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CREDIT AGREEMENT

ANY Trust and Savings Bank

Ladies and Gentlemen:

The undersigned, ABC Capital, LLC, an Illinois limited liability company (the "*Borrower*"), applies to you (the "*Bank*") for your commitment, subject to the terms and conditions hereof and on the basis of the representations and warranties hereinafter set forth, to extend credit to the Borrower, all as more fully hereinafter set forth. All capitalized terms used herein without definition shall have the same meanings herein as such terms are defined in Section 4.1 hereof.

SECTION 1. THE CREDIT.

*Section 1. Revolving Credit.* Subject to the terms and conditions hereof, the Bank agrees to extend a revolving credit (the "*Revolving Credit*") to the Borrower which may be availed of by the Borrower from time to time during the period from and including the date hereof to but not including the Termination Date, at which time the commitment of the Bank to extend credit under the Revolving Credit shall expire. The Revolving Credit may be utilized by the Borrower in the form of loans (individually a "*Loan*" and collectively the "*Loans*"), provided that the aggregate principal amount of Loans outstanding at any one time shall not exceed the lesser of (i) \$\_\_\_\_\_ (the "*Commitment*", as such amount may be reduced pursuant to the terms hereof) and (ii) the Borrowing Base as then determined and computed. Each Loan shall be in a minimum amount of \$\_\_\_\_\_ or such greater amount which is an integral multiple of \$\_\_\_\_\_. The Loans shall be made against and evidenced by a single promissory note of the Borrower in the form (with appropriate insertions) attached hereto as Exhibit A (the "*Note*"). The Note shall be dated the date of issuance thereof and be expressed to bear interest as set forth in Section 2 hereof. The Note, and all Loans evidenced thereby, shall mature and become due and payable in full on the Termination Date. Without regard to the principal amount of the Note stated on its face, the actual principal amount at any time outstanding and owing by the Borrower on account of the Note shall be the sum of all Loans made hereunder less all payments of principal actually received by the Bank. During the period from and including the date hereof to but not including the Termination Date, the Borrower may use the Commitment by borrowing, repaying, and reborrowing Loans in whole or in part, all in accordance with the terms and conditions of this Agreement.

*Section 2. Manner and Disbursement of Loans.* The Borrower shall give written or telephonic notice to the Bank (which notice shall be irrevocable once given and, if given by telephone, shall be promptly confirmed in writing) by no later than \_\_\_\_\_am/pm, on the date the Borrower requests the Bank to make a Loan hereunder. Each such notice shall specify the date of the Loan requested (which must be a Business Day) and the amount of such Loan. The Borrower agrees that the Bank may rely upon any written or telephonic notice given

by any person the Bank in good faith believes is an Authorized Representative without the necessity of independent investigation and, in the event any telephonic notice conflicts with the written continuation, such telephonic notice shall govern if the Bank has acted in reliance thereon. Subject to the provisions of Section 6 hereof, the proceeds of each Loan shall be made available to the Borrower at the principal office of the Bank in Any Town, USA, in immediately available funds.

SECTION 2. INTEREST, FEES, PREPAYMENTS, TERMINATIONS, APPLICATIONS AND CAPITAL ADEQUACY.

Section 2.1. Interest Rates; Interest Payment Dates.

(a) *Interest Rate.* The outstanding principal balance of the Loans shall bear interest (which the Borrower hereby promises to pay at the rates and at the times set forth herein) at the rate per annum equal to the Base Rate as in effect from time to time, *provided* that if the Loans are not paid when due (whether by lapse of time, acceleration or otherwise), or at the election of the Bank upon notice to the Borrower during the existence of any other Event of Default, the Loans shall bear interest, whether before or after judgment until paid in full, at the rate per annum determined by adding 2.0% to the Base Rate as in effect from time to time. Any change in the interest rate on the Loans resulting from a change in the Base Rate shall be effective on the date of the relevant change in the Base Rate. Interest on the Loans shall be computed on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days elapsed.

(b) *Interest Payment Dates.* Interest on the Loans shall be payable monthly in arrears on the last day of each month (commencing \_\_\_\_\_, 20\_\_ ) and at maturity, and interest after maturity shall be due and payable on demand.

Section 2.2. Fees.

(a) *Commitment Fee.* For the period from and including the date hereof to but not including the Termination Date, the Borrower shall pay to the Bank a commitment fee at the rate of 0.20% per annum (computed on the basis of a year of 360 days for the actual number of days elapsed) on the average daily unused portion of the Commitment. Such commitment fee shall be payable quarterly in arrears on the last day of each March, June, September, and December in each year (commencing \_\_\_\_\_, 20\_\_) and on the Termination Date.

(b) *Closing Fee.* The Borrower shall pay to the Bank on the date hereof a non-refundable closing fee in the amount of \$\_\_\_\_\_.

(c) *Audit Fees.* The Borrower shall pay to the Bank charges for audits of the Collateral performed by the Bank or its agents or representatives in such amounts as the Bank may from time to time request (the Bank acknowledging and agreeing that such charges shall be computed in the same manner as it at the time customarily uses for the assessment of charges for similar collateral audits); *provided, however,* that in the absence of any Default or Event of Default, the Borrower shall not be required to pay the Bank more than one (1) such audit per calendar year (not exceeding \$\_\_\_ per audit).

*Section 2.3. Voluntary Prepayments.* The Borrower shall have the privilege of prepaying without premium or penalty and in whole or in part (but if in part, then in an amount not less than \$\_\_\_\_\_) the Note at any time upon notice to the Bank prior to \_\_\_\_ a.m./p.m. on the date fixed for prepayment. If such prepayment prepays the Note in full and is accompanied by the termination of the Commitment in whole, such prepayment shall be made together with accrued interest thereon to the date of prepayment.

*Section 2.4. Mandatory Prepayments.* The Borrower covenants and agrees that if at any time the then unpaid principal balance of the Note shall be in excess of the Borrowing Base as then determined and computed, the Borrower shall immediately without notice or demand pay over the amount of the excess to the Bank as and for a mandatory prepayment on the Note.

*Section 2.5. Terminations.* The Borrower shall have the right, at any time and from time to time, upon 3 Business Days prior notice to the Bank, to terminate without premium or penalty and in whole or in part (but if in part, then in an amount not less than \$\_\_\_\_\_) the Commitment, provided that the Commitment may not be reduced to an amount less than the aggregate principal amount of the Loans then outstanding. Any termination of the Commitment pursuant to this Section may not be reinstated.

*Section 2.6 Extensions of the Commitment.* No less than 60 days prior to the Termination Date (as the same may have been extended pursuant to this Section 2.6), the Borrower may advise the Bank in writing of its desire to extend the Termination Date for an additional 364 days. The Bank will notify the Borrower whether or not the Bank is agreeable to any such extension (it being understood that the Bank may accept or decline such a request in its sole discretion and on such terms as it may elect) and, if the Bank is agreeable to any such extension, the Borrower and the Bank shall enter into such documents as the Bank may deem necessary or appropriate to reflect such extension, and all costs and expenses incurred by the Bank in connection therewith (including attorneys' fees) shall be paid by the Borrower.

*Section 2.7. Place and Application of Payments.* All payments of principal, interest, fees, and all other Obligations payable under the Loan Documents shall be made to the Bank at its office at \_\_\_\_\_ (or at such other place as the Bank may specify) no later than \_\_\_\_ a.m./p.m. on the date any such payment is due and payable. Payments received by the Bank after \_\_\_\_ a.m./p.m. shall be deemed received as of the opening of business on the next Business Day. All such payments shall be made in lawful money of the United States of America, in immediately available funds at the place of payment, without set-off or counterclaim and without reduction for, and free from, any and all present or future taxes, levies, imposts, duties, fees, charges, deductions, withholdings, restrictions, and conditions of any nature imposed by any government or any political subdivision or taxing authority thereof (but excluding any taxes imposed on or measured by the net income of the Bank).

*Section 2.8. Notations.* The amount and date of each Loan and the amount and date of each payment of principal and interest thereon shall be recorded by the Bank on its books and records or, at its option, recorded on a schedule to the Note, and the amount of principal and interest shown on such books and records or such schedule as owing on the Note from time to

time shall be prima facie evidence in any court or other proceeding brought to enforce the Note of the principal amount remaining unpaid thereon and the interest applicable thereto; provided that the failure of the Bank to record any of the foregoing shall not limit or otherwise affect the obligation of the Borrower to repay the principal amount owing on the Note together with accrued interest thereon.

