
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2003

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

For the transition period from _____ to _____.

Commission File Number: 0-19582

OLD DOMINION FREIGHT LINE, INC.

(Exact name of registrant as specified in its charter)

VIRGINIA
(State or other jurisdiction of
incorporation or organization)

56-0751714
(I.R.S. Employer
Identification No.)

500 Old Dominion Way
Thomasville, NC 27360
(Address of principal executive offices)

(336) 889-5000
(Registrant's telephone number, including area code)

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

Yes No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2).

Yes No

As of August 11, 2003, there were 16,057,602 shares of the registrant's Common Stock (\$.10 par value) outstanding.

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

**OLD DOMINION FREIGHT LINE, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS**

	Three Months Ended		Six Months Ended	
	June 30, 2003	June 30, 2002	June 30, 2003	June 30, 2002
	(Unaudited)	(Unaudited)	(Unaudited)	(Unaudited)
<i>(In thousands, except share and per share data)</i>				
Revenue from operations	\$ 163,817	\$ 139,669	\$ 316,682	\$ 266,816
Operating expenses:				
Salaries, wages and benefits	97,127	83,830	188,984	162,591
Purchased transportation	4,860	4,504	9,764	8,840
Operating supplies and expenses	17,341	13,694	35,499	25,559
Depreciation and amortization	9,447	7,741	18,132	15,195
Building and office equipment rents	1,820	1,904	3,587	3,719
Operating taxes and licenses	6,531	5,709	12,820	11,154
Insurance and claims	4,924	4,257	8,931	8,218
Communications and utilities	2,513	2,708	4,884	5,110
General supplies and expenses	5,764	5,256	11,138	10,013
Miscellaneous expenses, net	1,299	1,388	2,086	2,659
Total operating expenses	151,626	130,991	295,825	253,058
Operating income	12,191	8,678	20,857	13,758
Other deductions:				
Interest expense, net	1,564	1,459	2,997	2,780
Other (income) expense, net	(132)	70	82	153
Total other deductions	1,432	1,529	3,079	2,933
Income before income taxes	10,759	7,149	17,778	10,825
Provision for income taxes	4,250	2,788	7,022	4,222
Net income	\$ 6,509	\$ 4,361	\$ 10,756	\$ 6,603
Basic and diluted earnings per share:	\$ 0.41	\$ 0.35	\$ 0.67	\$ 0.53
Weighted average shares outstanding:				
Basic	16,041,801	12,475,011	16,032,855	12,472,356
Diluted	16,061,058	12,482,066	16,054,035	12,479,403

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

OLD DOMINION FREIGHT LINE, INC.
CONSOLIDATED BALANCE SHEETS

	<u>June 30,</u> <u>2003</u>	<u>December 31,</u> <u>2002</u>
<i>(In thousands, except share data)</i>	(Unaudited)	(Audited)
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 949	\$ 19,259
Customer receivables, less allowances of \$8,164 and \$7,866, respectively	69,276	63,843
Other receivables	2,641	4,162
Tires on equipment	8,705	7,988
Prepaid expenses	8,629	15,623
Deferred income taxes	3,670	3,670
	<u>93,870</u>	<u>114,545</u>
Property and equipment:		
Revenue equipment	262,154	229,478
Land and structures	153,566	142,350
Other equipment	67,269	57,849
Leasehold improvements	1,512	1,267
	<u>484,501</u>	<u>430,944</u>
Less accumulated depreciation and amortization	<u>(185,291)</u>	<u>(175,117)</u>
Net property and equipment	299,210	255,827
Other assets	21,156	19,106
	<u>21,156</u>	<u>19,106</u>
Total assets	<u>\$ 414,236</u>	<u>\$ 389,478</u>

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

OLD DOMINION FREIGHT LINE, INC.
CONSOLIDATED BALANCE SHEETS
(CONTINUED)

	June 30, 2003	December 31, 2002
	<u>(Unaudited)</u>	<u>(Audited)</u>
<i>(In thousands, except share data)</i>		
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 15,867	\$ 16,841
Compensation and benefits	18,756	14,719
Claims and insurance accruals	18,045	17,143
Other accrued liabilities	4,256	3,288
Current maturities of long-term debt	17,747	11,139
	<u>74,671</u>	<u>63,130</u>
Long-term liabilities:		
Long-term debt	82,589	82,084
Other non-current liabilities	15,964	14,846
Deferred income taxes	25,855	25,855
	<u>124,408</u>	<u>122,785</u>
Shareholders' equity:		
Common stock—\$.10 par value, 25,000,000 shares authorized, 16,045,102 and 10,651,864 shares outstanding, respectively	1,605	1,065
Capital in excess of par value	72,433	72,135
Retained earnings	141,119	130,363
	<u>215,157</u>	<u>203,563</u>
Commitments and contingencies	—	—
	<u>—</u>	<u>—</u>
Total liabilities and shareholders' equity	\$414,236	\$ 389,478

