisions and calculates similar amounts payable to it by other borrowers having in their credit agreements provisions comparable to those contained in Article IV.

SECTION 4.8. Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of

any Loan, or participation in Swing Line Loans held by it, (other than pursuant to the terms of Sections 4.3, 4.4 and 4.5) in excess of its pro rata share of payments then or therewith obtained by all Lenders, such Lender shall purchase from the other Lenders such participations in Loans made by them and/or such subparticipations in the participations in Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided, however, that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such recovery together with an amount equal to such selling Lender's ratable share (according to the proportion of

(a) the amount of such selling Lender's required repayment to the purchasing Lender

to

(b) 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 or subparticipation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 4.9) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation or subparticipation. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

SECTION 4.9. Setoff. Each Lender shall, upon the occurrence of any Event of Default described in clauses (a) through (e) of Section 8.1.9 or, upon the occurrence of any other Event of Default, have the right to appropriate and apply to the payment of the obligations owing to it (whether or not then due) any and all balances, credits, deposits, accounts or moneys of the Borrower then or thereafter maintained with such Lender or any Affiliate of such Lender; provided, however, that any such appropriation and application shall be subject to the provisions of Section 4.8. Each Lender agrees promptly to notify the Borrower and the Agent after any such setoff and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff under applicable law or otherwise) which such Lender may have.

SECTION 4.10. Use of Proceeds. The Borrower shall use the proceeds of the Loans to refinance existing indebtedness under the Existing Credit Agreement, for general corporate purposes and for commercial paper backup; without limiting the foregoing, no proceeds of any Loan will be used to acquire any equity security of a Person as part of a hostile takeover.

ARTICLE V

CONDITIONS PRECEDENT

SECTION 5.1. Conditions Precedent to the Obligations of the Lenders. The obligations of the Lenders under this Agreement shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 5.1.

SECTION 5.1.1. Resolutions, etc. The Agent shall have received from the Borrower a certificate, dated the same date as this Agreement, of its Secretary or Assistant Secretary as to

(a) resolutions of its Board of Directors then in full force and effect authorizing the execution, delivery and performance of this Agreement, the Notes and each other Loan Document to be executed by it,

(b) the incumbency and signatures of those of its officers authorized to act with respect to this Agreement, the Notes and each other Loan Document executed by it, upon which certificate each Lender may conclusively rely until it shall have received a further certificate of the Secretary of the Borrower canceling or amending such prior certificate, and

(c) true and correct copies of the Organic Documents of the Borrower.

SECTION 5.1.2. Officer's Certificate. The Agent shall have received a certificate, dated the date of this Agreement, signed by an Authorized Officer of the Borrower certifying (a) that on such date (both before and after giving effect to the making of any Loans hereunder on such date) no Default or Event of Default has occurred and is continuing, (b) each of the representations and warranties set forth in Article VI of this Agreement is true and correct on and as of such date and (c) that there has been no event or circumstance since November 30, 2000 which has or could be reasonably expected to have a Material Adverse Effect.

SECTION 5.1.3. Closing Fees, Expenses, etc. The Agent shall have received for its own account, or for the account of each Lender, the Lead Arrangers and the other Agents, as the case may be, all fees, costs and expenses due and payable pursuant to Sections 3.4 and 10.3, if then invoiced.

SECTION 5.1.4. Delivery of Financial Information. The Agent shall have received, with copies for each Lender, audited consolidated balance sheets of the Borrower and its Subsidiaries as at November 30, 2000 and the related statements of earnings and cash flow, and unaudited balance sheets of the Borrower and its Subsidiaries as of the end of the Fiscal Quarter ending February 28, 2001 and consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries for such Fiscal Quarter, certified by an Authorized Officer of the Borrower.

SECTION 5.1.5. Delivery of Notes. The Agent shall have received (a) for the account of each Lender, its Revolving Loan Note and its Competitive Bid Loan Note duly executed and delivered by the Borrower with respect to such Lender's Commitment and (b) for the account of the Swing Line Lender, its Swing Line Note duly executed and delivered by the Borrower with respect to the Swing Line Sublimit.

SECTION 5.1.6. Termination of the Existing Credit Agreement. The Agent shall have received satisfactory evidence that the Existing Credit Agreement has been terminated and all Indebtedness, liabilities and obligations outstanding thereunder has been paid in full.

SECTION 5.1.7. Opinion of Counsel. The Agent shall have received an opinion of Robert W. Skelton, General Counsel of the Borrower or any Associate General Counsel of the Borrower, dated the date of this Agreement and addressed to the Agent and all Lenders, substantially in the form of Exhibit G hereto.

SECTION 5.2. Conditions Precedent to Borrowings. The obligation of each Lender to fund any Loan on the occasion of any Borrowing (including the initial Borrowing) shall be subject to the satisfaction of each of the conditions precedent set forth in this Section 5.2.

SECTION 5.2.1. Compliance with Warranties, No Default, etc. Both before and after giving effect to any Borrowing, the following statements shall be true and correct:

(a) the representations and warranties set forth in Article VI (other than the representations and warranties set forth in Sections 6.6 and 6.7) shall be true and correct with the same effect as if then made (unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date); and

(b) no Default or Event of Default shall have then occurred and be continuing.

SECTION 5.2.2. Borrowing Request. The Agent shall have received a Revolving Loan Borrowing Request, a Competitive Bid Loan Borrowing Request or a Swing Line Loan Borrowing Request (as the case may be) for such Borrowing. Each of the delivery of a Borrowing Request and the acceptance by the Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Borrowing (both immediately before and after giving effect to such Borrowing and the application of the proceeds thereof) the statements made in Section 5.2.1 are true and correct.

SECTION 5.2.3. Satisfactory Legal Form. All documents executed or submitted pursuant hereto by or on behalf of the Borrower shall be reasonably satisfactory in form and substance to the Agent and its counsel (and the execution of this Agreement by the Agent shall be deemed to evidence such satisfaction); the Agent and its counsel shall have received all non-confidential information, approvals, opinions, documents or instruments as the Agent or its counsel may reasonably request.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders and the Agents to enter into this Agreement and to make Loans hereunder, the Borrower represents and warrants as follows as of the Effective Date, and thereafter, as of the date of each Borrowing to the extent set forth in clause (a) of Section 5.2.1.

SECTION 6.1. Organization, etc. The Borrower and each of its Subsidiaries is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the laws of the State of its incorporation or organization, is duly qualified to do business and is in good standing in each jurisdiction where the nature of its business requires such qualification, except where the failure to so qualify will not have a Material Adverse Effect, and has full power and authority and holds all requisite governmental licenses, permits and other approvals to enter into and perform its Obligations under this Agreement, the Notes and each other Loan Document to which it is a party and to own or hold under lease its property and to conduct its business substantially as currently conducted by it.

SECTION 6.2. Due Authorization, Non-Contravention etc. The execution, delivery and performance by the Borrower of this Agreement, the Notes and each other Loan Document executed or to be executed by it, are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not

(a) contravene the Borrower's Organic Documents;

(b) contravene any contractual restriction, law or governmental regulation or court decree or order binding on or affecting the Borrower and its Subsidiaries; or

(c) result in, or require the creation or imposition of, any Lien on any of the Borrower's properties.

SECTION 6.3. Government Approval Regulation, etc. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or other Person is required for the due execution, delivery or performance by the Borrower of this Agreement, the Notes or any other Loan Document. Neither the Borrower nor any of its Subsidiaries is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", within the meaning of the Public Utility Holding Company Act of 1935, as amended.

SECTION 6.4. Validity, etc. This Agreement constitutes, and the Notes and each other Loan Document executed by the Borrower will, on the due execution and delivery thereof, constitute, the legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms, subject to the effect of bankruptcy insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally and by general principles of equity.

SECTION 6.5. Financial Information. The consolidated balance sheets of the Borrower and its Subsidiaries as at November 30, 2000, and the related consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries, copies of which have been furnished to the Agent and each Lender, have been prepared in accordance with GAAP consistently applied, and present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at the dates thereof and the results of their operations for the periods then ended.

SECTION 6.6. No Material Adverse Change. Since the date of the financial statements described in Section 6.5 (except to the extent the information disclosed therein is modified or

superseded, as the case may be, by information in the Borrower's quarterly report on Form 10-Q for the quarter ended February 28, 2001) there has been no material adverse change in the financial condition, operations, assets, business or properties of the Borrower and its Subsidiaries taken as a whole.

SECTION 6.7. Litigation, Labor Controversies, etc. There is no pending or, to the knowledge of the Borrower, threatened litigation, action, proceeding, or labor controversy affecting the Borrower or any of its Subsidiaries, or any of their respective properties, businesses, assets or revenues, which will result in a Material Adverse Effect or which purports to affect the legality, validity or enforceability of this Agreement, the Notes or any other Loan Document, except as disclosed in Item 6.7 ("Litigation") of the Disclosure Schedule.

SECTION 6.8. Subsidiaries. The Borrower has no Subsidiaries, except those Subsidiaries

(a) which are identified in Item 6.8 ("Existing Subsidiaries as of the Effective Date") of the Disclosure Schedule; or

(b) which are hereafter acquired or formed.

It being understood that Subsidiaries may merge, consolidate, liquidate and sell assets as permitted pursuant to Section 7.2.4.

SECTION 6.9. Ownership of Properties. The Borrower and each of its Subsidiaries has good and marketable title to all of its tangible properties and assets, real and personal, of any nature whatsoever, free and clear of all Liens, charges or claims except as permitted pursuant to Section 7.2.3 or Liens, charges or claims that will not have a Material Adverse Effect; and the Borrower has duly registered in the U.S. all trademarks required for the conduct of its business in the U.S., other than those as to which the lack of protection, or failure to register, would not have a Material Adverse Effect.

SECTION 6.10. Taxes. The Borrower and each of its Subsidiaries has filed all federal and all other material income tax returns and reports required by law to have been filed by it and has paid all taxes and governmental charges thereby shown to be owing, except any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

SECTION 6.11. Pension and Welfare Plans. During the twelve-consecutive-month period ending immediately prior to the date of the execution and delivery of this Agreement, no Pension Plan has been terminated, or has been subject to the commencement of any termination, that could reasonably be expected to have a Material Adverse Effect, and no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which might result in the incurrence by the Borrower or any member of the Controlled Group of any liability, fine or penalty which is likely to have a Material Adverse Effect. Except for the post-retirement benefits described in Item 6.11 ("Employee Benefit Plans") of the Disclosure Schedule, the Borrower has no contingent liability with respect to post-retirement benefits provided by the Borrower and its Subsidiaries under a Welfare Plan, other

than (i) liability for continuation coverage described in Part 6 of Subtitle B of Title I of ERISA and (ii) liabilities which will not, individually or in the aggregate, have a Material Adverse Effect.

SECTION 6.12. Environmental Warranties. Except as set forth in Item 6.12 ("Environmental Matters") of the Disclosure Schedule:

(a) all facilities and property (including underlying groundwater) owned or leased by the Borrower or any of its Subsidiaries have been, and continue to be, owned or leased by the Borrower and its Subsidiaries in compliance with all Environmental Laws, except for such non-compliance which, singly or in the aggregate, will not have a Material Adverse Effect;

(b) there have been no past unresolved, and there are no pending or threatened (in writing)

(i) claims, complaints, notices or requests for information received by the Borrower or any of its Subsidiaries with respect to any alleged violation of any Environmental Law, or

(ii) complaints, written notices or inquiries to the Borrower or any of its Subsidiaries regarding potential liability under any Environmental Law,

which violation or potential liability singly or in the aggregate will have a Material Adverse Effect;

(c) there have been no Releases of Hazardous Materials at, on or under any property now or to the Borrower's knowledge previously owned or leased by the Borrower or any of its Subsidiaries that, singly or in the aggregate, have, or will have a Material Adverse Effect;

(d) the Borrower and its Subsidiaries have been issued and are in compliance with all permits, certificates, approvals, licenses and other authorizations relating to environmental matters and necessary for their businesses, except for such permits, approvals, licenses and other authorizations which, if not obtained by the Borrower, or as to which the Borrower is not in compliance (in each case singly or in the aggregate), will not have a Material Adverse Effect;

(e) no property now or, to the Borrower's knowledge, previously owned or leased by the Borrower or any of its Subsidiaries is listed or with the knowledge of the Borrower, proposed for listing (with respect to owned property only) on (i) the CERCLIS or on any similar state list of sites requiring investigation or clean-up or (ii) the National Priorities List pursuant to CERCLA; other than properties as to which any such listing will not result in a Material Adverse Effect;

(f) there are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any property now or, to the Borrower's knowledge,

previously owned or leased by the Borrower or any of its Subsidiaries that, singly or in the aggregate, have, or will have, a Material Adverse Effect;

(g) to the Borrower's knowledge, neither Borrower nor any Subsidiary of the Borrower has directly transported or directly arranged for the transportation of any Hazardous Material to any location which is listed or, with the knowledge of the Borrower, proposed for listing, on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list or which is the subject of federal, state or local enforcement actions or other investigations which will lead to claims against the Borrower or such Subsidiary thereof for any remedial work, damage to natural resources or personal injury, including claims under CERCLA, which will have a Material Adverse Effect; and

(h) there are no polychlorinated biphenyls or friable asbestos present at any property owned or leased by the Borrower or any Subsidiary of the Borrower that, singly or in the aggregate, have, or will have, a Material Adverse Effect.