### SECTION 3. COLLATERAL AND GUARANTIES.

*Section 3.1. Collateral.* The Obligations shall be secured by valid, perfected, and enforceable Liens on all right, title, and interest of the Borrower and of each Subsidiary in all real and personal property and fixtures of such Person, including all accounts, instruments, documents, chattel paper, general intangibles (including, without limitation, patents, trademarks, trade names, copyrights, and other intellectual property rights), investment property, inventory, equipment, fixtures, deposit accounts, and real estate, whether now owned or hereafter acquired or arising, and all proceeds thereof. The Borrower acknowledges and agrees that the Liens on the Collateral shall be valid and perfected first priority Liens (subject to Liens permitted by this Agreement), in each case pursuant to one or more Collateral Documents in form and substance satisfactory to the Bank.

*Section 3.2. Deposit Accounts and Collections.* The Borrower agrees to forthwith make such arrangements as shall be necessary or appropriate to assure that all cash or cash equivalent proceeds of the Collateral are deposited (in the same form as received), through a lock box maintained by or otherwise under the control of the Bank, into one or more deposit accounts maintained with or otherwise under the control of the Bank. The Borrower shall cause each financial institution maintaining one or more deposit accounts for the Borrower or any of its Subsidiaries to enter into an agreement with the Bank pursuant to which such financial institution acknowledges and agrees to the Bank's Lien on such deposit accounts and all funds therein, to waive any right of offset or bankers' lien with respect to such deposit accounts (other than charges for account maintenance fees and returned items), and, during the existence of any Default or Event of Default, to remit all collected balances in such deposit accounts to the Bank. The Borrower hereby acknowledges and agrees that the Bank has (and is hereby granted) a Lien on all such deposit accounts and all funds contained therein to secure the Obligations. The Bank agrees with the Borrower that if and so long as no Default or Event of Default has occurred or is continuing, amounts on deposit in the deposit accounts maintained with the Bank will (subject to the rules and regulations of the Bank as from time to time in effect applicable to demand deposit accounts) be made available to the Borrower or the relevant Subsidiary for use in the conduct of its business. Upon the occurrence of a Default or an Event of Default, the Bank may apply the funds on deposit in all such deposit accounts to the Obligations.

*Section 3.3. Guaranties.* The payment and performance of the Obligations shall at all times be guaranteed by (a) J.S. Bach and (b) each direct and indirect Subsidiary of the Borrower (if any), in each case pursuant to one or more guaranty agreements in form and substance acceptable to the Bank, as the same may be amended, modified, or supplemented from time to time (individually a "Guaranty" and collectively the "Guaranties").

*Section 3.4. Further Assurances.* The Borrower agrees that it shall, and shall cause each Subsidiary to, execute and deliver such documents and do such acts and things as the Bank may from time to time request in order to provide for or perfect or protect the Bank's Lien on the Collateral.

SECTION 4. DEFINITIONS; INTERPRETATION.

*Section 4.1. Definitions.* The following terms when used herein shall have the following meanings:

*"Adjusted Total Liabilities"* means, at any time the same is to be determined, Total Liabilities at such time minus, to the extent included in the determination of Total Liabilities, the sum of (a) the principal amount of Subordinated Debt at such time, plus (b) the aggregate principal amount of Non-recourse Debt of the Borrower and its Subsidiaries at such time.

*"Affiliate"* means any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to control another Person for purposes of this definition if such Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the other Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise, provided that, in any event for purposes of this definition, any Person that owns, directly or indirectly, 25% or more of the securities having the ordinary voting power for the election of directors or governing body of a corporation or 25% or more of the partnership or other ownership interests of any other Person (other than as a limited partner of such other Person) will be deemed to control such corporation or other Person.

*"Agreement"* means this Credit Agreement, as the same may be amended, modified, or restated from time to time in accordance with the terms hereof.

*"Authorized Representative"* means those persons shown on the list of officers provided by the Borrower pursuant to Section 6.2 hereof, or on any update of any such list provided by the Borrower to the Bank, or any further or different officer of the Borrower so named by any Authorized Representative of the Borrower in a written notice to the Bank.

*"Bank"* is defined in the introductory paragraph hereof.

*"Base Rate"* means, for any day, the greater of (a) the rate of interest announced by the Bank from time to time as its prime commercial rate, as in effect on such day (it being understood and agreed that such rate may not be the Bank's best or lowest rate), and (b) the sum of (i) the rate determined by the Bank to be the average (rounded upwards, if necessary, to the next higher 1/100 of 1 %) of the rates per annum quoted to the Bank at approximately 10:00 a.m. (Chicago time) (or as soon thereafter as is practicable) on such day (or, if such day is not a Business Day, on the immediately preceding Business Day) by two or more Federal funds brokers selected by the Bank for the sale to the Bank at face value of Federal funds in an amount equal or comparable to the principal amount owed to the Bank for which such rate is being determined, plus (ii) 3/8 of 1%.

"*Borrower*" is defined in the introductory paragraph hereof.

"*Borrowing Base*" means, as of any time it is to be determined, 75% of the Net Amount of Eligible Finance Receivables then outstanding; *provided* that (a) not more than 15% of the Borrowing Base at any time outstanding shall consist of participation interests in Eligible Finance Receivables acquired from another Person and (b) the Borrowing Base shall be computed only as against and on so much of the Collateral as is included on the certificates to be furnished from time to time by the Borrower pursuant to Section 7.5(a) hereof and, if required by the Bank pursuant to any of the terms hereof or any Collateral Document, as verified by such other evidence required to be furnished to the Bank pursuant hereto or pursuant to any such Collateral Document.

"*Business Day*" means any day other than a Saturday or Sunday on which the Bank is not authorized or required to close in Any Town, USA.

"*Capital Lease*" means any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

"*Capitalized Lease Obligation*" means the amount of the liability shown on the balance sheet of any Person in respect of a Capital Lease as determined in accordance with GAAP.

"*Change of Control*" means either (a) J.S. Bach, individually or as trustee of a family trust, ceases to own, legally and beneficially, 80% of the equity interest issued by the Borrower or (b) J.S. Bach ceases to be actively involved in the management of the Borrower.

"*Code*" means the Internal Revenue Code of 1986, as amended, and any successor statute thereto.

"*Collateral*" means all properties, rights, interests, and privileges from time to time subject to the Liens granted to the Bank by the Collateral Documents.

"*Collateral Documents*" means the Security Agreement, and all other mortgages, deeds of trust, security agreements, assignments, financing statements and other documents as shall from time to time secure the Obligations or any part thereof.

"*Commitment*" is defined in Section 1.1 hereof.

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

"*Default*" means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.



"*Delinquent Finance Receivable*" means, at any time, any Finance Receivable with respect to which any principal or interest payment or non-cancelable fixed-term base rental payment due thereunder is 60 days or more contractually past due.

"*EBITDA*" means, with reference to any period, Net Income for such period plus all amounts deducted in arriving at such Net Income amount in respect of (a) Interest Expense for such period, plus (b) federal, state, and local income taxes for such period, plus (c) all amounts properly charged for depreciation of fixed assets and amortization of intangible assets during such period on the books of the Borrower and its Subsidiaries.

"*Eligible Finance Receivable*" means any Finance Receivable of the Borrower that:

- (a) is denominated and payable in United States Dollars, and owing by an account debtor or obligor who is a resident of the United States of America;
- (b) is the valid, binding and legally enforceable obligation of the account debtor or obligor obligated thereon and such account debtor or obligor is not (i) a Subsidiary or an Affiliate of the Borrower or of any Subsidiary, (ii) a shareholder, director, officer or employee of the Borrower or of any Subsidiary or of any Affiliate of the Borrower or any Subsidiary, (iii) the United States of America, or any state or political subdivision thereof, or any department, agency or instrumentality thereof, (iv) a debtor under any proceeding under the United States Bankruptcy Code, as amended, or any other bankruptcy, arrangement or reorganization proceedings or other proceedings for relief of debtors, or (v) an assignor for the benefit of creditors;
- (c) constitutes "chattel paper" or an "instrument" (each as defined in the Uniform Commercial Code as in effect in the State of Illinois) and either (i) has been delivered to the Bank (together with any endorsements or instruments of transfer requested by the Bank therefor) or (ii) is being held by the Borrower in trust for the Bank in a segregated storage container that has been conspicuously marked with a written legend satisfactory to the Bank as being subject to the Bank's Lien;
- (d) is an asset of the Borrower to which it has good and marketable title, is freely assignable, and is subject to an enforceable Lien in favor of the Bank free and clear of any other Liens;
- (e) is not subject to any rebate, refund, reduction, credit or allowance of any kind;
- (f) is not subject to any asserted right or rescission, offset, counterclaim or other defense with respect thereto and all amounts represented as owing with respect to such Finance Receivable are true and correctly stated;
- (g) was originated or acquired and at all times thereafter serviced in accordance with the Borrower's credit and collection policies and practices as from time to time in effect, and in any case such Finance Receivable shall only have been originated

or acquired after the Borrower has made a credit investigation of the account debtor or obligor thereon and determined that the risk of extending such credit or entering into the relevant lease is satisfactory and in accordance with, at the least, the standards historically observed by the Borrower in the conduct of its business;