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

OLD DOMINION FREIGHT LINE, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

	Six Months Ended June 30,	
	2003	2002
<i>(In thousands)</i>	(Unaudited)	(Unaudited)
Cash flows from operating activities:		
Net income	\$ 10,756	\$ 6,603
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	18,132	15,195
(Gain) loss on sale of property and equipment	(192)	171
Changes in assets and liabilities:		
Customer and other receivables, net	(3,912)	(12,202)
Tires on equipment	(717)	(507)
Prepaid expenses and other assets	4,941	6,413
Accounts payable	(974)	9,174
Compensation, benefits and other accrued liabilities	5,005	4,415
Claims and insurance accruals	1,562	3,844
Income taxes payable	—	(203)
Other liabilities	458	152
Net cash provided by operating activities	<u>35,059</u>	<u>33,055</u>
Cash flows from investing activities:		
Purchase of property and equipment	(63,423)	(33,261)
Proceeds from sale of property and equipment	2,103	379
Net cash used in investing activities	<u>(61,320)</u>	<u>(32,882)</u>
Cash flows from financing activities:		
Proceeds from issuance of long-term debt	2,650	—
Principal payments under long-term debt agreements	(9,155)	(4,927)
Net proceeds from revolving line of credit	13,618	5,028
Proceeds from the conversion of stock options	838	40
Net cash provided by financing activities	<u>7,951</u>	<u>141</u>
(Decrease) increase in cash and cash equivalents	(18,310)	314
Cash and cash equivalents at beginning of period	19,259	761
Cash and cash equivalents at end of period	<u>\$ 949</u>	<u>\$ 1,075</u>

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Basis of Presentation

The accompanying unaudited consolidated interim financial statements reflect, in the opinion of management, all adjustments (consisting of normal recurring items) necessary for a fair presentation, in all material respects, of the financial position and results of operations for the periods presented. The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions. Such estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates. The results of operations for the interim periods are not necessarily indicative of the results for the entire year.

There have been no significant changes in the accounting policies of the Company or significant changes in the Company's commitments and contingencies as previously described in the 2002 Annual Report to Shareholders and related annual report to the Securities and Exchange Commission on Form 10-K.

Recent Accounting Pronouncements

In July 2002, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard No. 146, *Obligations Associated with Disposal Activities* ("SFAS No. 146"), which is effective for disposal activities initiated after December 31, 2002. SFAS No. 146 requires that a liability for a disposal obligation should be recognized and measured at its fair value when it is incurred. The adoption of this standard did not have a material impact on our financial statements.

In December 2002, the FASB issued Statement of Financial Accounting Standard No. 148 ("SFAS No. 148"), *Accounting for Stock-Based Compensation—Transition and Disclosure—An Amendment to FASB Statement No. 123*, to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation and requiring revised disclosures in both interim and annual reports. We adopted SFAS No. 148 on January 1, 2003, and for the periods presented in this report, there was no difference between the intrinsic value method and the fair value method of measuring stock-based compensation; therefore, no additional disclosures are required under this statement.

In January 2003, the FASB issued Interpretation No. 46, *Consolidation of Variable Interest Entities* ("FIN 46"). FIN 46 requires an investor with a majority of the variable interests in a variable interest entity ("VIE") to consolidate the entity and also requires majority and significant variable interest investors to provide certain disclosures. A VIE is an entity in which the equity investors do not have a controlling interest, or the equity investment at risk is insufficient to finance the entity's activities without receiving additional subordinated financial support from the other parties. For arrangements entered into with VIEs created prior to January 31, 2003, the provisions of FIN 46 are required to be adopted at the beginning of the first interim or annual period beginning after June 15, 2003. We are currently reviewing our investments and other arrangements to determine whether any of our investee companies are VIEs. We do not expect to identify any significant VIEs that would be consolidated, but may be required to make additional disclosures. Our maximum exposure related to any investment that may be determined to be in a VIE is limited to the amount invested. The provisions of FIN 46 are effective immediately for all arrangements entered into with new VIEs created after January 31, 2003. We have not invested in any new VIEs created after January 31, 2003.

Related Party Transactions

Transactions with Old Dominion Truck Leasing, Inc.

Old Dominion Truck Leasing, Inc. ("Leasing"), a North Carolina corporation whose voting stock is owned by the Earl E. Congdon Intangibles Trust, David S. Congdon, Trustee, the John R. Congdon Revocable Trust and members of Earl E. Congdon's and John R. Congdon's families, is engaged in the business of purchasing and leasing tractors, trailers and other vehicles. John R. Congdon is Chairman of the Board,

and Earl E. Congdon is Vice Chairman of the Board of Leasing. Since 1986, we have combined our requirements with Leasing for the purchase of tractors, trailers, equipment, parts, tires and fuel to obtain pricing discounts because of the increased level of purchasing.

We provide vehicle repair, maintenance and other services to Leasing at cost plus a negotiated markup, and we rent vehicle repair facilities to Leasing at two of our service center locations for fair market value. For these services and use of these facilities, we charged Leasing \$15,000 and \$9,000 for the first six months of 2003 and 2002, respectively.

We purchased \$133,000 and \$164,000 of maintenance and other services from Leasing in the first six months of 2003 and 2002, respectively. We believe that the prices we pay for such services are lower than would be charged by unaffiliated third parties for the same quality of work, and we intend to continue to purchase maintenance and other services from Leasing, provided that Leasing's prices continue to be favorable to us. We did not lease any equipment from Leasing in the first half of 2003 or for the entire year 2002.

On January 4, 2002, we purchased 91 1997 model pickup and delivery trailers from Leasing for an aggregate purchase price of \$774,000. We also purchased one trailer from Leasing on May 1, 2003 for a purchase price of \$8,000.

Transactions with E & J Enterprises

On July 29, 2002, our Board of Directors approved the purchase of 163 trailers for \$1,200 each, or a total of \$195,600, from E & J Enterprises, a Virginia general partnership of which Earl E. Congdon, our Chief Executive Officer and Chairman of our Board of Directors, and John R. Congdon, Vice Chairman of our Board of Directors, are each 50% owners. These trailers, which are approximately 20 years old, had been leased to us by E & J Enterprises since 1988 pursuant to a term lease, which converted to a month-to-month lease in 1999. At year-end 2002, we had completed the purchase of 50 of these trailers for a purchase price of \$60,000. During the first quarter 2003, we continued to lease the remaining 113 trailers on a month-to-month basis until we completed the purchase of those trailers in March for a purchase price of \$135,600.