SECTION 6.13. Regulations U and X. No proceeds of any Loans will be used for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation U or X. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and not more than 25% of the consolidated assets of the Borrower and its Subsidiaries consists of margin stock. Terms for which meanings are provided in F.R.S. Board Regulation U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

SECTION 6.14. Accuracy of Information. Neither this Agreement nor any other document, certificate or statement furnished to the Agent or any Lender by or on behalf of the Borrower in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading, in light of the circumstances under which they were made.

SECTION 6.15. Compliance with Law; Absence of Default. The Borrower and its Subsidiaries are in compliance with all Applicable Laws the noncompliance with which would have a Material Adverse Effect and with all of the material provisions of their respective Organic Documents, and no event has occurred or has failed to occur which has not been remedies or waived, the occurrence or non-occurrence of which constitutes (i) a Default or Event of Default or (ii) a default by the Borrower or one of its Subsidiaries under any other material indenture, agreement or other instrument, or any judgment, decree, or order to which the Borrower or such Subsidiary is a party or by which the Borrower or such Subsidiary or any of their respective properties may be bound, which would have a Material Adverse Effect.

ARTICLE VII

COVENANTS

SECTION 7.1. Affirmative Covenants. The Borrower agrees with the Agents and each Lender that, until all Obligations have been paid and performed in full, the Borrower will perform the obligations set forth in this Section 7.1.

SECTION 7.1.1. Financial Information Reports, Notices, etc. The Borrower will furnish, or will cause to be furnished, to each Lender and the Agent copies of the following financial statements, reports, notices and information:

(a) as soon as available and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter and consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter, certified by an Authorized Officer of the Borrower, it being understood and agreed that the delivery of the Borrower's Form 10-Q (as filed with the Securities and Exchange Commission) shall satisfy the requirements set forth in this clause);

(b) as soon as available and in any event within 120 days after the end of each Fiscal Year of the Borrower, a copy of the annual audit report for such Fiscal Year for the Borrower and its Subsidiaries, including therein a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Year and consolidated statements of earnings and cash flow of the Borrower and its Subsidiaries for such Fiscal Year, in each case certified (without any Impermissible Qualification) in a manner acceptable to the Agent and the Required Lenders by Ernst & Young or other independent public accountants reasonably acceptable to the Agent and the Required Lenders (it being understood and agreed that the delivery of the Borrower's Form 10-K (as filed with the Securities and Exchange Commission) shall satisfy such delivery requirement in this clause), together with a certificate from an Authorized Officer of the Borrower containing a computation in reasonable detail of, and showing compliance with, each of the financial ratios and restrictions contained in Sections 7.2.2, 7.2.3, 7.2.4 and 7.2.5 and to the effect that, in making the examination necessary for the signing of such certificate, he has not become aware of any Default or Event of Default that has occurred and is continuing, or, if he has become aware of such Default or Event of Default, describing such Default or Event of Default and the steps, if any, being taken to cure it;

(c) as soon as available and in any event within 60 days after the end of each Fiscal Quarter, a Compliance Certificate, executed by the Treasurer or an Authorized Officer of the Borrower, showing (in reasonable detail and with appropriate calculations and computations in all respects satisfactory to the Agent) compliance with the financial covenants set forth in Sections 7.2.2, 7.2.3, 7.2.4 and 7.2.5 and representing as to the absence of any Default;

(d) as soon as possible and in any event within three Business Days upon any officer or director of the Borrower becoming aware of the occurrence of each Default or Event of Default, a statement of the Treasurer or the chief financial Authorized Officer of the Borrower setting forth details of such Default or Event of Default and the action which the Borrower has taken and proposes to take with respect thereto;

(e) as soon as possible and in any event within five Business Days after (x) the occurrence of any adverse development with respect to any litigation, action, proceeding, or labor controversy described in Section 6.7 which will result in or is likely to result in a Material Adverse Effect or (y) the commencement of any labor controversy, litigation, action, proceeding of the type described in Section 6.7, notice thereof and copies of all documentation relating thereto;

(f) promptly after the sending or filing thereof, copies of all reports which the Borrower sends to any of its security holders, and all reports and registration statements (other than on Form S-8 or any successor form) which the Borrower or any of its Subsidiaries files with the Securities and Exchange Commission or any national securities exchange;

(g) immediately upon becoming aware of the taking of any specific actions by the Borrower or any other Person to terminate any Pension Plan (other than a termination pursuant to Section 4041(b) of ERISA which can be completed without the Borrower or any Controlled Group member having to provide more than $3,000,000 in addition to the normal contribution required for the plan year in which termination occurs to make such Pension Plan sufficient), or the failure to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a Lien under section 302(f) of ERISA, or the taking of any action with respect to a Pension Plan which would likely result in the requirement that the Borrower furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan which would likely result in the incurrence by the Borrower of any liability, fine or penalty which will have a Material Adverse Effect, or any increase in the contingent liability of the Borrower with respect to any post-retirement Welfare Plan benefit if the increase in such contingent liability will result in a Material Adverse Effect, notice thereof and copies of all documentation relating thereto;

(h) immediately upon becoming aware of any change in Borrower's Senior Debt Rating, a statement describing such change, whether such change was made by S&P, Moody's or both and the effective date of such change; and

(i) such other non-confidential information respecting the condition or operations, financial or otherwise, of the Borrower or any of its Subsidiaries as any Lender through the Agent may from time to time reasonably request.

SECTION 7.1.2. Compliance with Laws, etc. The Borrower will, and will cause each of its Subsidiaries to, comply in all respects with all Applicable Laws, except where such non-compliance would not have a Material Adverse Effect, such compliance to include (without limitation):

(a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Applicable Laws of the jurisdiction of its organization and each jurisdiction where its conduct of business requires qualification or good standing (except any Subsidiary may merge, consolidate or liquidate as permitted pursuant to Section 7.2.4), and

(b) the payment, before the same become delinquent, of all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

SECTION 7.1.3. Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, maintain, preserve, protect and keep its material properties in good repair, working order and condition, and make necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times unless the Borrower determines in good faith that the continued maintenance of any of its properties is no longer economically desirable.

SECTION 7.1.4. Insurance. The Borrower will, and will cause each of its Subsidiaries to, maintain or cause to be maintained with responsible insurance companies insurance with respect to its properties material to the business of the Borrower and its Subsidiaries against such casualties and contingencies and of such types and in such amounts as is customary in the case of similar businesses and will, upon request of the Agent, furnish to each Lender at reasonable intervals a certificate of an Authorized Officer of the Borrower setting forth the nature and extent of all insurance maintained by the Borrower and its Subsidiaries in accordance with this Section, provided, that the Borrower and its Subsidiaries may self-insure to the extent customary for similarly situated corporations engaged in the same or similar business.

SECTION 7.1.5. Books and Records. The Borrower will, and will cause each of its Subsidiaries to, keep books and records which accurately reflect all of its business affairs and material transactions and permit the Agent and each Lender or any of their respective representatives, at reasonable times and intervals, to visit all of its offices, to discuss its non-confidential financial matters with its officers and independent public accountant and, upon the reasonable request of the Agent or a Lender, to examine (and, at the expense of the Lenders, photocopy extracts from) any of its non-confidential books or other corporate records.

SECTION 7.1.6. Environmental Covenant. The Borrower will, and will cause each of its Subsidiaries to,

(a) use and operate all of its facilities and properties in compliance with all Environmental Laws except for such non-compliance which, singly or in the aggregate, will not have a Material Adverse Effect, keep all necessary permits, approvals, certificates, licenses and other authorizations relating to environmental matters in effect and remain in compliance therewith, except where the failure to keep such permits, approvals, certificates, licenses or other authorizations, or any non-compliance with the provisions thereof will not have a Material Adverse Effect, and handle all Hazardous

Materials in compliance with all applicable Environmental Laws, except for any non-compliance that will not have a Material Adverse Effect;

(b) immediately notify the Agent and provide copies upon receipt of all written inquiries from any local, state or federal governmental agency, claims, complaints or notices relating to the condition of its facilities and properties or compliance with Environmental Laws which will have a Material Adverse Effect, and shall promptly cure and have dismissed with prejudice or contest in good faith any actions and proceedings relating to material compliance with Environmental Laws the result of which, if not contested by the Borrower, would have a Material Adverse Effect; and

(c) provide such non-confidential information and certifications which the Agent may reasonably request from time to time to evidence compliance with this Section 7.1.6.

SECTION 7.2. Negative Covenants. The Borrower agrees with the Agents and each Lender that, until all Obligations have been paid and performed in full, the Borrower will perform the obligations set forth in this Section 7.2.

SECTION 7.2.1. Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, enter into, or cause, suffer or permit to exist any material arrangement or contract with any of its other Affiliates (other than other Subsidiaries) unless such arrangement or contract is fair and equitable to the Borrower or such Subsidiary based upon the good faith judgment of the Borrower's Board of Directors.

SECTION 7.2.2. Indebtedness. The Borrower will not permit any of its Subsidiaries to create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness if, after giving effect to the incurrence of any such Indebtedness, the aggregate outstanding amount of Indebtedness of all Subsidiaries would exceed 25% of Consolidated Net Tangible Assets.

SECTION 7.2.3. Liens. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, except:

(a) Liens securing payment of Indebtedness permitted under Section 7.2.2;

(b) Liens granted prior to the Effective Date which are identified in Item 7.2.3 ("Existing Liens") of the Disclosure Schedule;

(c) any Lien existing on the assets of any Person at the time it becomes a Subsidiary (and not created, assumed or incurred by such Person in contemplation of such event);

(d) Liens for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(e) Liens of carriers, warehousemen, mechanics, materialmen and landlords incurred in the ordinary course of business for sums not overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(f) Liens incurred in the ordinary course of business in connection with workmen's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, leases and contracts (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(g) judgment Liens in existence less than 30 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by insurance maintained with responsible insurance companies;

(h) other Liens incidental to the conduct of the Borrower's or any of its Subsidiaries' businesses (including without limitation, Liens on goods securing trade letters of credit issued in respect of the importation of goods in the ordinary course of business, or the ownership of any of the Borrower's or any Subsidiary's property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit and which do not in the aggregate materially detract from the value of the Borrower's or any of its Subsidiaries' property or assets or materially impair the use thereof in the operation of Borrower's or any of its Subsidiaries' businesses);

(i) Liens in favor of the Borrower on assets of its Subsidiaries, and Liens in favor of Subsidiaries of the Borrower on assets of the Borrower;

(j) Liens securing industrial development or pollution control bonds so long as such Liens attach solely to the property acquired, constructed or improved with the proceeds of such bonds; and

(k) any Lien not otherwise permitted by this Section 7.2.3 securing Indebtedness, provided that, immediately after giving effect thereto (and to the incurrence of such Indebtedness secured thereby), the sum of (without duplication and excluding any Indebtedness payable to the Borrower or a Subsidiary) (i) the aggregate outstanding amount of Indebtedness of the Borrower and its Subsidiaries secured by all Liens described in clauses (b), (c) and (k) of this Section 7.2.3 (excluding any such Liens described in clauses (d) through (j) of this Section 7.2.3) and (ii) the Attributable Value of all Sale-Leaseback Transactions entered into by the Borrower and its Subsidiaries in the aggregate does not exceed 15% of Consolidated Net Tangible Assets.

SECTION 7.2.4. Mergers, Asset Dispositions, etc. The Borrower will not, nor will it permit any of its Subsidiaries to, liquidate, dissolve or enter into any consolidation, merger, joint venture or any other combination or sell, lease, assign, transfer or otherwise dispose of any assets

or stock, whether now owned or hereafter acquired, in a single transaction or in a series of transactions other than:

(a) sales of inventory in the ordinary course of business;

(b) the merger or consolidation of any Subsidiary with or into the Borrower or a wholly-owned Subsidiary;

(c) the merger or consolidation of any other Person with or into the Borrower or any Subsidiary, so long as, after giving effect thereto, (i) the Borrower or its Subsidiary, as the case may be, is the surviving entity and (ii) no Default or Event of Default would exist;

(d) sales of assets or stock by the Borrower or a Subsidiary to a wholly-owned Subsidiary or the Borrower; and

(e) (i) sales of assets or stock to any other Person or (ii) liquidations of Subsidiaries (other than a Principal Subsidiary) if, after giving effect thereto, the aggregate book value of such assets or stock disposed of or liquidated does not, during the most recent period of 12 consecutive months, exceed 20% of Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding Fiscal Year; and

(f) joint ventures between Subsidiaries, between one or more Subsidiaries and the Borrower, between the Borrower and other Persons and between Subsidiaries and other Persons.