(h) was created in accordance with, and is subject to lease documentation or loan and security documentation, as relevant, which complies in all respects with, all applicable federal, state and local laws, rules and regulations;

(i) does not have three (3) or more cumulative contractual payments past due (without regard to any stated grace period), no payment is more than 60 days contractually past due (without regard to any stated grace period), and the account debtor or obligor has otherwise performed in all material respects its other obligations under the relevant lease or loan and security agreements;

(j) does not represent a renewal or restructure of a monetary obligation, in whole or in part, in which the prior delinquency of the account debtor or obligor was a consideration in the renewal or restructure;

(k) all representations of the Borrower with respect to such Finance Receivable in the Security Agreement are true and correct;

(l) in the case of a lease, (i) is evidenced by a written lease agreement which: (v) permits assignments thereof without the consent of the lessee or, if required, such lessee has permitted the assignment thereof to the Bank and its successors and assigns without restriction, (w) requires the lessee to maintain the leased goods in accordance with any manufacturer's warranty thereof or otherwise in good repair and working order (or words of like import) which are the subject to the lease agreement, (x) requires the lessee to pay all taxes on or with respect to the leased goods which are the subject of the lease agreement, (y) requires the lessee to maintain insurance (including self-insurance where agreed to by the Borrower) on the leased goods which are the subject of the lease agreement, and (z) provides that upon such lessee's acceptance of the leased goods in accordance with the terms thereof, the lessee's obligations thereunder are non-cancellable, absolute and unconditional; (ii) requires substantially equal monthly base rental payments over the term of the lease, (iii) the term of the lease is not more than 60 months; (iv) the Borrower has performed in all material respects all of its obligations under such lease; (v) the lease has not been amended or modified in any material respect; (vi) the goods subject to such lease are adequately and accurately described in the lease agreement, are located within the United States of America, are owned by the Borrower free and clear of any transfer or assignment restrictions and are subject to an enforceable Lien in favor of the Bank free and clear of any other Liens other than the rights of the lessee to use the leased good during the term of the lease in the ordinary course; (vii) the goods subject to such lease have been delivered to and accepted by the lessee thereof, and the lessee shall have delivered to the Borrower a written certificate acknowledging the lessee's receipt of such goods in accordance with the terms of the lease and its acceptance thereof; and (viii) all filings and recording requirements required by law with respect to



such lease, or necessary in order to perfect the Borrower's interest in the relevant leased goods, have been completed and complied with;

(m) in the case of a loan, (i) is evidenced by a written loan and security agreement and/or promissory note which: (x) permits assignments thereof without the consent of the obligor or, if required, such obligor has permitted the assignment thereof to the Bank and its successors and assigns without restriction, (y) provides for collateral security in the form of equipment of the obligor, and (z) provides that the obligation to repay the loan is absolute and unconditional, and shall not be subject to any defense, offset, or counterclaim; (ii) requires substantially equal monthly payments of principal and interest over the term of the loan, and is not payable on an "interest only" basis during any period; (iii) the term of the loan is not more than 60 months; (iv) the loan is fully funded by the Borrower, the Borrower has no obligation to make future advances with respect thereto, and the Borrower has performed in all material respects its obligations with respect to such loan; (v) the loan and security documentation, including any promissory note, has not been amended or modified in any material respect; and (vi) all filings and recordings necessary in order to perfect the Borrower's interest in the collateral security for such loan have been completed and complied with;

(n) would not cause the total Finance Receivables owing from anyone account debtor/obligor and its Affiliates to exceed 15% of the Borrower's Tangible Net Worth at such time; and

(o) is not otherwise deemed ineligible by the Bank for any other reason in its Discretion, provided that participation interests in Finance Receivables owned by the Borrower and acquired from another financial institution may be included as Eligible Finance Receivables hereunder so long as (i) the participation interest in such Finance Receivable represents a true sale to the Borrower of a pro rata interest in such Finance Receivable (and is not considered in law or pursuant to GAAP as a loan to the seller thereof), (ii) the participation interest in such Finance Receivable is on terms no less favorable than on a pari passu basis (and in no event on a last-out or other subordinated basis), (iii) the participation interest is freely assignable to, and transferrable by, the Bank without restriction, and (iv) the Finance Receivable, if originated and held solely by the Borrower for its own account, would satisfy the requirements set forth in subsections (a)-(o) above.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

"Event of Default" means any event or condition identified as such in Section 8.1 hereof.

"Finance Receivable" means the following:

(a) accounts receivable arising from commercial loans entered into or acquired by the Borrower, as lender, in the ordinary course of business, but only if such

commercial loans are secured (and, when originally made, fully secured) by equipment of the account debtor/obligor; and

(b) accounts receivable arising from sales-type, direct financing, or operating leases of equipment entered into or acquired by the Borrower, as lessor, in the ordinary course of business.

*"Funds Transfer and Deposit Account Liability"* means the liability of the Borrower or any of its Subsidiaries owing to the Bank, or any Affiliates of the Bank, arising out of (a) the execution or processing of electronic transfers of funds by automatic clearing house transfer, wire transfer or otherwise to or from the deposit accounts of the Borrower and/or any Subsidiary now or hereafter maintained with the Bank or its Affiliates, (b) the acceptance for deposit or the honoring for payment of any check, draft or other item with respect to any such deposit accounts, and (c) any other deposit, disbursement, and cash management services afforded to the Borrower or any such Subsidiary by the Bank or its Affiliates.

*"GAAP"* means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

*"Guaranty"* and *"Guaranties"* each is defined in Section 3.3 hereof.

*"Hedging Liability"* means the liability of the Borrower or any Subsidiary to the Bank, or any Affiliates of the Bank, in respect of any interest rate swap, interest rate cap, interest rate collar, interest rate floor, interest rate exchange, foreign currency contracts, currency swap contracts, commodity option, commodity forward contract, commodity swap, commodity cap, commodity collar, commodity floor, or other similar interest rate or currency or commodity hedging arrangements as the Borrower or such Subsidiary, as the case may be, may from time to time enter into with the Bank or its Affiliates.

*"Indebtedness for Borrowed Money"* means for any Person (without duplication) (a) all indebtedness of such Person for borrowed money, whether current or funded, or secured or unsecured, (b) all indebtedness for the deferred purchase price of Property or services, (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of a default are limited to repossession or sale of such Property), (d) all indebtedness secured by a purchase money mortgage or other Lien to secure all or part of the purchase price of Property subject to such mortgage or Lien, (e) all obligations under leases which shall have been or must be, in accordance with GAAP, recorded as Capital Leases in respect of which such Person is liable as lessee, (f) any liability in respect of banker's acceptances or letters of credit, (g) any indebtedness, whether or not assumed, secured by Liens on Property acquired by such Person at the time of acquisition thereof, and (h) all indebtedness referred to in clause (a), (b), (c), (d), (e), (f), and (g) above which is directly or indirectly

guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which any of them have otherwise assured a creditor against loss, it being understood that the term "Indebtedness for Borrowed Money" shall not include trade payables arising in the ordinary course of business which are not more than 90 days past due.

"*Interest Expense*" means, with reference to any period, the sum of all interest charges (including imputed interest charges with respect to Capitalized Lease Obligations and all amortization of debt discount and expense) of the Borrower and its Subsidiaries for such period determined in accordance with GAAP.

"*Lien*" means any mortgage, lien, security interest, pledge, charge, or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

"*Loan*" and "*Loans*" each is defined in Section 1.1 hereof.

"*Loan Documents*" means this Agreement, the Note, the Guaranties, the Collateral Documents, and each other instrument or document to be delivered hereunder or thereunder or otherwise in connection therewith.

"*Material Adverse Effect*" means (a) a material adverse change in, or material adverse effect upon, the operations, business, Property, condition (financial or otherwise) or prospects of the Borrower or of the Borrower and its Subsidiaries taken as a whole, (b) a material impairment of the ability of the Borrower or any Subsidiary to perform its obligations under any Loan Document, or (c) a material adverse effect upon (i) the legality, validity, binding effect or enforceability against the Borrower or any Subsidiary of any Loan Document or the rights and remedies of the Bank thereunder or (ii) the perfection or priority of any Lien granted under any Collateral Document.

"*Moody's*" means Moody's Investors Service, Inc.