Also on July 29, 2002, our Board of Directors approved the leasing from E & J Enterprises of 150 pickup and delivery trailers on a month-to-month basis for \$204 per month for each trailer, commencing upon delivery of the trailers. The total amount paid for all trailer leases under lease agreements with E & J Enterprises was \$204,000 and \$200,000 for the first six months of 2003 and 2002, respectively.

On March 7, we purchased 10 additional trailers from E & J Enterprises for \$5,000 each for a total purchase price of \$50,000.

Common Stock Split

On May 19, 2003, the Board of Directors approved a three-for-two common stock split for shareholders of record as of the close of business on June 4, 2003. On June 16, these shareholders received one additional share of common stock for every two shares owned. All references in this report to weighted average shares outstanding and earnings per share amounts have been restated retroactively for this stock split.

Earnings Per Share

Net income per share of common stock is based on the weighted average number of shares outstanding during each period.

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

Overview

We are a leading less-than-truckload multi-regional motor carrier providing one to four day service among five regions in the United States and next-day and second-day service within these regions. Through our four branded product groups, OD-Domestic, OD-Global, OD-Expedited and OD-Technology, we offer an array of innovative products and services that provide direct service to 38 states within the Southeast, South Central, Northeast, Midwest and West regions of the country, including 24 states within which we provide full-state coverage. In addition, through marketing and carrier relationships, we provide service to and from the remaining 12 states, as well as Canada, Mexico and the Caribbean. Our non-union workforce operates a fleet of more than 3,000 tractors and more than 11,400 trailers.

Historically, over 90% of our revenue is derived from transporting LTL shipments for our customers, whose demand for our services is generally tied to the health of the overall economy. The majority of direct costs associated with our business are driver and service center wages and benefits; operating supplies and expenses; and depreciation of our equipment fleet and service center facilities.

The following table sets forth, for the periods indicated, expenses and other items as a percentage of revenue from operations:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2003	2002	2003	2002
Revenue from operations	100.0%	100.0%	100.0%	100.0%
Operating expenses:				
Salaries, wages and benefits	59.3	60.0	59.7	60.9
Purchased transportation	3.0	3.2	3.1	3.3
Operating supplies and expenses	10.6	9.8	11.2	9.6
Depreciation and amortization	5.8	5.5	5.7	5.7
Building and office equipment rents	1.1	1.4	1.1	1.4
Operating taxes and licenses	4.0	4.1	4.0	4.2
Insurance and claims	3.0	3.0	2.8	3.1
Communications and utilities	1.5	2.0	1.6	1.9
General supplies and expenses	3.5	3.8	3.5	3.7
Miscellaneous expenses	.8	1.0	.7	1.0
Total operating expenses	92.6	93.8	93.4	94.8
Operating income	7.4	6.2	6.6	5.2
Interest expense, net	.9	1.0	1.0	1.0
Other expense, net	(.1)	.1	0.0	.1
Income before income taxes	6.6	5.1	5.6	4.1
Provision for income taxes	2.6	2.0	2.2	1.6
Net income	4.0%	3.1%	3.4%	2.5%

Results of Operations

For the second quarter and first six months of 2003, we continued to produce strong growth in both revenue and profitability, even as the U.S. economy remained sluggish. Second quarter revenue grew 17.3% to \$163,817,000 from \$139,669,000 for the second quarter 2002. Combined with the 20.2% increase in revenue we recorded in the first quarter of 2003, our revenue for the first six months was \$316,682,000, an 18.7% increase over the comparable period in 2002.

This additional revenue produced certain operating efficiencies that improved our profitability. Our operating ratio, a measure of profitability calculated by dividing operating expenses by revenue, decreased to 92.6% for the second quarter compared to 93.8% for the comparable quarter in 2002. Through the first six months of 2003, our operating ratio was 93.4% versus 94.8% for the same period in 2002. Net income for the second quarter of 2003 was \$6,509,000, an increase of 49.3%, while net income for the first half of 2003 was \$10,756,000, an increase of 62.9%.

Diluted earnings per share for the second quarter increased to \$.41 per share from \$.35 for the comparable quarter last year, an increase of 17.1%. For the first six months, earnings per diluted share increased to \$.67 compared to \$.53 for the same period last year. Our weighted average number of diluted shares outstanding for the quarter and first six months of 2003 increased approximately 29% due primarily to our November 2002 public stock offering. As a result, our growth rate in net income outpaced our growth in earnings per share.

Revenue

We believe our revenue growth, despite weak economic conditions, is a result of three key factors. First, we continue to benefit from the industry consolidation caused by the September 3, 2002 bankruptcy of Consolidated Freightways, a major national LTL carrier and one of our competitors. We have experienced continued growth in our longer haul lanes as evidenced by the progressive increase in our average length of haul to 930 miles per shipment in the second quarter from 903 miles for the second quarter of 2002, which is typical of the longer average lengths of haul associated with the inter-regional and national freight that became available. The longer length of haul was also a factor in the 5.4% increase in our average less-than-truckload ("LTL") revenue per LTL shipment for the comparable second quarter, which increased to \$145.53 per shipment from \$138.08, despite a decrease in our LTL weight per LTL shipment of 3.0% for the two comparable periods. For the first half of the year, our LTL revenue per shipment increased 6.8% over the prior-year period on a decrease in LTL weight per shipment of 2.4%.