SECTION 7.2.5. EBIT to Interest Expense Ratio. The Borrower will not permit the ratio of EBIT to Interest Expense to be less than 2.5:1.00. For purposes of calculating such ratio, the items included therein shall be measured on a consolidated basis for the Borrower and its Subsidiaries for the four full Fiscal Quarters immediately preceding the date of calculation.

ARTICLE VIII

EVENTS OF DEFAULT

SECTION 8.1. Listing of Events of Default. Each of the following events or occurrences described in this Section 8.1 shall constitute an "Event of Default".

SECTION 8.1.1. Non-Payment of Obligations. The Borrower shall default in the payment when due of any principal of any Loan, or the Borrower shall default (and such default shall continue unremedied for a period of three Business Days) in the payment when due of any interest on any Loan, or the Borrower shall default after notice (including, without limitation, notice delivered by way of submission of a detailed invoice) (and such default shall continue unremedied for a period of five days) in the payment when due of any fee described in Section 3.4 or of any other Obligation, including, without limitation, fees described in the Transaction Fee Letter.

SECTION 8.1.2. Breach of Warranty. Any representation or warranty of the Borrower made or deemed to be made hereunder or in any other Loan Document or any other writing or certificate furnished by or on behalf of the Borrower to the Agent or any Lender for the purposes of or in connection with this Agreement or any such other Loan Document (including any certificates delivered pursuant to Article V) is or shall be incorrect when made in any material respect.

SECTION 8.1.3. Non-Performance of Certain Covenants and Obligations. The Borrower shall default in the due performance and observance of any of its obligations under clause (a) of Section 7.1.2 (with respect to the maintenance and preservation of the Borrower's corporate existence) or under Section 7.1.6, or the Borrower shall default in the due performance and observance of its obligations under Section 7.2, and such default (if capable of being remedied within such period) shall not be remedied within five Business Days after any officer of the Borrower obtains actual knowledge thereof.

SECTION 8.1.4. Non-Performance of Other Covenants and Obligations. The Borrower shall default in the due performance and observance of any other agreement contained herein or in any other Loan Document, and such default shall continue unremedied for a period of 30 days after notice thereof shall have been given to the Borrower by the Agent or any Lender.

SECTION 8.1.5. Default on Other Indebtedness. A default shall occur in the payment when due (subject to any applicable grace period), whether by acceleration or otherwise, of any Indebtedness (other than Indebtedness described in Section 8.1.1) of the Borrower or any of its Subsidiaries having a principal amount, individually or in the aggregate, in excess of $15,000,000, or a default shall occur in the performance or observance of any obligation or condition with respect to such Indebtedness (whether or not waived) if the effect of such default is to accelerate the maturity of any such Indebtedness or such default (whether or not waived) shall continue unremedied for any applicable period of time sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause such Indebtedness to become due and payable prior to its expressed maturity.

SECTION 8.1.6. Judgments. Any judgment or order for the payment of money in excess of $15,000,000 shall be rendered against the Borrower or any of its Subsidiaries and either

(a) enforcement proceedings shall have been commenced by any creditor upon such judgment or order; or

(b) 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.

SECTION 8.1.7. Pension Plans. Any of the following events shall occur with respect to any Pension Plan

(a) the institution of any steps by the Borrower, any member of its Controlled Group or any other Person to terminate a Pension Plan if, as a result of such termination, the Borrower or any such member could reasonably be required to make a contribution to

such Pension Plan, or could reasonably expect to incur a liability or obligation to such Pension Plan, in excess of $5,000,000; or

(b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA which is not cured within 20 days from the date such contribution was due.

SECTION 8.1.8. Control of the Borrower. Any Change in Control shall occur.

SECTION 8.1.9. Bankruptcy, Insolvency, etc. The Borrower or any of its Subsidiaries that are Principal Subsidiaries shall

(a) become insolvent or generally fail to pay, or admit in writing its inability to pay, debts as they become due;

(b) apply for, consent to, or acquiesce in, the appointment of a trustee, receiver, sequestrator or other custodian for the Borrower or any of such Subsidiaries or a substantial part of any property of any thereof, or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for the Borrower or any of such Subsidiaries or for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within 60 days, provided that the Borrower and each such Subsidiary hereby expressly authorizes the Agent and each Lender to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend their rights under the Loan Documents;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of the Borrower or any of such Subsidiaries, and, if any such case or proceeding is not commenced by the Borrower or such Subsidiary, such case or proceeding shall be consented to or acquiesced in by the Borrower or such Subsidiary or shall result in the entry of an order for relief or shall remain for 60 days undismissed, provided that the Borrower and each such Subsidiary hereby expressly authorizes the Agent and each Lender to appear in any court conducting any such case or proceeding during such 60-day period to preserve, protect and defend their rights under the Loan Documents; or

(e) take any corporate action authorizing, or in furtherance of, any of the foregoing.

SECTION 8.2. Action if Bankruptcy. If any Event of Default described in clauses (a) through (e) of Section 8.1.9 shall occur, the Commitments (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of all outstanding Loans and all other Obligations shall automatically be and become immediately due and payable, without notice or demand.

SECTION 8.3. Action if Other Event of Default. If any Event of Default (other than any Event of Default described in clauses (a) through (e) of Section 8.1.9) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Agent, upon the direction of the Required Lenders, shall by notice to the Borrower declare all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable and/or the Commitments (if not theretofore terminated) to be terminated, whereupon the full unpaid amount of such Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment and/or, as the case may be, the Commitments shall terminate.

ARTICLE IX

THE AGENT

SECTION 9.1. Appointment; Powers and Immunities. Each Lender hereby irrevocably appoints and authorizes the Agent to act as its Agent hereunder and under the other Loan Documents with such powers as are specifically delegated to the Agent by the terms hereof and thereof, together with such other powers as are reasonably incidental thereto. The Agent: (a) shall have no duties or responsibilities except as expressly set forth in this Agreement and the other Loan Documents, and shall not by reason of this Agreement or any other Loan Document be a trustee for any Lender; (b) makes no warranty or representation to any Lender and shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in this Agreement or any other Loan Document, or in any certificate or other document referred to or provided for in, or received by any Lender under, this Agreement or any other Loan Document, or for the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or any other document referred to or provided for herein or therein or for any failure by the Borrower to perform any of its obligations hereunder or thereunder; (c) shall not be required to initiate or conduct any litigation or collection proceedings hereunder or under any other Loan Document except to the extent requested by the Required Lenders, and then only on terms and conditions satisfactory to the Agent, and (d) shall not be responsible for any action taken or omitted to be taken by it hereunder or under any other Loan Document or any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except for its own gross negligence or willful misconduct. The Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The provisions of this Article IX are solely for the benefit of the Agent and the Lenders, and the Borrower shall not have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement and under the other Loan Documents, the Agent shall act solely as Agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower. The duties of the Agent shall be ministerial and administrative in nature, and the Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender.

SECTION 9.2. Reliance by Agent. The Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopier, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or

on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants or other experts selected by the Agent. As to any matters not expressly provided for by this Agreement or any other Loan Document, the Agent shall in all cases be fully protected in acting, or in

refraining from acting, hereunder and thereunder in accordance with instructions signed by the Required Lenders, and such instructions of the Required Lenders in any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

SECTION 9.3. Defaults. The Agent shall not be deemed to have knowledge of the occurrence of a Default or an Event of Default (other than the nonpayment of principal of or interest on the Loans) unless the Agent has received notice from a Lender or the Borrower specifying such Default or Event of Default and stating that such notice is a "Notice of Default". In the event that the Agent receives such a notice of the occurrence of a Default or an Event of Default, the Agent shall give prompt notice thereof to the Lenders. The Agent shall (subject to Section 10.1) take such action hereunder with respect to such Default or Event of Default as shall be directed by the Required Lenders, provided that, unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 9.4. Rights of Agent and its Affiliates as a Lender. With respect to its Commitment and the Loans made by it and any of its Affiliates, Wachovia, N.A. (and any successor acting as Agent hereunder) in its capacity as a Lender hereunder and any Affiliate of Wachovia, N.A. in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as the Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Wachovia, N.A. in its individual capacity and any Affiliate of the Agent in its individual capacity. Wachovia, N.A. (and any successor acting as Agent hereunder) and any Affiliate thereof may (without having to account therefor to any Lender) accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with the Borrower (and any of the Borrower's Affiliates) as if it were not acting as the Agent, and Wachovia, N.A. and any Affiliate thereof may accept fees and other consideration from the Borrower or any Subsidiary or Affiliate thereof for services in connection with this Agreement or any other Loan Document or otherwise without having to account for the same to the Lenders.

SECTION 9.5. Indemnification. Each Lender severally agrees to indemnify the Agent, to the extent the Agent shall not have been reimbursed by the Borrower, ratably in accordance with its Commitment, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, counsel fees and disbursements) or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of this Agreement or any other Loan Document or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses that the Borrower is obligated to pay under Section 10.3 or any amount the Borrower is obligated to pay under Section 10.4, but excluding the normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or any such other documents; provided that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of

the Agent. If any indemnity furnished to the Agent for any purpose shall, in the opinion of the Agent, be insufficient or become impaired, the Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

SECTION 9.6. Consequential Damages. THE AGENT SHALL NOT BE RESPONSIBLE OR LIABLE TO ANY LENDER, THE BORROWER OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 9.7. Registered Holder of Loan Treated as Owner. The Agent may deem and treat each Person in whose name a Loan is registered as the owner thereof for all purposes hereof unless and until a written notice of the assignment or transfer thereof shall have been filed with the Agent and the provisions of Section 10.11.1 have been satisfied. Any requests, authority or consent of any Person who at the time of making such request or giving such authority or consent is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee or assignee of that Note or of any Note or Notes issued in exchange therefor or replacement thereof.

SECTION 9.8. Nonreliance on Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on the Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and decision to enter into this Agreement and 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 analysis and decisions in taking or not taking action under this Agreement or any of the other Loan Documents. The Agent shall not be required to keep itself (or any Lender) informed as to the performance or observance by the Borrower of this Agreement or any of the other Loan Documents or any other document referred to or provided for herein or therein or to inspect the properties or books of the Borrower or any other Person. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Agent hereunder or under the other Loan Documents, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower or any other Person (or any of their Affiliates) which may come into the possession of the Agent or any of its Affiliates.

SECTION 9.9. Failure to Act. Except for action expressly required of the Agent hereunder or under the other Loan Documents, the Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction by the Lenders of their indemnification obligations under Section 9.5 against any and all liability and expense which may be incurred by the Agent by reason of taking, continuing to take, or failing to take any such action.

SECTION 9.10. Successor Agent. The Agent may resign at any time by giving notice thereof to the Lenders and the Borrower. Upon any such resignation, 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 notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent. Any successor Agent shall be a bank or other financial institution which has 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,

privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article IX shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent hereunder.

SECTION 9.11. Other Agents. Bank of America, N.A. is hereby appointed Documentation Agent of the Lenders hereunder and under each Loan Document. SunTrust Bank is hereby appointed Syndication Agent of the Lenders hereunder and under each Loan Document. Bank of America, N.A. shall not have any duties, responsibilities or liabilities in its capacity as Documentation Agent. SunTrust Bank shall not have any duties, responsibilities or liabilities in its capacity as Syndication Agent.

ARTICLE X

MISCELLANEOUS PROVISIONS

SECTION 10.1. Waivers, Amendments, etc. The provisions of this Agreement and of each other Loan Document may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Borrower and the Required Lenders; provided, however, that no such amendment, modification or waiver which would:

(a) modify any requirement hereunder that any particular action be taken by all the Lenders or by the Required Lenders shall be effective unless consented to by each Lender;

(b) modify this Section 10.1, change the definition of "Required Lenders", increase the Percentage or Commitment of any Lender, reduce any fees described in Article III, or extend the Maturity Date shall be made without the consent of each Lender and each holder of a Note;

(c) extend the due date for, or reduce the amount of, any scheduled repayment of principal of or payment of interest on any Loan or fees owed hereunder (or reduce the principal amount of or rate of interest on any Loan or the fees owed hereunder) shall be made without the consent of the holder of that Note evidencing such Loan or owed such fees;

(d) affect the rights or duties of the Swing Line Lender under this Agreement shall be made without consent of the Swing Line Lender; or

(e) affect adversely the interests, rights or obligations of the Agent qua the Agent shall be made without consent of the Agent.

No failure or delay on the part of the Agent, any Lender or the holder of any Note in exercising any power or right under this Agreement or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on the Borrower in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Agent, any Lender or the holder of any Note under this Agreement or any other Loan Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

SECTION 10.2. Notices. All notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing or by facsimile and addressed, delivered or transmitted to such party at its address or facsimile number set forth below its signature hereto or set forth in the Lender Assignment Agreement or at such other address or facsimile number as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when transmitted.