"*Net Amount*" means, with respect to any Eligible Finance Receivable as of any time the same is to be determined, the following:

(a) with respect to an Eligible Finance Receivable which is a loan, the outstanding principal amount of such loan (including capitalized indirect costs included in such loan amount) minus all unearned income (whether relating to interest or finance charges or otherwise) relating thereto;

(b) with respect to an Eligible Finance Receivable which is a sales-type or direct financing lease, the sum of all non-cancelable base rental payments (i.e., rental or lease payments due under such leases, including capitalized indirect costs and any final residual payment due at lease expiration included in such rental payments, but determined exclusive of percentage rent or payments for maintenance, insurance, or taxes

or similar reimburseable expenses) not yet paid minus all unearned income (whether relating to interest or financing charges or otherwise) relating thereto; and

(c) with respect to an Eligible Finance Receivable which is an operating lease, the sum of all non-cancelable base rental payments not yet paid minus all unearned income (whether relating to interest or finance charges or otherwise) relating thereto.

*"Net Income"* means, with reference to any period, the net income (or net loss) of the Borrower and its Subsidiaries for such period computed on a consolidated basis in accordance with GAAP; provided that there shall be excluded from Net Income (a) the net income (or net loss) of any Person accrued prior to the date it becomes a Subsidiary of, or has merged into or consolidated with, the Borrower or another Subsidiary, and (b) the net income (or net loss) of any Person (other than a Subsidiary) in which the Borrower or any of its Subsidiaries has a equity interest in, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries during such period.

*"Non-Recourse Debt"* means indebtedness of any Person which expressly provides that the source of repayment of such indebtedness is limited to the property of such Person securing such indebtedness (whether such property consists of specific leases or leased goods, holdback or similar reserved property, or otherwise), and that the holder of such indebtedness generally has no recourse against the obligor thereon or any other Person.

*"Note"* is defined in Section 1.1 hereof.

*"Obligations"* means all obligations of the Borrower to pay principal and interest on the Loans, all fees and charges payable hereunder, and all other payment obligations of the Borrower arising under or in relation to any Loan Document, and all Funds Transfer and Deposit Account Liability and Hedging Liability owed to the Bank or any of its Affiliates, in each case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held, or acquired.

*"PBGC"* means the Pension Benefit Guaranty Corporation or any Person succeeding to any or all of its functions under ERISA.

*"Person"* means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or any other entity or organization, including a government or agency or political subdivision thereof.

*"Plan"* means any employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code that either (a) is maintained by a member of the Controlled Group for employees of a member of the Controlled Group or (b) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Revolving Credit" is defined in Section 1.1 hereof.

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

"Security Agreement" means that certain Security Agreement dated as of December \_\_, 20\_\_, between the Borrower and the Bank, as the same may be amended, modified, supplemented, or restated from time to time.

"Subordinated Debt" means Indebtedness for Borrowed Money of the Borrower owing to any Person on terms and conditions, and in such amounts, acceptable to the Bank in its discretion and which is subordinated in right of payment to the prior payment in full of the Obligations pursuant to written subordination provisions approved in writing by the Bank.

"Subsidiary" means any corporation or other Person more than 50% of the outstanding ordinary voting shares or other equity interests of which is at the time directly or indirectly owned by the Borrower, by one or more of its Subsidiaries, or by the Borrower and one or more of its Subsidiaries.

"Tangible Net Worth" means, as of any time the same is to be determined, the total shareholders' equity (including capital stock, additional paid-in-capital and retained earnings after deducting treasury stock, but excluding minority interests in Subsidiaries) which would appear on the balance sheet of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP, minus the sum of (a) all assets which would be classified as intangible assets under GAAP, including, without limitation, goodwill, patents, trademarks, trade names, copyrights, franchises and deferred charges (including, without limitation, unamortized debt discount and expense, organization costs and deferred research and development expense) and similar assets and (b) the write-up of assets above cost.

"Termination Date" means \_\_\_\_\_, 20\_\_, or such later date to which the Commitment may be extended pursuant to Section 2.6 hereof (provided that in the event the Termination Date is not extended pursuant to Section 2.6, the stated Termination Date then in effect shall be extended by four (4) months upon the Borrower's written request at such time), or such earlier date on which the Commitment is terminated in whole pursuant to Section 2.5, 8.2, or 8.3 hereof.

"Total Liabilities" means, as of any time the same is to be determined, the aggregate of all indebtedness, obligations, liabilities, reserves and any other items which would be listed as a liability on a balance sheet of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

"Unfunded Vested Liabilities" means, for any Plan at any time, the amount (if any) by which the present value of all vested nonforfeitable accrued benefits under such Plan exceeds the

fair market value of all Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the Controlled Group to the PBGC or the Plan under Title IV of ERISA.

"Welfare Plan" means a "welfare plan" as defined in Section 3(1) of ERISA.

*Section 4.2. Interpretation.* The foregoing definitions are equally applicable to both the singular and plural forms of the terms defined. The words "hereof", "herein", and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All references to time of day herein are references to **Any Town, USA** time unless otherwise specifically provided. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, it shall be done in accordance with GAAP except where such principles are inconsistent with the specific provisions of this Agreement.

SECTION 5. REPRESENT A TRONS AND WARRANTES.

The Borrower represents and warrants to the Bank as follows:

*Section 5.1. Organization and Qualification.* The Borrower is duly organized, validly existing, and in good standing as a limited liability company under the laws of the State of \_\_\_\_\_, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying where the failure to do so could reasonably be expected to have a Material Adverse Effect.

*Section 5.2. Subsidiaries.* Each Subsidiary is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated or organized, as the case may be, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying where the failure to do so could reasonably be expected to have a Material Adverse Effect. Schedule 5.2 hereto identifies each Subsidiary, the jurisdiction of its incorporation or organization, as the case may be, the percentage of issued and outstanding shares of each class of its capital stock or other equity interests owned by the Borrower and the Subsidiaries and, if such percentage is not 100% (excluding directors' qualifying shares as required by law), a description of each class of its authorized capital stock and other equity interests and the number of shares of each class issued and outstanding. All of the outstanding shares of capital stock and other equity interests of each Subsidiary are validly issued and outstanding and fully paid and nonassessable and all such shares and other equity interests indicated on Schedule 5.2 as owned by the Borrower or a Subsidiary are owned, beneficially and of record, by the Borrower or such Subsidiary free and clear of all Liens other than Liens granted to the Bank. There are no outstanding commitments or other obligations of any Subsidiary to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of



capital stock or other equity interests of any Subsidiary. As of the date hereof, the Borrower has no Subsidiaries.

*Section 5.3. Authority and Validity of Obligations.* The Borrower has full right and authority to enter into this Agreement and the other Loan Documents, to make the borrowings herein provided for, to issue its Note in evidence thereof, to grant to the Bank the Liens described in the Collateral Documents, and to perform all of its obligations hereunder and under the other Loan Documents. Each Subsidiary has full right and authority to enter into the Loan Documents executed by it, to guarantee the Obligations, to grant to the Bank the Liens described in the Collateral Documents executed by it, and to perform all of its obligations under the Loan Documents executed by it. The Loan Documents delivered by the Borrower and its Subsidiaries have been duly authorized, executed, and delivered by the Borrower and its Subsidiaries and constitute valid and binding obligations of the Borrower and its Subsidiaries enforceable in accordance with their terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, or similar laws affecting creditors' rights generally and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law); and this Agreement and the other Loan Documents do not, nor does the performance or observance by the Borrower and its Subsidiaries of any of the matters and things herein or therein provided for, (a) contravene or constitute a default under any provision of law or any judgment, injunction, order or decree binding upon the Borrower or any Subsidiary or any provision of the organizational documents (*e.g.*, charter, articles of incorporation, or by-laws, articles of association or operating agreement, partnership agreement or other similar documents) of the Borrower or any Subsidiary or any covenant, indenture or agreement of or affecting the Borrower or any Subsidiary or any of its Property, or (b) result in the creation or imposition of any Lien on any Property of the Borrower or any Subsidiary other than Liens granted to the Bank.

*Section 5.4. Use of Proceeds: Margin Stock.* The Borrower shall use the proceeds of the Loans to refinance existing indebtedness and for its general working capital purposes and for such other legal and proper purposes as are consistent with all applicable laws. Neither the Borrower nor any Subsidiary is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of any Loan will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

*Section 5.5. Financial Reports.* The consolidated balance sheet of the Borrower and its Subsidiaries as of \_\_\_\_\_, 20\_\_ I, and the related consolidated statements of income, retained earnings, and cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, and accompanying notes thereto, which financial statements are accompanied by the audit report of ABC & Company, LLP, independent public accountants, and the unaudited interim consolidated balance sheet of the Borrower and its Subsidiaries as at \_\_\_\_\_, 20\_\_, and the related consolidated statements of income, retained earnings, and cash flows of the Borrower and its Subsidiaries for the 6 months then ended, heretofore furnished to the Bank, fairly present the consolidated financial condition of the Borrower and its Subsidiaries as at said dates and the consolidated results of their operations and cash flows for the periods then ended in conformity

with GAAP applied on a consistent basis. Neither the Borrower nor any Subsidiary has contingent liabilities which are material to it other than as indicated on such financial statements or, with respect to future periods, on the financial statements furnished pursuant to Section 7.5 hereof.