Second, we continued to increase market share in our existing areas of operations by offering a combination of regional and inter-regional service that many of our competitors do not offer. In addition, our strategy of offering full-state coverage in 24 of the 38 states in which we operate simplifies our customers' logistical needs by providing single-source, comprehensive transportation services that differentiate us in the marketplace. In 2003, we plan to announce three additional states in which we will offer this "all points" direct service. In June 2003, we also opened two new service centers located in Des Moines, Iowa and Reno, Nevada, which will enhance our service products in our Midwest and West regions.

Third, our general tariffs and contracts generally include provisions for a fuel surcharge to offset significant fluctuations in diesel fuel costs. The fuel surcharge for the second quarter increased approximately \$3,012,000 over the second quarter 2002 and increased \$8,642,000 in the first half of 2003 compared with the prior-year period.

In addition to these factors, we also benefited from a planned increase in our sales force from 288 professional salespersons at the end of the second quarter 2002 to 319 at June 30, 2003.

We believe that continued economic weakness could impact our pricing policies and resulting revenue growth; however, we remain confident that we will meet or exceed our targeted revenue growth for 2003 of between 10% and 15%, based upon the results of the first half of 2003 and our forecasts for the remainder of the year.

Operating Costs and Other Expenses

LTL shipments increased 13.4% for the second quarter and 13.1% for the first half of 2003 compared with the same periods of 2002. LTL tonnage increased 10.1% for the comparable prior-year quarter and 10.3% for the comparable six-month periods. During 2003, these increases in concentrations of shipments and tonnage moving through our route structure and service center network generated economies of scale and resulted in profitability improvements.

Salaries, wages and employee benefit expenses, the largest component of our cost structure, were 59.3% of revenue in the second quarter 2003 compared to 60.0% for the second quarter of 2002. For the first six months of 2003, these costs were 59.7% of revenue compared to 60.9% for the prior-year period. Most of these costs were incurred as variable driver and platform labor directly associated with the movement of shipments through our network.

These cost reductions in 2003 were achieved primarily by incrementally improving our pickup and delivery driver and platform labor productivity, which was enhanced by the increased concentrations of freight volumes. Direct driver wages in our pickup and delivery operations were 11.9% of revenue for the second quarter of 2003 compared to 12.5% in the second quarter of 2002. For the first half of 2003, direct pickup and delivery driver wages were 11.9% of revenue compared to 12.7% for the same period of 2002. We also attribute a portion of these productivity gains to the continued implementation of driver handheld computers that were first introduced into our operations in the second half of 2002.

For the second quarter 2003, direct platform wages were 7.9% of revenue compared to 8.0% for the prior-year period. For the first six months of 2003, direct platform wages were 7.8% of revenue compared to 8.2%. We also benefited from our technology initiatives at our docks through the implementation of our Dock/Yard Management System, which tracks and plans freight movement at our service centers. We anticipate further benefits from this system as we continue to implement it throughout our service center network.

Operating supplies increased to 10.6% of revenue for the second quarter of 2003 compared to 9.8% for the prior-year period. This increase was primarily due to increases in diesel fuel prices, which increased to 5.2% of revenue in the second quarter of 2003 compared to 4.5% for the prior-year period, excluding fuel taxes. For the first half of 2003, diesel fuel costs were 5.7% of revenue compared to 4.2% for the same period in 2002, excluding fuel taxes. We believe that our fuel surcharges, which decrease or are eliminated as fuel prices approach base levels, have effectively offset the increases in diesel fuel prices in 2003.

In March 2002, we renegotiated our major voice and data communication contracts and implemented other cost saving initiatives that have resulted in significant savings in communication expenses. For the second quarter 2003, voice and data communication expenses decreased to .6% of revenue from 1.1% for the prior-year period, while decreasing to .6% of revenue for the first half of 2003 from 1.0% for the same period in 2002.

Depreciation expense for the second quarter increased to 5.8% of revenue from 5.5% for the same quarter in 2002 and was 5.7% of revenue for both six-month periods in each year. Approximately two-thirds of our planned capital expenditures for 2003, or \$63,423,000 were completed in the first half of the year in order to increase our fleet and service center capacity in preparation for the third quarter, which historically has produced higher levels of economic activity. As a result, we did not experience the same leverage on these assets during the first half of the year that we anticipate for the remainder of the year. In addition, \$12,013,000 of capital expenditures were completed in the first half of 2003 for purchases or improvements in our service centers, which contributed to the decrease in building and office equipment rents to 1.1% of revenue for the second quarter from 1.4% for the prior-year quarter. For the first half of 2003, building and office equipment rents were 1.1% of revenue compared to 1.4% for the same period in 2002.

During the second quarter and first half of 2003, we successfully leveraged other costs, including general supplies and expenses, operating taxes and licenses, and miscellaneous expenses, which as a group

decreased to 8.3% of revenue for the second quarter and 8.2% for the first half of 2003 compared to 8.9% of revenue for both comparable periods in 2002.

Our results for the second quarter and first six months of 2003 also includes a pre-tax, non-operating gain of \$293,000 on the sale of a service center located in Cincinnati, Ohio, which had been previously been held for lease.

While debt levels during the first half of 2003 were not significantly different from the first half of 2002, a larger percentage of our outstanding debt in 2003 consisted of borrowings under our senior notes, which carry a higher interest rate than our revolving line of credit. In addition, we capitalized \$107,000 of interest charges in the first half of 2003 compared to \$395,000 for the prior-year period. As a result, our interest expense increased 7.2% to \$1,564,000 for the second quarter 2003 and 7.8% to \$2,997,000 for the first six months of 2003, when compared to the prior-year periods. Long-term debt including current maturities was \$100,336,000 at June 30, 2003 compared to \$98,523,000 on June 30, 2002, an increase of 1.8%.