SECTION 10.3. Payment of Costs and Expenses. The Borrower agrees to pay on demand all reasonable expenses of the Agents and the Lead Arrangers (including the reasonable fees, internal charges and out-of-pocket expenses of counsel to the Agents and the Lead Arrangers, which attorneys may be employees of the Agents or Lead Arrangers, and of local counsel, if any, who may be retained by counsel to the Agents and the Lead Arrangers) in connection with

(a) the negotiation, preparation, syndication, due diligence, execution and delivery of this Agreement and of each other Loan Document, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to this Agreement or any other Loan Document as may from time to time hereafter be required, whether or not the transactions contemplated hereby are consummated, and

(b) the preparation and review of the form of any document or instrument relevant to this Agreement or any other Loan Document;

provided, however, that the Borrower shall not be obligated to pay for expenses incurred by the Agent or a Lender in connection with the assignment of Loans to an Assignee Lender pursuant to Section 10.11.1 or the sale of Loans to a Participant pursuant to Section 10.11.2, and the Borrower shall only be obligated to pay to the Agent an amount equal to $100 (unless otherwise agreed to by the Agent), multiplied by the then existing number of Lenders, in respect of each Competitive Bid Loan Request submitted by the Borrower (payable on the date of submission of such request).

The Borrower further agrees to pay, and to save the Agents and the Lenders harmless from all liability for, any stamp or other taxes which may be payable in connection with the execution or delivery of this Agreement, the borrowings hereunder, or the issuance of the Notes or any other Loan Documents. The Borrower also agrees to reimburse the Agents and each Lender upon demand for all reasonable out-of-pocket expenses (including attorneys' fees and legal expenses, and the allocated costs of staff counsel) incurred by the Agents or such Lender in connection with (x) the negotiation of any restructuring or "work-out", whether or not consummated, of any Obligations and (y) the enforcement of any Obligations.

SECTION 10.4. Indemnification. In consideration of the execution and delivery of this Agreement by each Lender and the extension of Commitments, the Borrower hereby indemnifies, exonerates and holds the Agents, the Lead Arrangers and each Lender and each of their respective officers, directors, employees and agents (collectively, the "Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages, and expenses incurred in connection therewith (irrespective of whether any such Indemnified Party is a party to the action for which indemnification hereunder is sought), including reasonable attorneys' fees and disbursements (collectively, the "Indemnified Liabilities"), incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to

(a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Loan;

(b) the entering into and performance of this Agreement and any other Loan Document by any of the Indemnified Parties;

(c) any investigation, litigation or proceeding related to any acquisition or proposed acquisition by the Borrower or any of its Subsidiaries of all or any portion of the stock or assets of any Person, whether or not the Agents, the Lead Arrangers or such Lender is party thereto;

(d) any investigation, litigation or proceeding related to any environmental cleanup, audit, compliance or other matter relating to the protection of the environment or the Release by the Borrower or any of its Subsidiaries of any Hazardous Material; or

(e) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releases from, any real property owned or operated by the Borrower or any Subsidiary thereof of any Hazardous Material (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law), regardless of whether caused by, or within the control of, the Borrower or such Subsidiary,

except for any such Indemnified Liabilities arising by reason of the relevant Indemnified Party's gross negligence or willful misconduct. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

SECTION 10.5. Survival. The obligations of the Borrower under Sections 4.3, 4.4, 4.5, 4.6, 10.3 and 10.4, and the obligations of the Lenders under Section 9.1, shall in each case survive any termination of this Agreement and the payment in full of all Obligations and the termination of all Commitments. The representations and warranties made by the Borrower in this Agreement and in each other Loan Document shall survive the execution and delivery of this Agreement and each such other Loan Document.

SECTION 10.6. Severability. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 10.7. Headings. The various headings of this Agreement and of each other Loan Document are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or such other Loan Document or any provisions hereof or thereof.

SECTION 10.8. Execution in Counterparts, Effectiveness, etc. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be executed by the Borrower and the Agent and shall be deemed to be an original and all of which shall constitute together but one and the same Agreement. This Agreement shall become effective when counterparts hereof executed on behalf of the Borrower and each Lender (or notice thereof satisfactory to the Agent) shall have been received by the Agent and notice thereof shall have been given by the Agent to the Borrower and each Lender.

SECTION 10.9. Governing Law; Entire Agreement. **THIS AGREEMENT, THE NOTES AND EACH OTHER LOAN DOCUMENT SHALL EACH BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.** This Agreement, the Notes and the other Loan Documents constitute the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

SECTION 10.10. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that:

(a) the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Agent and all Lenders; and

(b) the rights of sale, assignment and transfer of the Lenders are subject to Section 10.11.

SECTION 10.11. Sale and Transfer of Loans and Note; Participations in Loans and Note. Each Lender may assign, or sell participations in, its Loans and Commitments to one or more other Persons in accordance with this Section 10.11.

SECTION 10.11.1. Assignments. Any Lender,

(a) with the written consent of the Borrower, the Swing Line Lender and the Agent (which consent shall not be unreasonably delayed or withheld, and which consent, in the case of the Borrower, shall be deemed to have been given if the Borrower fails to deliver a written notice to the Agent on or before the tenth Business Day after receipt by the Borrower of the Agent's request for consent, stating, in reasonable detail, the reasons why the Borrower proposes to withhold such consent) may at any time assign and delegate to other commercial banks, other financial institutions or Approved Funds its Loans, Swing Line Loan participations and Commitments hereunder; provided, however, that if an Event of Default has occurred and is continuing, the consent of the Borrower shall not be required; and

(b) with notice to the Borrower, the Swing Line Lender and the Agent, but without the consent of the Borrower, the Swing Line Lender or the Agent, may assign and delegate to any of its Affiliates or to any other Lender or its Affiliates all or any portion of its Loans, Swing Line Loan participations and Commitments hereunder;

(each Person described in either of the foregoing clauses as being the Person to whom such assignment and delegation is to be made, being hereinafter referred to as an "Assignee Lender"), in a minimum aggregate amount of $10,000,000 (or such lesser amount as may be agreed to by the Borrower and the Agent, at their option) in the case of clause (a) above, and all of the Loans and Commitments of such Assignee Lender in the case of clause (b) above; provided, however, that any such Assignee Lender will comply, if applicable, with the provisions contained in the last sentence of Section 4.6 and further, provided, however, that, the Borrower and the Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned and delegated to an Assignee Lender until:

(i) written notice of such assignment and delegation, together with payment instructions, addresses and related information with respect to such Assignee Lender, shall have been given to the Borrower and the Agent by such Lender and such Assignee Lender;

(ii) such Assignee Lender shall have executed and delivered to the Borrower and the Agent a Lender Assignment Agreement, accepted by the Agent; and

(iii) the processing fees described below shall have been paid.

From and after the date that the Agent accepts such Lender Assignment Agreement, (x) the Assignee Lender thereunder shall be deemed automatically to have become a party hereto and to the extent that rights and obligations hereunder have been assigned and delegated to such Assignee Lender in connection with such Lender Assignment Agreement, shall have the rights and obligations of a Lender hereunder and under the other Loan Documents, and (y) the assignor Lender, to the extent that rights and obligations hereunder have been assigned and delegated by it in connection with such Lender Assignment Agreement, shall be released from its obligations hereunder and under the other Loan Documents but shall continue to be entitled to the benefits of the indemnity provisions hereunder for the period prior to such assignment. Within five Business Days after its receipt of notice that the Agent has received an executed Lender

Assignment Agreement, the Borrower shall execute and deliver to the Agent (for delivery to the relevant Assignee Lender) a new Note evidencing such Assignee Lender's assigned Loans and Commitments, and, if the assignor Lender has retained Loans and a Commitment hereunder, a replacement Note in the principal amount of the Loans and Commitment retained by the assignor Lender hereunder (such Note to be in exchange for, but not in payment of, that Note then held by such assignor Lender). Each such Note shall be dated the date of the predecessor Note. The assignor Lender shall mark the predecessor Note "exchanged" and deliver it to the Borrower. Accrued interest on that part of the predecessor Note evidenced by the new Note, and accrued fees, shall be paid as provided in the Lender Assignment Agreement. Accrued interest on that part of the predecessor Note evidenced by the replacement Note shall be paid to the assignor Lender. Accrued interest and accrued fees shall be paid at the same time or times provided in the predecessor Note and in this Agreement. Such assignor Lender or such Assignee Lender must also pay a processing fee to the Agent upon delivery of any Lender Assignment Agreement in the amount of $3,500 (provided, however, that such processing fee shall not be required to be paid by a Lender in the case of an assignment of such Lender's Loans and Commitments to an Affiliate or Subsidiary of such Lender). Any attempted assignment and delegation not made in accordance with this Section 10.11.1 shall be null and void. Notwithstanding anything to the contrary set forth above, any Lender may (without requesting the consent of the Borrower, the Swing Line Lender or the Agent) pledge its Loans to a Federal Reserve Bank in accordance with applicable regulations. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in Section 10.1.1, any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This section may not be amended without the written consent of each Granting Lender, all or any of whose Loans are being funded by an SPC at the time of such amendment. It is understood and acknowledged that

the Granting Lender shall for all purposes, including, without limitation, the approval of any amendment or waiver of any provision of any Loan Document or the obligation to pay any amount otherwise payable by the Granting Lender under the Loan Documents, continue to be the Lender of record hereunder.

As used herein, (i) the term "Approved Fund" means any Fund that is administered or managed by (A) a Lender, (B) an Affiliate of a Lender or (C) an entity or an Affiliate of any entity that administers or manages a Lender and (ii) the term "Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

SECTION 10.11.2. Participations. Any Lender may at any time sell to one or more commercial banks or other Persons (each of such commercial banks and other Persons being herein called a "Participant") participating interests in any of the Loans, its Commitment, or other interests of such Lender hereunder; provided, however, that

(a) no participation contemplated in this Section 10.11 shall relieve such Lender from its Commitment or its other obligations hereunder or under any other Loan Document;

(b) such Lender shall remain solely responsible for the performance of its Commitment and such other obligations;

(c) the Borrower and the Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents;

(d) no Participant, unless such Participant is an Affiliate of such Lender, or is itself a Lender, shall be entitled to require such Lender to take or refrain from taking any action hereunder or under any other Loan Document, except that such Lender may agree with any Participant that such Lender will not, without such Participant's consent, take any actions of the type described in clause (b) or (c) of Section 10.1; and

(e) the Borrower shall not be required to pay any amounts to a Lender under Sections 4.3, 4.4, 4.5, 4.6, 4.8, 4.9, 10.3 and 10.4 or otherwise, that are greater than the amounts which it would have been required to pay to such Lender had no participating interest been sold.

SECTION 10.12. Other Transactions. Nothing contained herein shall preclude the Agent or any other Lender from engaging in any transaction, in addition to those contemplated by this Agreement or any other Loan Document, with the Borrower or any of its Affiliates in which the Borrower or such Affiliate is not restricted hereby from engaging with any other Person.

SECTION 10.13. Forum Selection and Consent to Jurisdiction. **ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF**

CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE AGENT, THE LENDERS OR THE BORROWER SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. THE BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL TO THE CORPORATE SECRETARY, POSTAGE PREPAID, AND WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF THE STATE OF NEW YORK. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT THE BORROWER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OF FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE BORROWER HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 10.14. WAIVER OF JURY TRIAL. **THE AGENT, THE LENDERS AND THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE AGENT, THE LENDERS OR THE BORROWER. THE BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENT AND THE LENDERS ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT.**

[signature pages to follow]

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

McCORMICK & COMPANY, INCORPORATED

By: /s/ Christopher J. Kurtzman
Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. Geoffrey Carpenter
W. Geoffrey Carpenter
Title: Assistant Secretary

Address: 18 Loveton Circle

Sparks, MD 21152

Facsimile No.: (410) 527-8228

Attn: Secretary

WACHOVIA BANK, N.A.,
as Administrative Agent

By: /s/ Meg Beveridge
Printed Name: Meg Beveridge
Title: Vice President

191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303
Attention: Michael Adams
Facsimile No.: (404) 332-5144

PERCENTAGE

8.58%

LENDERS

WACHOVIA BANK, N.A.

By: /s/ Meg Beveridge
Printed Name: Meg Beveridge
Title: Vice President

191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303
Attention: Michael Adams
Facsimile No.: (404) 332-5144

PERCENTAGE

17.14%

LENDERS

BANK OF AMERICA, N.A.