*Section 5.6. No Material Adverse Change.* Since \_\_\_\_\_, 20\_\_, there has been no change in the condition (financial or otherwise) or business prospects of the Borrower or any Subsidiary except those occurring in the ordinary course of business, none of which individually or in the aggregate have been materially adverse.

*Section 5.7. Full Disclosure.* The statements and information furnished to the Bank in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by the Bank to provide all or part of the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading, the Bank acknowledging that, as to any projections furnished to the Bank, the Borrower only represents that the same were prepared on the basis of information and estimates the Borrower believed to be reasonable.

*Section 5.8. Trademarks, Franchises and Licenses.* The Borrower and its Subsidiaries own, possess, or have the right to use all necessary patents, licenses, franchises, trademarks, trade names, trade styles, copyrights, trade secrets, know how, and confidential commercial and proprietary information to conduct their businesses as now conducted, without known conflict with any patent, license, franchise, trademark, trade name, trade style, copyright, or other proprietary right of any other Person.

*Section 5.9. Governmental Authority and Licensing.* The Borrower and its Subsidiaries have received all licenses, permits, and approvals of all federal, state, and local governmental authorities, if any, necessary to conduct their businesses, in each case where the failure to obtain or maintain the same could reasonably be expected to have a Material Adverse Effect. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit or approval is pending or, to the knowledge of the Borrowers threatened.

*Section 5.10. Good Title.* The Borrower and its Subsidiaries have good and defensible title (or valid leasehold interests) to their assets as reflected on the most recent consolidated balance sheet of the Borrower and its Subsidiaries furnished to the Bank (except for sales of assets by the Borrower and its Subsidiaries in the ordinary course of business), subject to no Liens other than such thereof as are permitted by Section 7.8 hereof.

*Section 5.11. Litigation and Other Controversies.* There is no litigation or governmental or arbitration proceeding or labor controversy pending, nor to the knowledge of the Borrower threatened, against the Borrower or any Subsidiary which if adversely determined could reasonably be expected to have a Material Adverse Effect.

*Section 5.12. Taxes.* All tax returns required to be filed by the Borrower or any Subsidiary in any jurisdiction have, in fact, been filed, and all taxes, assessments, fees, and other

governmental charges upon the Borrower or any Subsidiary or upon any of their Property, income or franchises, which are shown to be due and payable in such returns, have been paid, except such taxes, assessments, fees, and governmental charges, if any, as are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and as to which adequate reserves established in accordance with GAAP have been provided. The Borrower does not know of any proposed additional tax assessment against it or its Subsidiaries for which adequate provisions in accordance with GAAP have not been made on their accounts. Adequate provisions in accordance with GAAP for taxes on the books of the Borrower and its Subsidiaries have been made for all open years, and for the current fiscal period.

*Section 5.13. Approvals.* No authorization, consent, license, or exemption from, or filing or registration with, any court or governmental department, agency, or instrumentality, nor any approval or consent of any other Person, is or will be necessary to the valid execution, delivery, or performance by the Borrower or any Subsidiary of any Loan Document, except for such approvals which have been obtained prior to the date of this Agreement and remain in full force and effect.

*Section 5.14. Affiliate Transactions.* Neither the Borrower nor any Subsidiary is a party to any contracts or agreements with any of its Affiliates on terms and conditions which are less favorable to the Borrower or such Subsidiary than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

*Section 5.15. Investment Company; Public Utility Holding Company.* Neither the Borrower nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "public utility holding company" within the meaning of the Public Utility Holding Company Act of 1935, as amended.

*Section 5.16. ERISA.* The Borrower and each other member of its Controlled Group has fulfilled its obligations under the minimum funding standards of, and is in compliance in all material respects with, ERISA and the Code to the extent applicable to it and has not incurred any liability to the PBGC or a Plan under Title IV of ERISA other than a liability to the PBGC for premiums under Section 4007 of ERISA. Neither the Borrower nor any Subsidiary has any contingent liabilities with respect to any post-retirement benefits under a Welfare Plan, other than liability for continuation coverage described in article 6 of Title I of ERISA.

*Section 5.17. Compliance with Laws.* The Borrower and its Subsidiaries are in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to their Property or business operations (including, without limitation, all federal, state, and local laws relating to the sale or lease of goods, the Federal Truth-in-Lending Act, Federal Truth-in-Leasing Act, the Equal Credit Opportunity Act, the Fair Credit Billing Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Federal Trade Commission Act, the Magnuson-Moss Warranty Act, the Federal Reserve Board's Regulations Band Z, the Soldiers' and Sailors' Civil Relief Act of 1940, and any other federal, state, and local laws relating to interest, usury, consumer credit, equal credit opportunity, fair

credit reporting, privacy, consumer protection, false or deceptive trade practices and disclosure, the Occupational Safety and Health Act of 1970, the Americans with Disabilities Act of 1990, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any Subsidiary has received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

*Section 5.18. Other Agreements.* Neither the Borrower nor any Subsidiary is in default under the terms of any covenant, indenture or agreement of or affecting the Borrower, any Subsidiary or any of their Property, which default if uncured could reasonably be expected to have a Material Adverse Effect.

*Section 5.19. No Default.* No Default or Event of Default has occurred and is continuing.

#### SECTION 6. CONDITIONS PRECEDENT.

The obligation of the Bank to make any Loan under this Agreement is subject to the following conditions precedent:

*Section 6.1. All Advances.* As of the time of the making of each Loan (including the initial Loan) hereunder:

- (a) each of the representations and warranties set forth in Section 5 hereof and in the other Loan Documents shall be true and correct as of such time, except to the extent the same expressly relate to an earlier date;
- (b) the Borrower and its Subsidiaries shall be in compliance with the terms and conditions of the Loan Documents, and no Default or Event of Default shall have occurred and be continuing or would occur as a result of making such Loan;
- (c) after giving effect to such Loan the aggregate principal amount of all Loans outstanding under this Agreement shall not exceed the lesser of (i) the Commitment and (ii) the Borrowing Base; and
- (d) such Loan shall *not* violate any order, judgment, or decree of any court or other authority or any provision of law or regulation applicable to the Bank (including, without limitation, Regulation U of the Board of Governors of the Federal Reserve System) as then in effect.

The Borrower's request for any Loan shall constitute its warranty as to the facts specified in subsections (a) through (c), both inclusive, above.

*Section 6.2. Initial Advance.* At or prior to the making of the initial Loan hereunder, the following conditions precedent shall also have been satisfied:

(a) the Bank shall have received the following (and, with respect to all documents, each to be properly executed and completed) and the same shall have been approved as to form and substance by the Bank:

(i) the Note;

(ii) the Security Agreement from the Borrower, together with any financing statements and lockbox and deposit account control agreements as the Bank may require;

(iii) the Guaranty from J.S. Bach;

(iv) copies (executed or certified as may be appropriate) of resolutions of the governing body of the Borrower authorizing the execution, delivery, and performance of the Loan Documents;

(v) articles of organization of the Borrower certified by the appropriate governmental office of the state of its organization;

(vi) operating agreement, if any, for the Borrower certified by an appropriate officer of such Person acceptable to the Bank;

(vii) an incumbency certificate containing the name, title and genuine signature of the Borrower's Authorized Representatives;

(viii) a good standing certificate for the Borrower dated as of a date no earlier than 30 days prior to the date hereof, from the appropriate governmental offices in the state of its organization and in each state in which it is qualified to do business as a foreign organization; and

(ix) one or more pay-off and lien release letters from secured creditors of the Borrower and its Subsidiaries setting forth, among other things, the total amount of indebtedness outstanding and owing to them (or outstanding letters of credit issued for their account) and containing an undertaking to cause to be delivered to the Bank termination statements and any other lien release instruments necessary to release its Lien on all of their assets;

(b) the Bank shall have received the initial fees called for hereby;

(c) the Bank shall have received such valuations and certifications as it may require in order to satisfy itself as to the value of the Collateral, the financial condition of the Borrower and its Subsidiaries, and the lack of material contingent liabilities of the Borrower and its Subsidiaries;

(d) legal matters incident to the execution and delivery of the Loan Documents and to the transactions contemplated hereby shall be satisfactory to the Bank and its counsel; and the Bank shall have received the favorable written opinion of counsel for the Borrower in form and substance satisfactory to the Bank and its counsel;

(e) the Bank shall have received a Borrowing Base certificate in the form attached hereto as Exhibit B showing the computation of the Borrowing Base in reasonable detail as of the close of business not earlier than 5 days prior to the making of the initial Loan hereunder;

(f) the Bank shall have received financing statement, tax and judgment lien search results against the Property of the Borrower and its Subsidiaries, evidencing the absence of Liens on their Property except as permitted by Section 7.8 hereof;

(g) the Liens granted to the Bank under the Collateral Documents shall have been perfected in a manner satisfactory to the Bank and its counsel; and

(h) the Bank shall have received such other agreements, instruments, documents, certificates and opinions as the Bank may reasonably request.