The effective tax rate for the first and second quarters of 2003 was 39.5% compared to 39.0% for the same periods in 2002.

Liquidity and Capital Resources

Expansion in both the size and number of service center facilities, the planned tractor and trailer replacement cycle and revenue growth have required continued investment in real estate and equipment. In order to support these requirements, we have incurred net capital expenditures of \$61,320,000 during the first six months of 2003. Cash provided by operating activities in 2003 funded approximately 57% of these expenditures, while the remainder was funded from proceeds generated from the public stock offering in the fourth quarter of 2002 and additional borrowings. At June 30, 2003, long-term debt including current maturities increased to \$100,336,000 from \$93,223,000 at December 31, 2002.

We estimate net capital expenditures to be approximately \$90,000,000 to \$100,000,000 for the year ending December 31, 2003. Of that, approximately \$46,000,000 is allocated for the purchase of tractors and trailers, \$35,000,000 is allocated for the purchase or construction of larger replacement service centers or expansion of existing service centers, \$12,000,000 is allocated for investments in technology and the balance is allocated for other assets. We plan to fund these capital expenditures with cash on hand, cash flows from operations and additional borrowings.

The table below sets forth our capital expenditures for the first six months of 2003 and the years ended December 31, 2002, 2001 and 2000, excluding assets acquired as part of business acquisitions:

<i>(In thousands)</i>	YTD June 2003	Year Ended December 31,		
		2002	2001	2000
Land and structures	\$ 12,013	\$21,637	\$30,245	\$21,189
Tractors	26,121	22,900	4,151	21,546
Trailers	11,796	8,800	1,284	9,291
Technology	10,494	7,840	4,806	4,138
Other	2,999	8,815	3,128	6,919
Total	\$ 63,423	\$69,992	\$43,614	\$63,083

On May 31, 2000, we entered into an uncollateralized committed credit facility with Wachovia Bank, National Association (formerly First Union National Bank), which, as amended, consisted of a \$20,000,000 line of credit and a \$20,000,000 line to support standby letters of credit. This facility had a term of three years that expired on May 31, 2003, but was extended through July 1, 2003. Interest on the line of credit was charged at rates that varied in a range of LIBOR plus .60% to .85%, based upon a fixed charge coverage ratio. The applicable interest rate for the second quarter 2003 under this agreement was based upon LIBOR plus .60%. A fee of .18% was charged on the unused portion of the line of credit, and a fee of .70% was charged on outstanding standby letters of credit. Standby letters of credit are primarily issued as collateral for self-insured retention reserves for bodily injury, property

damage and workers' compensation claims. At June 30, 2003, there was \$13,618,000 outstanding on the line of credit and \$19,403,000 outstanding on the standby letter of credit facility. The amount outstanding on the line of credit was reclassified to long-term debt in accordance with SFAS No. 6, as this debt was specifically replaced with debt that has a term of more than one year.

The Company entered into an unsecured revolving credit agreement dated June 30, 2003 with lenders consisting of Wachovia Bank, N.A.; Bank of America, N.A.; and Branch Banking and Trust Company, with Wachovia as agent for the lenders. This three-year facility consists of \$80,000,000 in line of credit commitments from the lenders, all of which are available for revolving loans. In addition, of that \$80,000,000 line of credit, \$30,000,000 may be used for letters of credit and \$10,000,000 may be used for borrowings under Wachovia's sweep program. We used a portion of the proceeds of this facility to refinance certain indebtedness under the previous facility and will use the remaining proceeds for working capital and general corporate purposes.

Generally, revolving loans under the facility will bear interest at either: (a) an applicable margin plus the higher of Wachovia's prime rate or one-half of one percentage point over the federal funds rate (the "Adjusted Base Rate"); or (b) LIBOR plus the applicable margin (the "Adjusted LIBOR Rate"). The applicable margin will vary depending upon our ratio of adjusted debt to capital. In the case of the Adjusted Base Rate, the applicable margin will range from 0% to .25%. In the case of the Adjusted LIBOR Rate, the applicable margin will range from .75% to 1.25%. Revolving loans under the sweep program will bear interest at the aggregate of the rate applicable under the sweep program plus the Adjusted LIBOR Rate. Quarterly fees will be charged on the aggregate unused portion of the facility at an annual rate ranging from .20% to .30% (depending upon our ratio of adjusted debt to capital). Quarterly fees will be charged on the aggregate undrawn portion of outstanding letters of credit at a rate ranging from .75% to 1.25% (depending upon our ratio of adjusted debt to capital). In addition a quarterly fee at an annual rate of .125% will be charged on the aggregate undrawn portion of outstanding letters of credit.

The new credit facility contains customary covenants, including financial covenants that require us to observe a maximum ratio of adjusted debt to capital, to maintain a minimum fixed charge coverage ratio and to maintain a minimum consolidated tangible net worth. The Company's wholly owned subsidiary guaranteed payment of all of our obligations under the facility. Future wholly owned subsidiaries will be required to guarantee payment of all of our obligations under the facility.

We have three senior note agreements with aggregate principal outstanding of \$70,821,000 as of June 30, 2003. These agreements call for periodic principal and interest payments with maturities ranging from 2005 through 2008, of which \$12,107,000 in principal is due within the next 12 months. Interest rates on the notes issued under these agreements are fixed and range from 6.35% to 7.59%. Under the provisions of one of the agreements, we may issue up to \$15,000,000 of additional senior notes, with applicable interest rate and payment schedules for the additional notes to be determined and mutually agreed upon at the time of issuance. The note agreements contain customary affirmative and negative covenants, as well as financial maintenance covenants establishing a maximum ratio of funded debt to capitalization, a minimum fixed charge coverage ratio and minimum consolidated tangible net worth. The Company's wholly owned subsidiary has issued guarantees to the note holders with respect to the Company's indebtedness under the note agreements.