By: /s/ William F. Sweeney
Printed Name: William F. Sweeney
Title: Managing Director

Address: 219 South LaSalle Street
Chicago, IL 60697

Facsimile No.: (312) 987-1276

Attn: William F. Sweeney

PERCENTAGE

17.14%

LENDERS

SUNTRUST BANK

By: /s/ Paul R. Beliveau
Printed Name: Paul R. Beliveau
Title: Vice President

Address: 120 East Baltimore Street

Baltimore, MD 21202

Facsimile: (410) 986-1670

Attn:

PERCENTAGE

14.29%

LENDERS

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Brad Hardy
Printed Name: Brad Hardy
Title: Vice President

By: /s/ Roy H. Roberts
Printed Name: Roy Roberts
Title: Vice President

Address: 70 E. 55th Street, 11th Floor
New York, NY 10022

Facsimile No.: (212) 593-5241

Attn: Lori Ross

PERCENTAGE

8.58%

LENDERS

ALLFIRST BANK

By: /s/ Frank V. Lago
Printed Name: Frank V. Lago
Title: Vice President

Address: 25 South Charles Street
Baltimore, MD 21201

Facsimile No.: (410) 244-4294

Attn: Frank V. Lago

PERCENTAGE

7.14%

LENDERS

CREDIT SUISSE FIRST BOSTON

By: /s/ Andrea E. Shkane
Printed Name: Andrea E. Shkane
Title: Vice President

Address: Eleven Madison Avenue
New York, NY 10019

Facsimile No.: (212) 325-8320

Attn: Jay Chall

By: /s/ David Sawyer
Printed Name: David Sawyer
Title: Vice President

PERCENTAGE

7.14%

LENDERS

BNP PARIBAS

By: /s/ Nanette Baudon
Printed Name: Nanette Baudon
Title: Vice President

By: /s/. Richard Pace
Printed Name: Richard Pace
Title: VP–Corporate Banking Division

Address: 787 7th Avenue, 31st Floor
New York, NY 10019

Facsimile No.: (212) 841-3049

Attn: Nanette Baudon

PERCENTAGE

7.14%

LENDERS

THE BANK OF NEW YORK

By: /s/ Steven P. Cavaluzzo
Printed Name: Steven P. Cavaluzzo
Title: Vice President

Address: 1 Wall Street, 22nd Floor
New York, NY 10286

Facsimile No.: (212) 635-6434

Attn: Steven P. Cavaluzzo

PERCENTAGE

7.14%

LENDERS

THE FUJI BANK, LIMITED

By: /s/ Raymond Ventura
Printed Name: Raymond Ventura
Title: Senior Vice President

Address: Two World Trade Center
New York, NY 10048-0042

Facsimile No.: (212) 321-9407

Attn: Alejandro D. Waldman

PERCENTAGE

5.71%

LENDERS

MELLON BANK, N.A.

By: /s/ David H. Reed
Printed Name: David H. Reed
Title: First Vice President

Address: 8521 Leesberg Pike, Ste. 405
Vienna, VA 22182

Facsimile No.: (410) 778-9448

Attn: Peter Heller

SCHEDULE I

DISCLOSURE SCHEDULE

ITEM 6.7 Litigation.

None.

ITEM 6.8 Existing Subsidiaries as of the Effective Date.

Attached - Exhibit A.

ITEM 6.11 Employee Benefit Plans.

Attached - Exhibit B.

ITEM 6.12 Environmental Matters.

None.

ITEM 7.2.3 Existing Liens.

Attached - Exhibit C.

EXHIBIT A

THE AMERICAS MARKET ZONE

U.S. Consumer Products Division
- Ampacco, Inc. (Maryland)
- Han-Dee Pak, Inc. (Maryland)
- McCormick de Puerto Rico, Inc. (Delaware)
- Mojave Foods Corporation (Maryland)
  - El Guapo Foods, Inc. (California)
  - More For Less, Inc. (Delaware)
  - Produce Partners, Inc. (Illinois)
  - Old Bay Company, Inc. (Delaware)
- McCormick Holding Company, Inc. (Delaware)
  - Signature Brands, LLC (Florida)
- McCormick Investment Company, Inc. (Delaware)
  - McCormick Fresh Herbs, LLC (Delaware)

McCormick de Centro America, S.A. de C.V. (El Salvador)

EUROPEAN MARKET ZONE

McCormick Europe Ltd. (United Kingdom)
- McCormick International Holdings Ltd. (United Kingdom)
  - McCormick France S.A.S. (France)
    - Ducros S.A.S. (France)
      - Dessert Products International (France)
    - Sodis S.A.S. (France)
    - McCormick Management Services S.A.R.L. (France)
- McCormick (U.K.) Ltd. (Scotland)
  - Bluebroad 1 Limited (England)
  - McCormick Baharat de Gida Sanay A.S. (Turkey)
  - McCormick Glentham (Pty) Limited (South Africa)
  - McCormick Kutas Food Services Ltd. (United Kingdom)
  - Noel Holdings Limited (England)
    - McCormick Foodservice Ltd. (England)

McCormick S.A. (Switzerland)

Oy McCormick Ab (Finland)

ASIAN MARKET ZONE

McCormick Foods Australia Pty. Ltd. (Australia)
- Traders Pty. Ltd. (Australia)

McCormick (Guangzhou) Food Company Limited (China)

McCormick India Private Limited (India) (100% owned subsidiary of McCormick (U.K.) Ltd.

Shanghai McCormick Foods Company, Limited (China) (90% owned)

GLOBAL INDUSTRIAL GROUP

Food Service Division

McCormick Flavor Group
- McCormick Ingredients Southeast Asia Private Limited
- Classic Foods, Inc. (Connecticut)
- McCormick Pesa, S.A. de C.V. (Mexico)
- McCormick Uruguay Holdings, Inc. (Delaware)
  - McCormick Uruguay, S.A. (Uruguay)

La Cie McCormick Canada Co

Packaging Group
- Setco, Inc. (Delaware)
- Tubed Products, Inc. (Maryland)
  - OG Dehydrated, Inc. (California)

MISCELLANEOUS

AH Investments, Inc. (Maryland)
Armanino Farms of California, Inc. (California)
International Ingredients, Inc. (Maryland)
McCormick Credit, Inc. (Delaware)
McCormick Delaware, Inc. (Delaware)
McCormick Foreign Sales Corporation (U.S. Virgin Islands)
McCormick Ingredientes Brasil Ltda. (Brazil)
- McCormick Global Ingredients Limited (Cayman)
  - McCormick Cyprus Limited (Cyprus)
    - McCormick Hungary Group Financing Limited Liability Company (Hungary)
    - McCormick Europe Ltd. (United Kingdom)
      - McCormick (U.K.) Ltd. (Scotland)
      - McCormick International Holdings Ltd. (United Kingdom)
        - La Cie McCormick Canada Co. (Canada)
          - McCormick Foods Australia Pty. Ltd. (Australia)

REVOLVING LOAN NOTE

U.S. $38,565,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of SUNTRUST BANK (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of THIRTY-EIGHT MILLION FIVE HUNDRED SIXTY-FIVE THOUSAND AND 00/100 UNITED STATES DOLLARS (U.S. $38,565,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY, INCORPORATED

By: /s/ Christopher J. Kurtzman

Title: Vice President & Treasurer

By: /s/ W. G. Carpenter

Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $38,565,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of BANK OF AMERICA, N.A. (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of THIRTY-EIGHT MILLION FIVE HUNDRED SIXTY-FIVE THOUSAND AND 00/100 UNITED STATES DOLLARS (U.S. $38,565,000) UNITED STATES DOLLARS (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $32,152,500 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of THIRTY-TWO MILLION ONE HUNDRED FIFTY-TWO THOUSAND FIVE HUNDRED 00/100 UNITED STATES DOLLARS (U.S. $32,152,500) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $19,305,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of WACHOVIA, N.A. (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of NINETEEN MILLION THREE HUNDRED FIVE THOUSAND AND 00/100 UNITED STATES DOLLARS (U.S. $19,305,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of the Revolving Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $19,305,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of ALLFIRST BANK (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of NINETEEN MILLION THREE HUNDRED FIVE THOUSAND AND 00/100 UNITED STATES DOLLARS (U.S. $19,305,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the

principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $16,065,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of CREDIT SUISSE FIRST BOSTON (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of SIXTEEN MILLION SIXTY-FIVE THOUSAND 00/100 UNITED STATES DOLLARS (U.S. $16,065,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $16,065,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of BNP PARIBAS (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of SIXTEEN MILLION SIXTY-FIVE THOUSAND 00/100 UNITED STATES DOLLARS (U.S. $16,065,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $16,065,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of BANK OF NEW YORK (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of SIXTEEN MILLION SIXTY-FIVE THOUSAND 00/100 UNITED STATES DOLLARS (U.S. $16,065,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $16,065,000 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of THE FUJI BANK, LTD. (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of SIXTEEN MILLION SIXTY-FIVE THOUSAND 00/100 UNITED STATES DOLLARS (U.S. $16,065,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

REVOLVING LOAN NOTE

U.S. $12,847,500 June 19, 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of MELLON BANK, N.A. (the "Lender") on the Maturity Date (as such term in defined in the 364-Day Credit Agreement, dated as of

June 19, 2001 (as amended or modified from time to time, the "Credit Agreement")), among the Borrower, Wachovia, N.A., as the administrative agent (the "Agent"), and the various financial institutions (including the Lender) as are, or may become parties thereto, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower from time to time pursuant to the Credit Agreement, the principal sum of TWELVE MILLION EIGHT HUNDRED FORTY-SEVEN THOUSAND FIVE HUNDRED AND 00/100 UNITED STATES DOLLARS (U.S. $12,847,500) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender pursuant to the Credit Agreement. A notation indicating all Revolving Loans made by the Lender pursuant to the Credit Agreement and payments on account of the principal of such Revolving Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

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McCORMICK & COMPANY,
INCORPORATED

By: /s/ Christopher J. Kurtzman
Title: Vice President & Treasurer

By: /s/ W. G. Carpenter
Title: Assistant Secretary

Date	Amount of Loans and Currency	Alternate Base Rate	LIBO Rate	Last Day of Applicable Interest Period	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

FORM OF COMPETITIVE BID LOAN NOTE

U.S. $225,000,000 June , 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), promises to pay to the order of (the "Lender") on the earlier of (i) each Competitive Bid Loan Maturity Date (as such term is defined in that certain 364-Day Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among the Borrower, Wachovia, N.A., as administrative agent (the "Agent"), and the various financial institutions, including the Lender, as are, or may from time to time become parties thereto), the aggregate unpaid principal amount of all Competitive Bid Loans made by the Lender to the Borrower pursuant to Section 2.3 of the Credit Agreement to which such Competitive Bid Loan Maturity Date applies and (ii) the Maturity Date (as defined in the Credit Agreement), the principal sum of TWO HUNDRED TWENTY-FIVE MILLION UNITED STATES DOLLARS (U.S. DOLLARS (U.S. $225,000,000) (or the Foreign Currency Equivalent of any currency which the Borrower may borrow under the Credit Agreement) or, if less, the unpaid principal amount of all Competitive Bid Loans made by the Lender to the Borrower from time to time pursuant to Section 2.3 of the Credit Agreement. A notation indicating all Competitive Bid Loans made by the Lender pursuant to the Credit Agreement and all payments on account of the principal of such Loans may, from time to time, be made by the holder hereof on the grid attached to this note (this "Note"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The unpaid principal amount of this Note from time to time outstanding shall bear interest as provided in Section 3.3.1 of the Credit Agreement. All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America (or the other currency borrowed) to the account designated by the Agent in same day or immediately available funds.

This Note is one of the Notes referred to in, and evidences indebtedness incurred in respect of Competitive Bid Loans under, the Credit Agreement, to which reference is made for a description of any security for this Note and for a statement of the terms and conditions on which the Borrower is permitted

and required to make prepayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be immediately due and payable.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY, INCORPORATED

By: _____

Title: _____

By: _____

Title: _____

Date	Amount of Loan	Competitive Bid Loan Maturity Date	Competitive Bid Loan Interest Payment Date	Amount of Interest Payment	Amount of Principal Payment	Outstanding Principal Balance	Notation Made By

FORM OF SWING LINE NOTE

$15,000,000 June , 2001

FOR VALUE RECEIVED, the undersigned, McCORMICK & COMPANY, INCORPORATED, a Maryland corporation (the "Borrower"), hereby promises to pay to the order of WACHOVIA, N.A. ("Swing Line Lender"), on the date when due in accordance with the Credit Agreement referred to below, the aggregate principal amount of each Swing Line Loan from time to time made by the Swing Line Lender to the Borrower under that certain Revolving Credit Agreement, dated as of June 19, 2001 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among the Borrower, the Lenders from time to time party thereto, and Wachovia, N.A., as administrative agent and Swing Line Lender.

The Borrower promises to pay interest on the unpaid principal amount of each Swing Line Loan from the date of such Swing Line Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement.

All payments of principal and interest shall be made to the Swing Line Lender in Dollars in immediately available funds at its Lending Office.