SECTION 7.

LAWYERS' MENTOR

COVENANTS.

The Borrower agrees that, so long as any credit is available to or in use by the Borrower hereunder, except to the extent compliance in any case or cases is waived in writing by the Bank:

*Section 7.1. Maintenance of Business.* The Borrower shall, and shall cause each Subsidiary to, preserve and maintain its existence. The Borrower shall, and shall cause each Subsidiary to, preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

*Section 7.2. Maintenance of Properties.* The Borrower shall maintain, preserve, and keep its property, plant, and equipment in good repair, working order and condition (ordinary wear and tear excepted) and shall from time to time make all needful and proper repairs, renewals, replacements, additions, and betterments thereto so that at all times the efficiency thereof shall be fully preserved and maintained, and shall cause each Subsidiary to do so in respect of Property owned or used by it.

*Section 7.3. Taxes and Assessments.* The Borrower shall duly pay and discharge, and shall cause each Subsidiary to duly pay and discharge, all taxes, rates, assessments, fees, and governmental charges upon or against it or its Property, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves are provided therefor.

*Section 7.4. Insurance.* Upon the request of the Bank with prior written notice to the Borrower, to the extent the Borrower does not already do so, (a) the Borrower shall insure and keep insured, and shall cause each Subsidiary to insure and keep insured, with good and responsible insurance companies, all insurable Property owned by it which is of a character usually insured by Persons similarly situated and operating like Properties against loss or damage from such hazards and risks, and in such amounts, as are insured by Persons similarly situated and operating like Properties and (b) the Borrower shall insure, and shall cause each Subsidiary to insure, such other hazards and risks (including employers' and public liability risks) with good and responsible insurance companies as and to the extent usually insured by Persons similarly situated and conducting similar businesses. The Borrower shall in any event maintain, or cause its lessees to maintain, insurance on the Collateral to the extent required by the Collateral Documents. The Borrower shall upon request furnish to the Bank a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section.

*Section 7.5. Financial Reports.* The Borrower shall, and shall cause each Subsidiary to, maintain a standard system of accounting in accordance with GAAP and shall furnish to the Bank and its duly authorized representatives such information respecting the business and financial condition of the Borrower and its Subsidiaries as the Bank may reasonably request; and without any request, shall furnish to the Bank:

(a) as soon as available, and in any event within 20 days after the last day of each calendar month, a Borrowing Base certificate in the form attached hereto as Exhibit B showing the computation of the Borrowing Base in reasonable detail as of the close of business on the last day of such month, together with an accounts receivable and accounts payable aging, prepared by the Borrower and certified to by its chief financial officer or such other officer acceptable to the Bank;

- (b) as soon as available, and in any event within 45 days after the last day of each fiscal quarter of the Borrower, a copy of the consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the last day of such period and the consolidated and consolidating statements of income, retained earnings, and cash flows of the Borrower and its Subsidiaries for the fiscal quarter and the fiscal year-to-date period then ended, each in reasonable detail showing in comparative form the figures for the corresponding date and period in the previous fiscal year, prepared by the Borrower in accordance with GAAP and certified to by its chief financial officer or such other officer acceptable to the Bank;
- (c) as soon as available, and in any event within 120 days after the close of each fiscal year of the Borrower, a copy of the consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the close of such period and the consolidated and consolidating statements of income, retained earnings, and cash flows of the Borrower and its Subsidiaries for such period, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Crowe, Chizek and Company, LLP, or another firm of independent public accountants of recognized standing, selected by the Borrower and satisfactory to the Bank, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the consolidated financial condition of the Borrower and its Subsidiaries as of the close of such fiscal year and the results of their operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;
- (d) within the period provided in subsection (c) above, the written statement of the accountants who certified the audit report thereby required that in the course of their audit they have obtained no knowledge of any Default or Event of Default, or, if such accountants have obtained knowledge of any such Default or Event of Default, they shall disclose in such statement the nature and period of the existence thereof;
- (e) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of the Borrower's or any Subsidiary's operations and financial affairs given to it by its independent public accountants;
- (f) promptly after knowledge thereof shall have come to the attention of any responsible officer of the Borrower, written notice of any threatened or pending litigation or governmental or arbitration proceeding or labor controversy against the Borrower or any Subsidiary which, if adversely determined, would adversely effect the financial condition, Properties, business or operations of the Borrower or any Subsidiary or of the occurrence of any Default or Event of Default hereunder; and
- (g) as soon as available, and in any event within 45 days after the last day of each fiscal quarter of the Borrower, the Borrower shall deliver to the Bank a written certificate in the form attached hereto as Exhibit C signed by the chief financial officer of the Borrower, or such other officer of the Borrower satisfactory to the Bank, to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by the Borrower to remedy the same together with calculations supporting such statements in respect

of Section 7.19 of this Agreement.

*Section 7.6. Inspection.* The Borrower shall, and shall cause each Subsidiary to, permit the Bank and its duly authorized representatives and agents to visit and inspect any of the Properties, corporate books and financial records of the Borrower and each Subsidiary, to examine and make copies of the books of accounts and other financial records of the Borrower and each Subsidiary, and to discuss the affairs, finances and accounts of the Borrower and each Subsidiary with, and to be advised as to the same by, its officers, employees, and independent public accountants (and by this provision the Borrower hereby authorizes such accountants to discuss with the Bank the finances and affairs of the Borrower and of each Subsidiary) at such reasonable times and reasonable intervals as the Bank may designate.

*Section 7.7. Borrowings and Guaranties.* The Borrower shall not, nor shall it permit any Subsidiary to, issue, incur, assume, create, or have outstanding any Indebtedness for Borrowed Money, or be or become liable as endorser, guarantor, surety, or otherwise for any debt, obligation, or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person; *provided, however,* that the foregoing shall not restrict nor operate to prevent:

- (a) the Obligations of the Borrower and its Subsidiaries owing to the Bank under the Loan Documents and other indebtedness and obligations of such Persons owing to the Bank;
- (b) purchase money indebtedness and Capitalized Lease Obligations of the Borrower and its Subsidiaries in an amount not to exceed \$ \_\_\_\_\_ in the aggregate at any one time outstanding;
- (c) endorsement of items for deposit or collection of commercial paper received in the ordinary course of business;
- (d) Non-Recourse Debt consented to in writing by the Bank (not to be unreasonably withheld);
- (e) unsecured Subordinated Debt consented to in writing by the Bank; and
- (f) unsecured indebtedness of the Borrower and its Subsidiaries not otherwise permitted by this Section in an amount not to exceed \$ \_\_\_\_\_ in the aggregate at any one time outstanding.

*Section 7.8. Liens.* The Borrower shall not, nor shall it permit any Subsidiary to, create, incur or permit to exist any Lien of any kind on any Property owned by any such Person; *provided, however,* that the foregoing shall not apply to nor operate to prevent:

- (a) Liens arising by statute in connection with worker's compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations, or other similar charges (other than Liens arising under ERISA), good faith cash deposits in connection with tenders, contracts, or leases to which the Borrower or any Subsidiary is a party or other cash deposits required to be made in the ordinary course of business, provided in each case that the obligation is not for borrowed money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by

appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics', workmen's, materialmen's, landlords', carriers', or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of the Borrower and its Subsidiaries secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of \$ \_\_\_\_\_ at any one time outstanding;

(d) Liens on property of the Borrower or any Subsidiary created solely for the purpose of securing indebtedness permitted by Section 7.7(b) hereof, representing or incurred to finance, refinance or refund the purchase price of Property, provided that no such Lien shall extend to or cover other Property of the Borrower or such Subsidiary other than the respective Property so acquired, and the principal amount of indebtedness secured by any such Lien shall at no time exceed the original purchase price of such Property, as reduced by repayments of principal thereon;

(e) any interest of a lessor or lessee under any operating lease entered into in the ordinary course of business;

(f) Liens securing Non-Recourse Debt permitted under Section 7.7(d) above;

and

(g) the Liens granted in favor of the Bank pursuant to the Collateral Documents.