We have secured a term loan used to purchase 300 tractors with principal outstanding of \$12,519,000 as of June 30, 2003. The borrowing under the term loan is evidenced by 48-month term notes secured by the purchased equipment pursuant to a security agreement with the lender. The notes call for equal monthly payments of principal and interest and mature in 2006, of which \$3,879,000 in principal is due within the next 12 months. The interest rates on the notes are fixed and range from 4.21% to 4.39%. The term loan agreement contains customary affirmative and negative covenants. The term notes originally incorporated by reference the financial covenants from the May 2000 credit facility and were amended to incorporate by reference our financial covenants under the new facility.

With the exception of the line of credit, interest rates are fixed on all of our debt instruments. Therefore, short-term exposure to fluctuations in interest rates is limited to the outstanding balance of our line of credit facility, which was \$13,618,000 at June 30, 2003. We do not currently use interest rate derivative instruments to manage exposure to interest rate changes. Also, we do not use fuel hedging instruments,

as our tariff provisions generally allow for fuel surcharges to be implemented in the event that fuel prices exceed stipulated levels.

A significant decrease in demand for our services could limit our ability to generate cash flow and affect profitability. If we do not achieve the stated levels of performance required by the financial covenants in our debt agreements, an acceleration of the payment schedules could potentially be triggered. We do not anticipate a significant decline in business levels or financial performance, and we believe that our existing credit facilities along with our additional borrowing capacity are sufficient to meet seasonal and long-term capital needs.

The following table summarizes our significant contractual obligations and commercial commitments as of June 30, 2003:

<u>Contractual Obligations (1)</u>	<u>Payments Due by Period (In Thousands)</u>				
	<u>Total</u>	<u>Less than 12 months</u>	<u>13 - 36 months</u>	<u>37 - 60 months</u>	<u>Over 60 months</u>
Long-Term Debt	\$ 97,397	\$ 16,213	\$52,829	\$23,355	\$5,000
Capital Lease Obligations	2,939	1,534	1,405	—	—
Operating Leases	19,542	8,738	8,642	2,156	6

<u>Other Commercial Commitments (2)</u>	<u>Total Amounts Committed</u>	<u>Amount of Commitment Expiration Per Period (In Thousands)</u>			
		<u>Less than 12 months</u>	<u>13 - 36 months</u>	<u>37 - 60 months</u>	<u>Over 60 months</u>
Standby Letters of Credit	\$ 19,403	\$ 19,403	—	—	—

- (1) Contractual obligations include long-term debt consisting primarily of senior notes totaling \$70,821,000; capital lease obligations for tractors, trailers and computer equipment; and off-balance sheet operating leases primarily consisting of real estate leases.
- (2) Other commercial commitments consist of standby letters of credit used as collateral for self-insured retention of insurance claims.

Critical Accounting Policies

In preparing our consolidated financial statements, we apply the following critical accounting policies that affect judgments and estimates of amounts recorded in certain assets, liabilities, revenue and expenses:

Revenue and Expense Recognition—Operating revenue is recognized on a percentage of completion method based on average transit time. Expenses associated with operating revenue are recognized when incurred.

Allowance for Uncollectible Accounts—We maintain an allowance for uncollectible accounts for estimated losses resulting from the inability of our customers to make required payments. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

Claims and Insurance Accruals—Claims and insurance accruals reflect the estimated ultimate total cost of claims, including amounts for claims incurred but not reported, for cargo loss and damage, bodily injury and property damage, workers' compensation, long-term disability and group health not covered by insurance. These costs are charged to insurance and claims expense except for workers' compensation, long-term disability and group health, which are charged to employee benefits expense.

From April 1, 2002 through June 30, 2003, we were self-insured for bodily injury and property damage claims up to \$1,750,000 per occurrence. Cargo loss and damage claims were self-insured up to \$100,000. We were also self-insured for workers' compensation in certain states and had first dollar or high deductible plans in the remaining states with self-insured retention levels ranging from \$250,000 to \$500,000. We renewed these major insurance policies on April 1, 2003 with the same retention levels for self-insurance on bodily injury, property damage and cargo loss and damage; however, we increased our workers' compensation retention levels to \$1,000,000 per claim. On January 1, 2003, we also increased our self-insured retention for group health claims to \$250,000 per occurrence from the \$200,000 retention we carried for the full-year 2002. Due to losses incurred by the insurance industry and other market factors, rates offered by insurers for these types of insurance coverage have generally increased. As a result, we periodically evaluate our self-insured retention levels to determine the most cost efficient balance of self-insurance and excess coverage.

In establishing accruals for claims and insurance expenses, we evaluate and monitor each claim individually, and we use factors such as historical experience, known trends and third-party estimates to determine the appropriate reserves for potential liability. We believe the assumptions and methods used to estimate these liabilities are reasonable; however, changes in the severity of previously reported claims, significant changes in the medical costs and legislative changes affecting the administration of our plans could significantly impact the determination of appropriate reserves in future periods.

Goodwill—The excess cost over net assets acquired in connection with acquisitions is recorded in "Other Assets". We adopted Statement of Financial Accounting Standard No. 142, *Goodwill and Other Intangible Assets* ("SFAS 142") on January 1, 2002 and completed the required analyses of the fair value of our single reporting unit compared to the carrying value as of January 1, 2002 and October 1, 2002. Based on those analyses, we concluded that there was no impairment of these assets, which totaled \$10,653,000 at June 30, 2003. Prior to the adoption of SFAS 142, these intangible assets were amortized using a straight-line method over their estimated useful lives of three to 25 years.