If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is the Swing Line Note referred to in the Credit Agreement, is entitled to the benefits thereof and is subject to prepayment in whole or in part as provided therein. Upon the occurrence of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. Swing Line Loans made by the Swing Line Lender shall be evidenced by one or more loan accounts or records maintained by Swing Line Lender in the ordinary course of business. The Swing Line Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of the Swing Line Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

McCORMICK & COMPANY, INCORPORATED

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT B
EMPLOYEE BENEFIT PLANS

7. PENSION AND PROFIT SHARING PLANS

The Company's pension expense is as follows:

	United States			International		
(millions)	**2000**	**1999**	**1998**	**2000**	**1999**	**1998**
Defined benefit plans						
Service cost	$ 7.1	$ 7.4	$ 6.2	$ 2.7	$ 2.8	$ 2.7
Interest costs	13.8	12.7	11.4	3.3	3.2	3.2
Expected return on plan assets	(15.5)	(13.2)	(11.2)	(4.7)	(5.2)	(4.9)
Amortization of prior service costs	.1	.1	.1	.1	.1	.1
Amortization of transition assets	.2	(.6)	(.5)	(.1)	(.1)	(.1)
Curtailment loss	—	—	—	—	.2	—
Recognized net actuarial loss (gain)	1.3	3.3	1.6	—	(.1)	(.3)
Other retirement plans	—	.1	.2	.5	.7	.8
	$ 7.0	$ 9.8	$ 7.8	$ 1.8	$ 1.6	$ 1.5

The Company's U.S. pension plans held .5 million shares, with a fair value of $17.9 million, of the Company's stock at November 30, 2000. Dividends paid on these shares in 2000 were $.4 million.

Rollforwards of the benefit obligation, fair value of plan assets and a reconciliation of the pension plans' funded status at September 30, the measurement date, follow:

	United States		International	
(millions)	**2000**	**1999**	**2000**	**1999**
Change in benefit obligation				
Beginning of the year	**$ 176.5**	$ 185.5	**$ 58.9**	$ 49.8
Service cost	**7.1**	7.4	**2.7**	2.8
Interest costs	**13.8**	12.7	**3.3**	3.2
Employee contributions	**—**	—	**1.2**	1.1
Plan changes and other	**.6**	.3	**—**	—
Curtailment	**—**	—	**—**	.4
Actuarial loss (gain)	**.6**	(17.7)	**.6**	4.2
Benefits paid	**(11.7)**	(11.7)	**(2.1)**	(2.2)
Foreign currency impact	**—**	—	**(5.6)**	(.4)
End of the year	**$ 186.9**	$ 176.5	**$ 59.0**	$ 58.9
Change in fair value of plan assets				
Beginning of the year	**$ 169.0**	$ 141.2	**$ 60.7**	$ 57.9
Actual return on plan assets	**16.6**	16.9	**10.5**	4.4
Transfer	**—**	.4	**—**	—
Employer contributions	**9.2**	22.2	**1.1**	—
Employee contributions	**—**	—	**1.2**	1.1
Benefits paid	**(11.7)**	(11.7)	**(2.1)**	(2.2)
Foreign currency impact	**—**	—	**(5.8)**	(.5)
End of the year	**$ 183.1**	$ 169.0	**$ 65.6**	$ 60.7
Reconciliation of funded status				
Funded status	**$ (3.9)**	$ (7.5)	**$ 6.6**	$ 1.8
Unrecognized net actuarial loss (gain)	**24.6**	26.2	**(7.6)**	(2.9)
Unrecognized prior service cost	**.2**	.3	**.5**	.7
Unrecognized transition asset (liability)	**.5**	.6	**(.3)**	(.4)
Employer contribution	**—**	—	**.3**	—
	$ 21.4	$ 19.6	**$ (.5)**	$ (.8)

Amounts recognized in the Consolidated Balance Sheet consist of the following:

(millions)	United States 2000	United States 1999	International 2000	International 1999
Prepaid pension cost	**$ 21.4**	$ 19.6	**$ .5**	$ .4
Accrued pension liability	**—**	—	**(1.0)**	(1.2)
	$ 21.4	$ 19.6	**$ (.5)**	$ (.8)

The accumulated benefit obligation for the U.S. pension plans was $152.4 million and $144.5 million as of September 30, 2000 and 1999, respectively.

(millions)	United States 2000	United States 1999	International 2000	International 1999
Significant assumptions				
Discount rate	**8.0%**	8.0%	**6.0-6.5%**	6.0-6.5%
Salary scale	**4.5%**	4.5%	**3.5-4.0%**	3.5-4.0%
Expected return on plan assets	**10.0%**	10.0%	**8.5%**	8.5%

Cumulative effect of an accounting change

In 1999, the Company changed its actuarial method of calculating the market-related value of plan assets used in determining the expected return-on-asset component of annual pension expense. This modification resulted in a cumulative effect of accounting change credit of $4.8 million after-tax or $.07 per share ($7.7 million before tax) recorded in the first quarter of 1999. Under the previous method, all realized and unrealized gains and losses were gradually included in the calculated market-related value of plan assets over a five-year period. Under the new method, the total expected investment return, which anticipates realized and unrealized gains and losses on plan assets, is included in the calculated market-related value of plan assets each year. Only the difference between total actual investment return, including realized and unrealized gains and losses, and the expected investment return is gradually included in the calculated market-related value of plan assets over a five-year period.

Under the new actuarial method, the calculated market-related value of plan assets more closely approximates fair value, while still mitigating the effect of annual market value fluctuations. It also reduces the growing difference between the fair value and calculated market-related value of plan assets that has resulted from the recent accumulation of unrecognized gains and losses. While this change better represents the amount of ongoing pension expense, the new method did not have a material impact on the Company's results of operations in 2000 or 1999 and is not expected to have a material impact in future years. The pro-forma impact of applying the change to 1998 was not material.

Profit Sharing Plan

Profit sharing plan expense was $5.8 million, $6.0 million and $4.2 million in 2000, 1999 and 1998, respectively.

The Profit Sharing Plan held 2.2 million shares, with a fair value of $83.1 million, of the Company's stock at November 30, 2000. Dividends paid on these shares in 2000 were $1.7 million.

EXHIBIT B

8. OTHER POSTRETIREMENT BENEFITS

The Company's other postretirement benefit expense follows:

(millions)	2000	1999	1998
Other postretirement benefits			
Service cost	**$ 2.4**	$ 2.6	$ 2.1
Interest cost	**5.3**	4.9	4.4
Amortization of prior service cost	**(.7)**	(.1)	(.1)
Accelerated recognition of prior unrecognized service cost	**(.6)**	—	—
	$ 6.4	$ 7.4	$ 6.4

Rollforwards of the benefit obligation, fair value of plan assets and a reconciliation of the plan's funded status at November 30, the measurement date, follow:

(millions)	2000	1999
Change in benefit obligation		
Beginning of the year	**$ 65.1**	$ 69.8
Service cost	**2.4**	2.6
Interest cost	**5.3**	4.9
Employee contributions	**1.7**	1.6
Plan changes	**—**	(6.1)
Actuarial loss (gain)	**2.0**	(2.7)
Benefits paid	**(5.2)**	(5.0)
End of the year	**$ 71.3**	$ 65.1
Change in fair value of plan assets		
Beginning of the year	**$ —**	$ —
Employer contributions	**3.5**	3.4
Employee contributions	**1.7**	1.6
Benefits paid	**(5.2)**	(5.0)
End of the year	**$ —**	$ —
Reconciliation of funded status		
Funded status	**$ (71.3)**	$ (65.1)

Unrecognized net actuarial loss (gain)	**1.8**	(.2)
Unrecognized prior service cost	**(6.0)**	(7.3)
Other postretirement benefit liability	**$ (75.5)**	$ (72.6)

The assumed weighted-average discount rates were 8.0% for 2000 and 1999, respectively.

The assumed annual rate of increase in the cost of covered health care benefits is 7.65% for 2000. It is assumed to decrease gradually to 5.25% in the year 2007 and remain at that level thereafter. Changing the assumed health care cost trend would have the following effect:

(millions)	1-Percentage-Point Increase	1-Percentage-Point Decrease
Effect on benefit obligation as of November 30, 2000	$ 8.0	$ (7.0)
Effect on total of service and interest cost components in 2000	$ 1.0	$ (.8)

FORM OF REVOLVING LOAN BORROWING REQUEST

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

This Revolving Loan Borrowing Request is delivered to you pursuant to clause (b) of Section 2.1 of the Revolving Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the Lenders now or hereafter parties thereto and Wachovia, N.A., as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby requests that a Revolving Loan Borrowing be made in the aggregate principal amount of [$U.S.] [£] [DM] [¥] [Euro] on , as [a Base Rate Loan] [a LIBO Rate Loan having an interest period of months].

The Borrower hereby certifies and warrants that on the date the Revolving Loan Borrowing requested hereby is made (both before and after giving effect to such Revolving Loan Borrowing);

(a) the representations and warranties set forth in Article VI of the Credit Agreement are and will be true and correct as if then made pursuant to Section 5.2.1 of the Credit Agreement;

(b) no Default or Event of Default has occurred and is continuing or will have occurred and be continuing; and

(c) the aggregate amount of the requested Revolving Loan Borrowing and all other Loans outstanding on the date of the requested Revolving Loan Borrowing does not and will not exceed the Commitment Amount.

The undersigned hereby confirms that the requested Revolving Loan Borrowing is to be made available to it in accordance with Section 2.1 of the Credit Agreement. If on the date of the Revolving Loan Borrowing there are Swing Line Loans outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such Swing Line Loans, and second, to the Borrower as provided below in this Revolving Loan Borrowing Request.

The Borrower agrees that if prior to the time of the Borrowing requested hereby any matter certified to herein by it will not be true and correct at such time as if then made, it will immediately so notify the Agent. Except to the extent, if any, that prior to the time of the Revolving Loan Borrowing requested hereby the Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed once again to be certified an true and correct at the date of such Borrowing as if then made.

Subject to the above, please wire transfer the proceeds of the Revolving Loan Borrowing to the following account of the Borrower: Account No. , (Name and address of depository bank).

The Borrower has caused this Revolving Loan Borrowing Request to be executed and delivered, and the certificate and warranties contained herein to be made, by its duly Authorized Officer this day of , .

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

FORM OF COMPETITIVE BID LOAN BORROWING REQUEST

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

This Competitive Bid Loan Borrowing Request is delivered to you pursuant to clause (a) of Section 2.3 of the Revolving Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the Lenders now or hereafter parties thereto and Wachovia, N.A., as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby proposes that a Competitive Bid Loan Borrowing be made on the following terms:

A. 1. Date of Competitive Bid Loan Borrowing:*

2. Amount of Competitive Bid Loan Borrowing:** [U.S.$] [£] [DM] [¥] [Euro] [Non-Major Alternate Currency]

3. The Competitive Bid Loan will be based on a [LIBO Rate Bid Margin] [Fixed Rate]

4. Competitive Bid Loan Maturity Date for repayment of such Competitive Bid Loan***

5. Competitive Bid Loan Interest Payment

---

* Must be at least five Business Days after the delivery of this competitive Bid Loan Borrowing Request.

** The amount shall be in a minimum principal amount of $5,000,000 and in an integral multiple of $1,000,000.

*** Which maturity date may not be earlier than the date occurring seven days after the date of such Competitive Bid Loan Borrowing or later than the date occurring 183 days after the date of such Competitive Bid Loan Borrowing.

Date(s):

****B. 1. Date of Competitive Bid Loan Borrowing:

2. Amount of Competitive Bid Loan Borrowing: [U.S.$] [£] [DM] [¥] [Euro] [Non-Major Alternate Currency]

3. The Competitive Bid Loan will be based on a [LIBO Rate Bid Margin] [Fixed Rate]

4. Competitive Bid Loan Maturity Date for repayment of such Competitive Bid Loan:

5. Competitive Bid Loan Interest Payment Date(s):

C. 1. Date of Competitive Bid Loan Borrowing:

2. Amount of Competitive Bid Loan Borrowing: [U.S.$] [£] [DM] [¥] [Euro]

[Non-Major Alternate Currency]

3. The Competitive Bid Loan will be based on a [LIBO Rate Bid Margin] [Fixed Rate]

4. Competitive Bid Loan Maturity Date for repayment of such Competitive Bid Loan:

5. Competitive Bid Loan Interest Payment Date(s):

The Borrower hereby certifies and warrants that on the date the Competitive Bid Loan Borrowing proposed hereby is made (both before and after giving effect to such Borrowing):

(a) the representative and warranties set forth in Article VI of the Credit Agreement are and will be true and correct as if then made pursuant to Section 5.2.1 of the Credit Agreement;

**** Insert if more than one Competitive Bid Loan Borrowing is requested.

(b) no Default or Event of Default has occurred and is continuing or will have occurred and be continuing; and

(c) the aggregate amount of the proposed Competitive Bid Loan Borrowing and all other Loans outstanding after giving effect to such Competitive Bid Loan (and any prepayments required pursuant to Section 2.3 of the Credit Agreement) will not exceed the Commitment Amount.