*Section 7.9. Investments, Acquisitions, Loans and Advances.* The Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly, make, retain, or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof; *provided, however,* that the foregoing shall not apply to nor operate to prevent:

(a) investments in direct obligations of the United States of America or of any agency or instrumentality thereof whose obligations constitute full faith and credit obligations of the United States of America, provided that any such obligations shall mature within one year of the date of issuance thereof;

(b) investments in commercial paper rated at least P-1 by Moody's and at least A-1 by S&P maturing within one year of the date of issuance thereof;

(c) investments in certificates of deposit issued by the Bank or by any United States commercial bank having capital and surplus of not less than \$ \_\_\_\_\_ which have a maturity of one year or less;

(d) investments in repurchase obligations with a term of not more than 7 days for underlying securities of the types described in subsection (a) above entered into with any bank meeting the qualifications specified in subsection (c) above, provided all such agreements require physical delivery of the securities securing such repurchase agreement, except those delivered through the Federal Reserve Book Entry System;

(e) investments in money market funds that invest solely, and which are restricted by their respective charters to invest solely, in investments of the type described in the immediately preceding subsections (a), (b), (c), and (d) above;

(f) purchases of Eligible Finance Receivables in the ordinary course of business consistent with past practices; and

(g) other investments, loans and advances in addition to those otherwise permitted by this Section in an amount not to exceed \$\_\_\_\_\_ in the aggregate at any one time outstanding.

In determining the amount of investments, acquisitions, loans, and advances permitted under this Section, investments and acquisitions shall always be taken at the original cost thereof (regardless of any subsequent appreciation or depreciation therein), and loans and advances shall be taken at the principal amount thereof then remaining unpaid.

*Section 7.10. Mergers, Consolidations and Sales.* The Borrower shall not, nor shall it permit any Subsidiary to, be a party to any merger or consolidation, or sell, transfer, lease or otherwise dispose of all or any part of its Property, including any disposition of Property as part of a sale and leaseback transaction, or in any event sell or discount (with or without recourse) any of its notes or accounts receivable; *provided, however,* that this Section shall not apply to nor operate to prevent:

(a) the sale or lease of inventory in the ordinary course of business;

(b) the sale of any Finance Receivables (including rights to the leased goods subject thereto) or the sale of leased goods at lease expiration or termination for fair market value in the ordinary course of business, *provided* that (i) the Borrower provide the Bank prior written notice of such sale setting forth the terms and conditions thereof (including a description of the assets being sold and the purchase price to be paid), and a pro forma Borrowing Base certificate showing compliance with the Borrowing Base after giving effect to such transaction, (ii) in the event of the sale of Finance Receivables aggregating \$1,000,000 or more in a single transaction or series of related transactions, the Bank has given its written consent to such sale, (iii) no Default or Event of Default then exists or would arise after giving effect to such transaction, and (iv) all proceeds of such sale are remitted to the Bank for application to the Obligations then outstanding;

(c) the sale, transfer, or other disposition of any tangible personal property that, in the reasonable business judgment of the Borrower or its Subsidiary, has become uneconomical, obsolete, or worn out, and which is disposed of in the ordinary course of business; and

(d) the sale, transfer, lease, or other disposition of Property of the Borrower or any Subsidiary (including any disposition of Property as part of a sale and leaseback transaction) aggregating for the Borrower and its Subsidiaries not more than \$\_\_\_\_\_ during any fiscal year of the Borrower.

*Section 7.11. Dividends and Certain Other Restricted Payments.* The Borrower shall not, nor shall it permit any Subsidiary to, (a) declare or pay any dividends on or make any other distributions in respect of any class or series of its membership or other equity interests or (b) directly or indirectly purchase, redeem, or otherwise acquire or retire any of its membership or other equity interests or any warrants, options, or similar instruments to acquire the same; *provided, however,* that the foregoing shall not operate to prevent (i) the making of dividends or distributions



by any Subsidiary to the Borrower and (ii) any other dividends or distributions by the Borrower to its members so long as no Default or Event of Default then exists or would arise after giving effect to any such dividend or distribution.

*Section 7.12. ERISA.* The Borrower shall, and shall cause each Subsidiary to, promptly pay and discharge all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed could reasonably be expected to result in the imposition of a Lien against any of its Property. The Borrower shall, and shall cause each Subsidiary to, promptly notify the Bank of: (a) the occurrence of any reportable event (as defined in ERISA) with respect to a Plan, (b) receipt of any notice from the PBGC of its intention to seek termination of any Plan or appointment of a trustee therefor, (c) its intention to terminate or withdraw from any Plan, and (d) the occurrence of any event with respect to any Plan which would result in the incurrence by the Borrower or any Subsidiary of any material liability, fine or penalty, or any material increase in the contingent liability of the Borrower or any Subsidiary with respect to any post-retirement Welfare Plan benefit.

*Section 7.13. Compliance with Laws.* The Borrower shall, and shall cause each Subsidiary to, comply in all respects with the requirements of all federal, state, and local laws, rules, regulations, ordinances and orders applicable to or pertaining to its Property or business operations, where any such non-compliance, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or result in a Lien upon any of its Property.

*Section 7.14. Burdensome Contracts With Affiliates.* The Borrower shall not, nor shall it permit any Subsidiary to, enter into any contract, agreement or business arrangement with any of its Affiliates on terms and conditions which are less favorable to the Borrower or such Subsidiary than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

*Section 7.15. No Changes in Fiscal Year.* The Borrower shall not, nor shall it permit any Subsidiary to, change its fiscal year from its present basis.

*Section 7.16. Formation of Subsidiaries.* The Borrower shall not, nor shall it permit any Subsidiary to, form or acquire any other Subsidiary.

*Section 7.17. Change in the Nature of Business.* The Borrower shall not, nor shall it permit any Subsidiary to, engage in any business or activity if as a result the general nature of the business of the Borrower or any Subsidiary would be changed in any material respect from the general nature of the business engaged in by it as of the date hereof.

*Section 7.18. Use of Loan Proceeds.* The Borrower shall use the credit extended under this Agreement solely for the purposes set forth in, or otherwise permitted by, Section 5.4 hereof.

*Section 7.19. Financial Covenants.* (a) *Tangible Net Worth.* The Borrower shall at all times maintain Tangible Net Worth in an amount not less than \$\_\_\_\_\_.

(b) *Leverage Ratio.* The Borrower shall at all times maintain a ratio of Adjusted Total Liabilities to Tangible Net Worth of not more than 1.5 to 1.0.

(c) *Delinquent Finance Receivables.* As of the last day of each fiscal quarter of the Borrower, the Borrower shall maintain the ratio of (i) the aggregate amount of principal and interest payments and

non-cancelable base rental payments due with respect to all Delinquent Finance Receivables of the Borrower and its Subsidiaries over the remaining term of such loan or lease agreements to (ii) the aggregate Net Amount of Finance Receivables of the Borrower and its Subsidiaries over the remaining unexpired term of such loan or lease agreements of not more than 0.035 to 1.0.

(d) *Interest Coverage Ratio.* As of the last day of each fiscal quarter of the Borrower, the Borrower shall not permit the ratio of EBIT for the four fiscal quarters then ended to Interest Expense for the same four fiscal quarters then ended to be less than 1.35 to 1.0.

SECTION 8.

LAWYERS' MENTOR

EVENTS OF DEFAULT AND REMEDIES.

*Section 8.1. Events of Default.* Anyone or more of the following shall constitute an "Event of Default" hereunder:

- (a) default in the payment when due of all or any part of any Obligation payable by the Borrower hereunder or under any other Loan Document (whether at the stated maturity thereof or at any other time provided for in this Agreement), or default shall occur in the payment when due of any other indebtedness or obligation (whether direct, contingent or otherwise) of the Borrower owing to the Bank; or
- (b) default in the observance or performance of any covenant set forth in Sections 7.5, 7.7, 7.8, 7.9, 7.10, 7.11, 7.18 or 7.19 hereof or of any provision of any Loan Document requiring the maintenance of insurance on the Collateral subject thereto or dealing with the use or remittance of proceeds of Collateral; or
- (c) default in the observance or performance of any other provision hereof or of any other Loan Document which is not remedied within 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of the Borrower or (ii) written notice thereof is given to the Borrower by the Bank; or
- (d) any representation or warranty made by the Borrower or any Subsidiary herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Loan made hereunder, proves untrue in any material respect as of the date of the issuance or making thereof; or
- (e) any event occurs or condition exists (other than those described in subsections (a) through (d) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents shall for any reason not be or shall cease to be in full force and effect, or any of the Loan Documents is declared to be null and void, or any of the Collateral Documents shall for any reason fail to create a valid and perfected first priority Lien in favor of the Bank in any Collateral purported to be covered thereby except as expressly permitted by the terms thereof; or
- (f) default shall occur under any Indebtedness for Borrowed Money issued, assumed or guaranteed by the Borrower or any Subsidiary aggregating more than \$\_\_\_\_\_, or under any indenture, agreement or other instrument under which the same may be issued, and such default shall continue for a period of time sufficient to permit the acceleration of the maturity of any such Indebtedness for Borrowed Money (whether or not such maturity is in fact accelerated), or any such Indebtedness for Borrowed Money shall not be paid when due (whether by lapse of time, acceleration or otherwise, but after any relevant notice or cure periods); or
- (g) any judgment or judgments, writ or writs, or warrant or warrants of attachment, or any similar process or processes in an aggregate amount in excess of \$50,000 shall be entered or filed against the Borrower or any Subsidiary or against any of their Property and which remains unvacated, unbonded, unstayed or unsatisfied for a period of 30 days; or
- (h) the Borrower or any member of its Controlled Group shall fail to pay when due an amount or amounts aggregating in excess \$\_\_\_\_\_ which it shall have become liable to pay to the PBGC or to a Plan under Title IV of ERISA; or notice of intent to terminate a Plan or Plans having aggregate Unfunded Vested Liabilities in excess of \$\_\_\_\_\_ (collectively, a "Material Plan") shall be filed under Title IV of ERISA by the Borrower or any other member of its Controlled