Property and Equipment—Property and equipment are recorded at cost and depreciated on a straight-line basis over their estimated economic lives. Management uses historical experience, certain assumptions and estimates in determining the economic life of each asset. Periodically, we review property and equipment for impairment to include changes in operational and market conditions, and we adjust the carrying value and economic life of any impaired asset as appropriate. Currently, estimated economic lives for structures are five to 30 years; revenue equipment is two to 12 years; other equipment is two to 10 years; and leasehold improvements are the lesser of 10 years or the life of the lease. The use of different assumptions, estimates or significant changes in the resale market for our equipment could result in material changes in the carrying value of our assets.

Inflation

Most of our expenses are affected by inflation, which generally results in increased operating costs. In response to fluctuations in the cost of petroleum products, particularly diesel fuel, we have implemented a fuel surcharge in our tariffs and contractual agreements. The fuel surcharge is designed to offset the cost of fuel above a base price and increases as fuel prices escalate over the base. For the first six months of 2003 and 2002, the net effect of inflation on our results of operations was minimal.

Seasonality

Our tonnage levels and revenue mix are subject to seasonal trends common in the motor carrier industry. Financial results in the first and fourth quarters are normally lower due to reduced shipments during the winter months. Harsh winter weather can also adversely impact our performance by reducing demand

and increasing operating expenses. The second and third quarters reflect increased demand for services during the spring and summer months, which generally result in improved operating margins.

Environmental Regulation

We are subject to various federal, state and local environmental laws and regulations that focus on, among other things, the emission and discharge of hazardous materials into the environment from our properties and vehicles, fuel storage tanks and the discharge or retention of storm water. Under specific environmental laws, we could also be held responsible for any costs relating to contamination at our past or present facilities and at third-party waste disposal sites. We do not believe that the cost of future compliance with environmental laws or regulations will have a material adverse effect on our operations or financial condition.

Related Party Transactions

The Audit Committee of our Board of Directors reviews and approves all related party transactions to ensure that these transactions are beneficial to the Company and are obtained at competitive prices.

Transactions with Old Dominion Truck Leasing, Inc.

Old Dominion Truck Leasing, Inc. ("Leasing"), a North Carolina corporation whose voting stock is owned by the Earl E. Congdon Intangibles Trust, David S. Congdon, Trustee, the John R. Congdon Revocable Trust and members of Earl E. Congdon's and John R. Congdon's families, is engaged in the business of purchasing and leasing tractors, trailers and other vehicles. John R. Congdon is Chairman of the Board, and Earl E. Congdon is Vice Chairman of the Board of Leasing. Since 1986, we have combined our requirements with Leasing for the purchase of tractors, trailers, equipment, parts, tires and fuel. We believe that, by combining our requirements, we are often able to obtain pricing discounts because of the increased level of purchasing. While this is beneficial to us, our management believes that the termination of this relationship would not have a material adverse impact on our financial results.

We provide vehicle repair, maintenance and other services to Leasing at cost plus a negotiated markup, and we rent vehicle repair facilities to Leasing at two of our service center locations for fair market value. For these services and use of these facilities, we charged Leasing \$15,000 and \$9,000 for the first six months of 2003 and 2002, respectively.

We purchased \$133,000 and \$164,000 of maintenance and other services from Leasing in the first six months of 2003 and 2002, respectively. We believe that the prices we pay for such services are lower than would be charged by unaffiliated third parties for the same quality of work, and we intend to continue to purchase maintenance and other services from Leasing, provided that Leasing's prices continue to be favorable to us. We did not lease any equipment from Leasing in the half of 2003 or for the entire year 2002.

On January 4, 2002, we purchased 91 1997 model pickup and delivery trailers from Leasing for an aggregate purchase price of \$774,000. We also purchased one trailer from Leasing on May 1, 2003 for a purchase price of \$8,000.

Transactions with E & J Enterprises

On July 29, 2002, our Board of Directors approved the purchase of 163 trailers for \$1,200 each, or a total of \$195,600, from E & J Enterprises, a Virginia general partnership of which Earl E. Congdon, our Chief Executive Officer and Chairman of our Board of Directors, and John R. Congdon, Vice Chairman of our Board of Directors, are each 50% owners. These trailers, which are approximately 20 years old, had been leased to us by E & J Enterprises since 1988 pursuant to a term lease, which converted to a month-to-month lease in 1999. At year-end 2002, we had completed the purchase of 50 of these trailers for a purchase price of \$60,000. During the first quarter 2003, we continued to lease the remaining 113 trailers on a month-to-month basis until we completed the purchase of those trailers in March for a purchase price of \$135,600.

Also on July 29, 2002, our Board of Directors approved the leasing from E & J Enterprises of 150 pickup and delivery trailers on a month-to-month basis for \$204 per month for each trailer, commencing upon delivery of the trailers. The total amount paid for all trailer leases under lease agreements with E & J Enterprises was \$204,000 and \$200,000 for the first six months of 2003 and 2002, respectively.

On March 7, we purchased 10 additional trailers from E & J Enterprises for \$5,000 each for a total purchase price of \$50,000.