The undersigned hereby confirms that the proposed Competitive Bid Loan Borrowing is to be made available to it in accordance with Section 2.3 of the Credit Agreement.

The Borrower agrees that if prior to the time of the Competitive Bid Loan Borrowing requested hereby any matter certified to herein by it will not be true and correct at such time as if then made, it will immediately so notify the Agent. Except to the extent, if any, that prior to the time of the Competitive Bid Loan Borrowing proposed hereby the Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed once again to be certified as true and correct at the date of such Borrowing as if then made.

The Borrower has caused this Competitive Bid Loan Borrowing Request to be executed and delivered, and the certification and warranties contained herein to be made, by its duly Authorized Officer this day of , .

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

SWING LINE LOAN BORROWING REQUEST

Date: ,

To: Wachovia, N.A., as Swing Line Lender
Wachovia, N.A., as Administrative Agent

Attn: Meg Beveridge

Re: McCormick & Company, Incorporated

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement, dated as of June 19, 2001 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement;" the terms defined therein being used herein as therein defined), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the Lenders from time to time party thereto, and Wachovia, N.A., as administrative agent and Swing Line Lender.

The undersigned hereby requests a Swing Line Loan:

1. On (a Business Day).
2. In the amount of $.

The Swing Line Borrowing requested herein complies with the requirements of the proviso to the first sentence of Section 2.4(a) of the Agreement.

MCCORMICK & COMPANY, INCORPORATED

By: _____
Name: _____
Title: _____

EXHIBIT C
EXISTING LIENS

(as of 5/31/01, in thousands)

	Current	Long Term	Total	
Capital Lease Liability				
McCormick Foods Australia	55	98	153	Autos
McCormick Pesa	34	352	692	Computers
Industrial Revenue Bonds				
Tubed Products (Oxnard, California)	0	3,050	3,050	
Mortgages				
(none outstanding)				

FORM OF INVITATION FOR BID LOAN QUOTES

[NAME OF LENDER] [DATE]

Attention:

Invitation for Bid Loan Quotes to
McCormick & Company, Incorporated (the "Borrower")

Pursuant to clause (b) of Section 2.3 of the Revolving Credit Agreement dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement") (unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement)), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), Wachovia, N.A., as administrative agent (the "Agent") and the Lenders now or hereafter parties thereto, we are pleased on behalf of the Borrower to invite you to submit Bid Loan Quotes to the Borrower for the following proposed Competitive Bid Loan(s):

*1. Date of Proposed Competitive Bid Loan: , .

2. Principal Amount
[U.S.$] [£] [DM] [¥] [Euro] [Non-Major Alternate Currency] .

3. The Competitive Bid Loan Maturity Date will be , .

4. The Competitive Bid Loan Interest Payment Date will be , .

PLEASE RESPOND TO THIS INVITATION BY NO LATER THAN [ ] (NEW YORK CITY TIME) ON , .

Wachovia, N.A., as Administrative Agent

By: _____
Title:

* Information to be repeated if multiple Competitive Bid Loans have been made in respect of a single Competitive Bid Loan Borrowing Request.

FORM OF COMPETITIVE BID LOAN OFFER

Date: ,

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen:

This Competitive Bid Loan Offer in delivered to you pursuant to clause (c) of Section 2.3 of the Revolving Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), Wachovia, N.A., as administrative agent (the "Agent"), and the Lenders now or hereafter parties thereto. Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The undersigned Lender hereby makes a Competitive Bid Loan offer in response to the Competitive Bid Loan Borrowing Request made by the Borrower on [,], and in that connection, sets forth the terms on which such Competitive Bid Loan Offer is made:

1*.	Date of Competitive Bid Loan:	,	
2.	Principal amount of Competitive Bid Loan [U.S.$] [£] [DM] [¥] [Euro] [Non-Major Alternate Currency]		
3.	Competitive Bid Loan Maturity will be	,	**
4.	Competitive Bid Loan Interest Payment Date(s) will be	, ,	***

* Information to be repeated if multiple Competitive Bid Loans have been made in respect of a single Competitive Bid Loan Borrowing Request.

** Insert the appropriate date specified in the Competitive Bid Loan Borrowing Request described in the second paragraph hereof.

*** Insert the appropriate date(s) specified in the Competitive Bid Loan Borrowing Request described in the second paragraph hereof.

5.	Competitive Bid Rate: [LIBO Rate Bid Margin] [Fixed Rate]	% per annum

We understand and agree that the offer(s) set forth above, subject to the satisfaction of the applicable conditions set forth in the Credit Agreement irrevocably obligates us to make the Competitive Bid Loan(s) for which any offer(s) are accepted, in whole or in part.

[NAME OF LENDER]

By: _____
Name:
Title:

FORM OF COMPETITIVE BID LOAN ACCEPTANCE

Wachovia, N.A., as Administrative Agent
191 Peachtree Street

Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

This Competitive Bid Loan Acceptance is delivered to you pursuant to clause (e) of Section 2.3 of the Revolving Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated a Maryland corporation (the "Borrower"), Wachovia, N.A., as administrative agent (the "Agent") and the Lenders now or hereafter parties thereto. Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

*The Borrower hereby accepts the Competitive Bid Loan Offer, dated , , made by [NAME OF LENDER] on the following terms:

1. Date of Competitive Bid Loan:** ,

2. Principal amount of Competitive Bid Loan
[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency]

3. Competitive Bid Loan Maturity Date:

4. Competitive Bid Rate:
[LIBO Rate Bid Margin Rate % per annum]
[Fixed Rate % per annum]

5. Competitive Bid Loan Interest Payment Date(s): ** ,
,

---

* Repeat this paragraph (and information contained therein) for each Lender whose Competitive Bid Loan Offer is accepted by the Borrower or for multiple Competitive Bid Loans.

** Terms must conform to the Competitive Bid Loan Borrowing Request referred to in the Competitive Bid Loan Offer relating to such Borrowing.

We undersigned hereby confirms that it accepted such Competitive Bid Loan Offer in accordance with clause (e)(ii) of Section 2.3 of the Credit Agreement.

The Borrower hereby certifies and warrants that on the date the Competitive Bid Loan Borrowing proposed hereby is made (both before and after giving effect to such Borrowing):

(a) the representative and warranties set forth in Article VI of the Credit Agreement are and will be true and correct as if then made pursuant to Section 5.2.1 of the Credit Agreement;

(b) no Default or Event of Default has occurred and is continuing or will have occurred and be continuing; and

(c) the aggregate amount of the proposed Competitive Bid Loan Borrowing and all other Loans outstanding after giving effect to such Competitive Bid Loan (and any prepayments required pursuant to Section 2.3 of the Credit Agreement) will not exceed the Commitment Amount.

Please wire transfer the proceeds of the Competitive Bid Loan(s) to the following account of the Borrower: Account No. [name and address of depository bank].

The Borrower has caused this Competitive Bid Loan Acceptance to be executed and delivered, and the certification and warranties contained herein to be made, by its duly Authorized Officer this day of , .

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

FORM OF COMPETITIVE BID LOAN BORROWING NOTICE

[Date]

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303

Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

This Competitive Bid Loan Borrowing Notice is delivered to you pursuant to clause (f) of Section 2.3 of the Revolving Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), Wachovia, N.A., as administrative agent (the "Agent"), and the Lenders now or hereafter parties thereto. Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower delivered to the Agent a Competitive Bid Loan Borrowing Request on [,]. In that connection, a Competitive Bid Loan Borrowing was made on , (the "Competitive Bid Loan Borrowing Date") with the following terms:

*1. Principal amount of Competitive Bid Loan Borrowing:

[Name of Lender]

[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency]

[Name of Lender]

[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency]

2. Amount of, and Competitive Bid Rate for [LIBO Rate Bid Margin] [Fixed Rate], each Competitive Bid Loan in such Competitive Bid Loan Borrowing:

* Information to be repeated if multiple Competitive Bid Loans have been made in respect of a single Competitive Bid Loan Borrowing Request.

[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency] at %
per annum in respect of Competitive Bid Loan made by [Name of Lender]

[U.S.$] [£] [DM] [¥] [Euro]
[Non-Major Alternate Currency] at %

per annum in respect of competitive Bid Loan made by [Name of Lender]

3. Competitive Bid Loan Maturity Date: ,

4. Competitive Bid Loan Interest Payment Date(s): ,
,

5. Competitive Bid Outstanding Balance **

The Borrower hereby confirms to the Agent that the Competitive Bid Loan Offer received by the Borrower in connection with the above-described Competitive Bid Loan Borrowing Request were accepted or rejected in accordance with clause (e) of Section 2.3 of the Credit Agreement.

McCORMICK & COMPANY, INCORPORATED

By: _____
Name:
Title:

** Insert the aggregate principal amount of all outstanding Competitive Bid Loans immediately after giving effect to the Competitive Bid Loan Borrowing.

FORM OF LENDER ASSIGNMENT AGREEMENT

[Date]

TO: McCormick & Company, Incorporated
18 Loveton Circle
Sparks, Maryland 21152
Attention: Treasurer

To: Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303
Attention: Michael Adams

McCormick & Company, Incorporated

Gentlemen and Ladies:

We refer to clause (d) of Section 10.11.1 of the Revolving Credit Agreement, dated as of June 19, 2001 (as amended from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the various financial institutions as are, or shall from time to time become, parties thereto (the "Lenders") and Wachovia, N.A., as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

This Agreement is delivered to you pursuant to clause (d) of Section 10.11.1 of the Credit Agreement and also constitutes notice to each of you, pursuant to clause (c) of Section 10.11.1 of the Credit Agreement, of the assignment and delegation to (the "Assignee") of % of the Revolving Loans and % of the Competitive Bid Loans of (the "Assignor") outstanding under the Credit Agreement on the date hereof. After giving effect to the foregoing assignment and delegation, the Assignor's and the Assignee's Percentages for the purposes of the Credit Agreement are set forth opposite such Person's name on the signature pages hereof.

[Add paragraph dealing with accrued interest and fees with respect to Loans assigned.]

The Assignee hereby acknowledges and confirms that it has received a copy of the Credit Agreement and the exhibits related thereto, together with copies of the documents which were required to be delivered under the Credit Agreement as a condition to the making of the Loans thereunder. The Assignee further confirms and agrees that in becoming a Lender and in making its Loans under the Credit Agreement, such actions have and will be made without recourse to, or representation or warranty by the Agent.

Except as otherwise provided in the Credit Agreement, effective as of the date of acceptance hereof by the Agent:

(a) the Assignee

(i) shall be deemed automatically to have become a party to the Credit Agreement, have all the rights and obligations of a "Lender" under the Credit Agreement and the other Loan Documents as if it were an original signatory thereto to the extent specified in the second paragraph hereof; and

(ii) agrees to be bound by the terms and conditions set forth in the Credit Agreement and the other Loan Documents as if it were an original signatory thereto; and

(b) the Assignor shall be released from its obligations under the Credit Agreement and the other Loan Documents to the extent specified in the second paragraph hereof but shall continue to be entitled to the benefits of the indemnity provisions set forth in the Credit Agreement for the period prior to such acceptance.

The Assignor and the Assignee hereby agree that the [Assignor] [Assignee] will pay to the Agent the processing fee referred to in Section 10.11.1 of the Credit Agreement upon the delivery hereof.

The Assignee hereby advises each of you of the following administrative details with respect to the assigned Loans and requests the Agent to acknowledge receipt of this document:

(A) Address for Notices:

Institution Name:

Attention:

Domestic Office:

Telephone:

Facsimile:

LIBOR Office:

Telephone:

Facsimile:

(B) Payment Instructions:

The Assignee agrees to furnish the tax form required by the last sentence of Section 4.6 (if so required) of the Credit Agreement no later than the date of acceptance hereof by the Agent.

This Agreement may be executed by the Assignor and Assignee in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

Adjusted Percentage

%

[ASSIGNOR]

By: _____
Title:

Percentage

%

[ASSIGNEE]

By: _____
Title:

Accepted and Acknowledged
this day of ,

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

WACHOVIA, N.A., as Administrative Agent

By: _____
Title:

FORM OF COMPLIANCE CERTIFICATE

To each of the financial institutions party
to the Credit Agreement hereinafter
referred to and Wachovia, N.A.,
as Administrative Agent for the Lenders

Re: McCormick & Company, Incorporated

Ladies and Gentlemen:

This Compliance Certificate is being delivered pursuant to the Revolving Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the various financial institutions as are or may, from time to time, become parties thereto (the "Lenders") and Wachovia, N.A., as administrative agent for the Lenders (the "Agent"). Capitalized terms used herein without definition shall have the meanings assigned to such terms in Section 1.1 of the Credit Agreement. All computations performed herein shall conform to the method of computation required by the Credit Agreement.