Group, any plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate or to cause a trustee to be appointed to administer any Material Plan or a proceeding shall be instituted by a fiduciary of any Material Plan against the Borrower or any member of its Controlled Group to enforce Section 515 or 4219(c)(5) of ERISA and such proceeding shall not have been dismissed within 30 days thereafter; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated; or

(i) dissolution or termination of the existence of the Borrower or any Subsidiary; or

G) any Change of Control shall occur; or

(k) the Borrower or any Subsidiary shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 8.1 (1) hereof; or

(1) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any Subsidiary or any substantial part of any of their Property, or a proceeding described in Section 8.1(k)(v) shall be instituted against the Borrower or any Subsidiary, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of 60 days.

*Section 8.2. Non-Bankruptcy Defaults.* When any Event of Default described in subsection (a) through G), both inclusive, of Section 8.1 has occurred and is continuing, the Bank may, by notice to the Borrower, take one or more of the following actions:

(a) terminate the obligation of the Bank to extend any further credit hereunder on the date (which may be the date thereof) stated in such notice;

(b) declare the principal of and the accrued interest on the Note to be forthwith due and payable and thereupon the Note, including both principal and interest and all fees, charges and other Obligations payable hereunder and under the other Loan Documents, shall be and become immediately due and payable without further demand, presentment, protest or notice of any kind; and

(c) enforce any and all rights and remedies available to it under the Loan Documents or applicable law.

*Section 8.3. Bankruptcy Defaults.* When any Event of Default described in subsection (k) or (1) of Section 8.1 has occurred and is continuing, then the Note, including both principal and interest, and all fees, charges and other Obligations payable hereunder and under the other Loan Documents, shall immediately become due and payable without presentment, demand, protest or notice of any kind, and the obligation of the Bank to extend further credit pursuant to any of the terms hereof shall immediately terminate. In addition, the Bank may exercise any and all remedies

available to it under the Loan Documents or applicable law.

SECTION 9. MISCELLANEOUS.

*Section 9.1. Non-Business Days.* If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment shall be extended to the next succeeding Business Day on which date such payment shall be due and payable. In the case of any payment of principal falling due on a day which is not a Business Day, interest on such principal amount shall continue to accrue during such extension at the rate per annum then in effect, which accrued amount shall be due and payable on the next scheduled date for the payment of interest.

*Section 9.2. No Waiver, Cumulative Remedies.* No delay or failure on the part of the Bank or on the part of the holder of the Obligations in the exercise of any power or right shall operate as a waiver thereof or as an acquiescence in any default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power or right. The rights and remedies hereunder of the Bank and of the holder of the Obligations are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have.

*Section 9.3. Amendments, Etc.* No amendment, modification, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

*Section 9.4. Costs and Expenses; Indemnification.* The Borrower agrees to pay on demand the costs and expenses of the Bank in connection with the negotiation, preparation, execution and delivery of this Agreement, the other Loan Documents and the other instruments and documents to be delivered hereunder or thereunder (not to exceed \$\_\_\_\_\_ in legal fees of the Bank payable by the Borrower in connection with the instruments and documents executed and delivered on or about the date hereof), and in connection with the recording or filing of any of the foregoing, and in connection with the transactions contemplated hereby or thereby, and in connection with any consents hereunder or waivers or amendments hereto or thereto, including the fees and expenses of counsel for the Bank with respect to all of the foregoing (whether or not the transactions contemplated hereby are consummated). The Borrower further agrees to pay to the Bank or any other holder of the Obligations all costs and expenses (including court costs and attorneys' fees), if any, incurred or paid by the Bank or any other holder of the Obligations in connection with any Default or Event of Default or in connection with the enforcement of this Agreement or any of the other Loan Documents or any other instrument or document delivered hereunder or thereunder. The Borrower further agrees to indemnify the Bank, and any security trustee, and their respective directors, officers and employees, against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor, whether or not the indemnified Person is a party

thereto) which any of them may pay or incur arising out of or relating to any Loan Document or any of the transactions contemplated thereby or the direct or indirect application or proposed application of the proceeds of any Loan, other than those which arise from the gross negligence or willful misconduct of the party claiming indemnification. The Borrower, upon demand by the Bank at any time, shall reimburse the Bank for any legal or other expenses incurred in connection with investigating or defending against any of the foregoing except if the same is directly due to the gross negligence or willful misconduct of the party to be indemnified. The obligations of the Borrower under this Section shall survive the termination of this Agreement.

*Section 9.5. Documentary Taxes.* The Borrower agrees to pay on demand any documentary, stamp or similar taxes payable in respect of this Agreement or any other Loan Document, including interest and penalties, in the event any such taxes are assessed, irrespective of when such assessment is made and whether or not any credit is then in use or available hereunder.

*Section 9.6. Survival of Representations.* All representations and warranties made herein or in any of the other Loan Documents or in certificates given pursuant hereto or thereto shall survive the execution and delivery of this Agreement and the other Loan Documents, and shall continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

*Section 9.7. Notices.* Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation, notice by telecopy) and shall be given to the relevant party at its address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by United States certified or registered mail, by telecopy or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

to the Borrower at:

ABC Capital, LLC  
123 Elm Street  
Any Town, USA  
Attention: J.S. Bach  
Telephone

to the Bank at:

ANY Trust and Savings Bank  
III

\_\_\_\_\_  
Attention:  
Telephone:

Each such notice, request or other communication shall be effective (i) if given by telecopier, when such telecopy is transmitted to the telecopier number specified in this Section and a confirmation of such telecopy has been received by the sender, (ii) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section; provided that any notice given pursuant to Section 1 hereof shall be effective only upon receipt.

*Section 9.8. Construction.* The provisions of this Agreement relating to Subsidiaries shall only apply during such times as the Borrower has one or more Subsidiaries. NOTHING



CONTAINED HEREIN SHALL BE DEEMED OR CONSTRUED TO PERMIT ANY ACT OR OMISSION WHICH IS PROHIBITED BY THE TERMS OF ANY OF THE OTHER LOAN DOCUMENTS, THE COVENANTS AND AGREEMENTS CONTAINED HEREIN BEING IN ADDITION TO AND NOT IN SUBSTITUTION FOR THE COVENANTS AND AGREEMENTS CONTAINED IN THE OTHER LOAN DOCUMENTS.

*Section 9.9. Headings.* Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

*Section 9.10. Severability of Provisions.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

*Section 9.11. Counterparts.* This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterpart signature pages, and all such counterparts taken together shall be deemed to constitute one and the same instrument.

*Section 9.12. Binding Nature, Governing Law, Etc.* This Agreement shall be binding upon the Borrower and its successors and assigns, and shall inure to the benefit of the Bank and the benefit of its successors and assigns, including any subsequent holder of the Obligations. The Borrower may not assign its rights hereunder without the written consent of the Bank. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HERETO SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

*Section 9.13. Submission to Jurisdiction; Waiver of Jury Trial.* The Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the District of \_\_\_\_\_ and of any \_\_\_\_\_ State court sitting in the City of \_\_\_\_\_ for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. The Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. THE BORROWER AND THE BANK HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

[SIGNATURE PAGE TO FOLLOW]

Upon your acceptance hereof in the manner hereinafter set forth, this Agreement shall constitute a contract between us for the uses and purposes hereinabove set forth.

Dated as of this day \_\_ of \_\_\_\_\_, 20\_\_.

ABC CAPITAL, LLC

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Accepted and agreed to at \_\_\_\_\_, as of the day and year last above written.

ANY TRUST AND SAVINGS BANK

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

LAWYERS' MENTOR