The Borrower hereby certifies, represents and warrants that as of , (the "Computation Date"):

1. Indebtedness of the Subsidiaries did not exceed % of Consolidated Net Tangible Assets (as computed on Attachment 1 hereto).

   Under Section 2.2 of the Credit Agreement, Indebtedness of Subsidiaries may not exceed 25% of Consolidated Net Tangible Assets.

2. The sum of (a) Indebtedness of the Borrower and its Subsidiaries secured by Liens described in clauses (b), (c) and (k) of Section 7.2.3 of the Credit Agreement (excluding liens described in clauses (d) through (j) of Section 7.2.3) and (b) the Attributable Value of all Sale-Leaseback Transactions entered into by the Borrower and its Subsidiaries in the aggregate does not exceed % of Consolidated Net Tangible Assets (as computed on Attachment 1 hereto).

   Section 7.2.3 (k) of the Credit Agreement does not permit the sum of (i) Indebtedness of the Borrower and its Subsidiaries secured by Liens described in clauses (b), (c) and (k) of Section 7.2.3 (excluding Liens described in clauses (d) thru (j) of Section 7.2.3) and (ii) the Attributable Value of all Sale-Leaseback Transactions entered into by the Borrower and its Subsidiaries in the aggregate to exceed 15% of Consolidated Net Tangible Assets.

3. The aggregate book value of all sales of assets or stock or liquidations of Subsidiaries do not, during the most recent period of 12 consecutive months, exceed % of Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding Fiscal Year (as computed on Attachment 1 hereto).

Section 7.2.4 of the Credit Agreement prohibits sales of assets or stock to anyone other than the Borrower or wholly-owned Subsidiaries if the aggregate book value of such sales or liquidation of Subsidiaries during the most recent period of 12 consecutive months would exceed 20% of Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding fiscal year.

4. The ratio of EBIT to Interest Expense was : 1:00 (as computed on Attachment 1 hereto).

   The minimum ratio of EBIT to Interest Expense permitted pursuant to Section 7.2.5 of the Credit Agreement is 2.50:1.00.

5. No Default or Event of Default has occurred and is continuing.

IN WITNESS WHEREOF, the Borrower has caused this Certificate to be executed and delivered by its duly Authorized Officer on this day of , .

McCORMICK & COMPANY, INCORPORATED

By: _____
Title:

ATTACHMENT 1

1.	Indebtedness of Subsidiaries (Section 7.2.2).		
	a. Total Amount of Subsidiary Indebtedness	$	
	b. Amount of Consolidated Net Tangible Assets	$	
	c. Subsidiary Indebtedness is equal to the following percentage of Consolidated Net Tangible Assets		%
2.	Liens (Section 7.2.3)		
	a. Indebtedness of the Borrower and its Subsidiaries (other than intercompany debt) secured by Liens described in clauses (b), (c) and (k) of Section 7.2.3 (excluding Liens described in clauses (d) through (j) of Section 7.2.3	$	
	b. Attributable Value of Sale-Leaseback Transactions of the Borrower and its Subsidiaries in the aggregate	$	
	(Sum of Items a. and b.)	$	
	c. Amount of Consolidated Net Tangible Assets	$	
	d. The sum of Items a. and b. is equal to the following percentage of Item c.		%
3.	Sale of Assets (Section 7.2.4)		

a.	The aggregate book value of sales of assets or stock or liquidation of Subsidiaries by the Borrower and its Subsidiaries during the immediately preceding 12 months	$	
b.	Consolidated Net Tangible Assets as at the end of the Borrower's immediately preceding Fiscal Year	$	
c.	Item a. is equal to the following percentage of Item b.		%
4.	EBIT to Interest Expense Ratio (Section 7.2.5)		
a.	Net Income (excluding any one-time non-recurring charges)	$	
b.	Interest Expense	$	
c.	Charges for federal, state, local and foreign income taxes	$	
	Total for EBIT	$	
d.	EBIT to Interest Expense ratio (EBIT divided by Interest Expense)		:1.00

FORM OF CONTINUATION/CONVERSION NOTICE

Wachovia, N.A., as Administrative Agent
191 Peachtree Street
Mail Code: GA-31273
Atlanta, Georgia 30303
Attention: Michael Adams

Re: McCormick & Company, Incorporated

Gentlemen and Ladies:

This Continuation/Conversion Notice is delivered to you pursuant to Section 2.5 of the Revolving Credit Agreement, dated as of June 19, 2001 (as amended or modified from time to time, the "Credit Agreement"), among McCormick & Company, Incorporated, a Maryland corporation (the "Borrower"), the various financial institutions from time to time parties thereto (the "Lenders") and Wachovia, N.A., as administrative agent (the "Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby requests that on , .

(1) [U.S.$] [£] [DM] [¥] [Euro] of the presently outstanding principal amount of the Loans originally made on , [and [U.S.$] [£] [DM] [¥] [Euro] of the presently outstanding principal amount of the Loans originally made on ,],

(2) and all presently being maintained as(1) [Base Rate Loans] [LIBO Rate Loans denominated in Dollars] [LIBO Rate Loans denominated in an Alternate Currency],

(3) be [converted into] [continued as],

(4) (2)[LIBO Rate Loans denominated in Dollars having an Interest Period of months] [LIBO Rate Loans denominated in an Alternate Currency having an Interest Period of months] [Base Rate Loans](3).

(1) Select appropriate interest rate option.
(2) Insert appropriate interest rate option.
(3) Dollars only.

The Borrower hereby:

(a) certifies and warrants that no Default has occurred and is continuing; and

(b) agrees that if prior to the time of such continuation or conversion any matter certified to herein by it will not be true and correct at such time as if then made, it will immediately so notify the Agent.

Except to the extent, if any, that prior to the time of the continuation or conversion requested hereby the Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed to be certified at the date of such continuation or conversion as if then made.

The Borrower has caused this Continuation/Conversion Notice to be executed and delivered, and the certification and warranties contained herein to be made, by its Authorized Officer this day of , .

McCORMICK & COMPANY,
INCORPORATED

By: _____
Title:

FORM OF OPINION OF COUNSEL TO THE BORROWER

To each of the Lenders party
to the Credit Agreement referred
to below, and Wachovia, N.A.
as Administrative Agent and
Swing Line Lender

[Date]

Ladies and Gentlemen:

I am General Counsel of McCormick & Company, Incorporated (the "Borrower"), a Maryland corporation, and have acted as counsel in connection with the execution and delivery of that certain Revolving Credit Agreement, dated as of June 19, 2001 (the "Credit Agreement"), among the Borrower, Wachovia, N.A., as administrative agent (the "Agent"), and the various financial institutions parties thereto (the "Lenders"). This opinion letter is delivered to you pursuant to Section 5.1.7 of the Credit Agreement. Capitalized terms used herein that are not defined herein have the respective specified meanings in the Credit Agreement.

In rendering the opinions set forth below, I or a member of my staff have examined executed originals of the Credit Agreement and the Notes (collectively, the "Subject Documents"); the Articles of Incorporation of the Borrower and all amendments thereto (the "Charter"); the Bylaws of the Borrower and all amendments thereto (the "Bylaws"); and a certificate issued by the Maryland Department of Assessments and Taxation, dated June , 2001, attesting to the continued corporate existence and good standing of the Borrower in the State of Maryland. In addition, I or a member of my staff have examined originals or photostatic or certified copies of certain of the corporate records and documents of the Borrower and its Subsidiaries, copies of public documents, certificates of officers of the Borrower and public officials, and such other documents as I have deemed necessary and appropriate as a basis for the opinions hereinafter set forth.

In my examination, I have assumed the genuineness of all signatures (other than those of the Borrower), the legal capacity of natural persons, the authenticity of all corporate records, documents, instruments and certificates submitted to us as originals and the conformity to authentic original corporate records, documents, instruments and certificates of all corporate records, documents instruments and certificates submitted to us as certified, conformed or photostatic copies. As to questions of fact material to my opinions, I have relied upon representations and warranties of the parties in the Subject Documents and the other agreements and documents contemplated therein, and on certificates of officers of the Borrower (including those delivered pursuant to the Credit Agreement) and of public officials.

I have further assumed that you have the power and authority and have taken the corporate action necessary to execute and deliver the Credit Agreement and to hold the Notes and that no approvals, waivers, filings, notices or consents, governmental or non-governmental, are required for the valid execution, delivery and performance by you of the Credit Agreement or

to hold the Notes, and that the Credit Agreement executed by you constitutes your legal, valid and binding obligation.

Based upon the foregoing and subject to the qualifications set forth above and hereinafter, I am of the opinion that:

1. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland.

2. The execution, delivery and performance by the Borrower of the Subject Documents are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not (i) contravene the Charter or the By-laws, (ii) violate any Federal or Maryland law, rule or regulation applicable to the Borrower (including, without limitation, Regulations U and X of the Board of Governors of the Federal Reserve System, insofar as the proceeds of the Loans are used solely for the purposes set forth in, and in accordance with the provisions of, the Credit Agreement) or (iii) result in any breach or violation of, or constitute a default under, any agreement or instrument set forth on the attached certificate of the Borrower. The Subject Documents have been duly executed and delivered on behalf of the Borrower.

3. Each of the Subject Documents has been duly executed by the Borrower and constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

4. No authorization or approval or other action by, and no notice to or filing with, any Federal or Maryland governmental authority or regulatory body (other than any applicable securities law filings) is required on behalf of the Borrower for the due execution, delivery or performance by the Borrower of any of the Subject Documents.

5. The Borrower is not an “investment company” within the meaning of the Investment Company Act of 1940, as amended, or a “holding company”, or a “subsidiary company” of a “holding company”, or an “affiliate” of a “holding company” or of a “subsidiary company” of a “holding company”, within the meaning of the Public Utility Company Act of 1935, as amended.

6. There is no pending or, to the best of my knowledge, threatened litigation, action, proceeding or labor controversy affecting the Borrower or any of its properties, business, assets or revenues which is likely to materially adversely affect the financial condition or operations of the Borrower and its Subsidiaries taken as a whole or which purports to affect the legality, validity or enforceability of any of the Subject Documents to which the Borrower is a party.

7. The New York governing law clauses of the Subject Documents, subjecting such Subject Documents to the law of the State of New York, are valid under the laws of the State of Maryland.

8. Under the law of the State of Maryland, the laws of the State of New York will be applied to the Subject Documents, except to the extent that any term of such documents or any provision of the law of the State of New York applicable to such documents violates an

important public policy of the State of Maryland. We have no reason to believe that any such term violates an important public policy of the State of Maryland.

The foregoing opinions are subject to the following additional qualifications:

(a) The opinions expressed herein are limited to the laws and regulations of the United States of America and the State of Maryland.

(b) My opinions regarding the enforceability of the Subject Documents are limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws or decisions affecting the enforcement of debtors’ obligations and creditors’ rights generally, and by general principles of equity and public policy. My opinions are also subject to the effect of certain laws and judicial decisions which may limit the enforceability of certain provisions of the Subject Documents, although such limitations do not, in my judgment, make the remedies provided therein (taken as a whole) inadequate for the practical realization of the benefits afforded thereby.

The opinions expressed herein are solely for your benefit in connection with the performance of the Subject Documents, and without my express prior written consent, this opinion letter may not be circulated or furnished to or relied upon by any other person.

Very truly yours,

Robert W. Skelton
Vice President, General Counsel
& Secretary

EXHIBIT 31.1

CERTIFICATIONS

I, Robert J. Lawless, Chairman, President and Chief Executive Officer of the Company, certify that:

1. I have reviewed this report on Form 10-Q of McCormick & Company, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) for the registrant and we have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affect, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting

which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: October 10, 2003

/s/ Robert J. Lawless
Robert J. Lawless
Chairman, President & Chief
Executive Officer

EXHIBIT 31.2

CERTIFICATIONS

I, Francis A. Contino, Executive Vice President, Chief Financial Officer & Supply Chain of the Company, certify that:

1. I have reviewed this report on Form 10-Q of McCormick & Company, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) for the registrant and we have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affect, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting

which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: October 10, 2003

/s/ Francis A. Contino
Francis A. Contino
Executive Vice President,
Chief Financial Officer & Supply Chain

EXHIBIT 32.1

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

In connection with the Quarterly Report of McCormick & Company, Incorporated (the "Company") on Form 10-Q for the period ending August 31, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert J. Lawless, Chairman, President & Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Robert J. Lawless
Robert J. Lawless
Chairman, President & Chief
Executive Officer

Date: October 10, 2003

EXHIBIT 32.2

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

In connection with the Quarterly Report of McCormick & Company, Incorporated (the "Company") on Form 10-Q for the period ending August 31, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Francis A. Contino, Executive Vice President, Chief Financial Officer & Supply Chain of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Francis A. Contino
Francis A. Contino
Executive Vice President, Chief
Financial Officer & Supply Chain

Date: October 10, 2003