Forward-Looking Information

Forward-looking statements in this report, including, without limitation, statements relating to future events or our future financial performance, appear in the preceding Management's Discussion and Analysis of Financial Condition and Results of Operations and in other written and oral statements made by or on behalf of us, including, without limitation, statements relating to our goals, strategies, expectations, competitive environment, regulation and availability of resources. Such forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Investors are cautioned that such forward-looking statements involve risks and uncertainties that could cause actual events and results to be materially different from those expressed or implied herein, including, but not limited to, the following: (1) changes in our goals, strategies and expectations, which are subject to change at any time at our discretion; (2) our ability to maintain a nonunion, qualified work force; (3) the competitive environment with respect to industry capacity and pricing; (4) the availability and cost of fuel, additional revenue equipment and other significant resources; (5) the ability to impose and maintain fuel surcharges to offset increases in fuel prices; (6) the impact of regulatory bodies; (7) various economic factors such as insurance costs, liability claims, interest rate fluctuations, the availability of qualified drivers or owner-operators, fluctuations in the resale value of revenue equipment, increases in fuel or energy taxes, economic recessions and downturns in customers' business cycles and shipping requirements; (8) our ability to raise capital or borrow funds on satisfactory terms, which could limit growth and require us to operate our revenue equipment for longer periods of time; (9) our ability to purchase, build or lease facilities suitable for our operations; (10) our ability to successfully deploy our technological initiatives; (11) our ability to attract new customers and maintain our current customer base; and (12) other risks and uncertainties indicated from time to time in our filings with the Securities and Exchange Commission.

Item 3. Quantitative and Qualitative Disclosure of Market Risk

The information called for by this item is provided under the caption "Liquidity and Capital Resources" under Item 2—Management's Discussion and Analysis of Financial Condition and Results of Operations.

Item 4. Controls and Procedures

a) Evaluation of disclosure controls and procedures.

As of the end of the period covered by this report, our Chief Executive Officer and our Chief Financial Officer evaluated the effectiveness of our disclosure controls and procedures in accordance with Rule 13a-14 under the Exchange Act. Based on their evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures enable us to record, process, summarize and report in a timely manner the information that we are required to disclose in our Exchange Act reports.

b) Changes in internal control over financial reporting.

There were no changes in our internal controls over financial reporting that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

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

We held our 2003 Annual Meeting of Shareholders on May 19, 2003. The only item on the agenda was the election of directors for which votes were cast or withheld as follows:

<u>Nominee</u>	<u>For</u>	<u>Withheld</u>
J. Paul Breitbach	9,439,644	113,688
Earl E. Congdon	8,874,653	678,679
John R. Congdon	8,460,993	1,092,339
David S. Congdon	8,890,455	662,877
John R. Congdon, Jr.	8,506,195	1,047,137
Robert G. Culp, III	9,439,644	113,688
John A. Ebeling	8,856,553	696,779
Harold G. Hoak	9,421,544	131,788
Franz F. Holscher	9,421,544	131,788

Item 6. Exhibits and Reports on Form 8-K

a) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
4.6.3	Amendment No. 1 to Note Purchase and Shelf Agreement among Old Dominion Freight Line, Inc. and the Noteholders set forth in Annex 1 thereto, dated June 27, 2003
4.6.9	First Amendment to the Loan Agreement between First Union Commercial Corporation and Old Dominion Freight Line, Inc., dated June 30, 2003
4.7.5	Letter Regarding Extension of Credit Agreement from Wachovia Bank, N.A. to Old Dominion Freight Line, Inc., dated May 14, 2003
4.7.6	Credit Agreement among Wachovia Bank, N.A., as Agent; Bank of America, N.A.; Branch Banking and Trust Company; and Old Dominion Freight Line, Inc., dated June 30, 2003
31.1	Certification Pursuant to Rule 13a-14(a) or 15d-14(a) of the Exchange Act, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification Pursuant to Rule 13a-14(a) or 15d-14(a) of the Exchange Act, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

b) Reports on Form 8-K:

On April 24, 2003, we furnished a Current Report on Form 8-K under Item 9 to report, pursuant to Item 12, our earnings for the first quarter 2003.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

OLD DOMINION FREIGHT LINE, INC.

DATE: August 11, 2003

/s/ J. Wes Frye

J. Wes Frye
Senior Vice President—Finance and Chief
Financial Officer
(Principal Financial Officer)

DATE: August 11, 2003

/s/ John P. Booker, III

John P. Booker, III
Vice President—Controller
(Principal Accounting Officer)

OLD DOMINION FREIGHT LINE, INC.

**AMENDMENT NO. 1 TO
NOTE PURCHASE AND SHELF AGREEMENT**

June 27, 2003

\$50,000,000 6.93% SENIOR GUARANTIED NOTES DUE AUGUST 10, 2008

UP TO \$15,000,000 SENIOR GUARANTIED SHELF NOTES

OLD DOMINION FREIGHT LINE, INC.
AMENDMENT NO. 1 TO
NOTE PURCHASE AND SHELF AGREEMENT

As of June 27, 2003

To each of the Persons
Named in Annex 1 hereto
(the “**Noteholders**”)

Ladies and Gentlemen:

Old Dominion Freight Line, Inc., a Virginia corporation (hereinafter, the “**Company**”), agrees with each of the Noteholders as follows:

1. PRELIMINARY STATEMENTS.

1.1. Note Issuance, etc.

Pursuant to the Note Purchase and Shelf Agreement (as in effect immediately prior to the effectiveness of this Agreement, the “**Existing Note Purchase Agreement**,” and, as amended hereby, the “**Note Purchase Agreement**”), dated as of May 1, 2001, by and among the Company and the Noteholders, the Company (i) issued \$50,000,000 in aggregate principal amount of its 6.93% Senior Guaranteed Notes due August 10, 2008 (as they may be amended, restated or otherwise modified from time to time, the “**Initial Notes**”) and (ii) authorized the issuance of up to \$15,000,000 in aggregate principle amount of additional senior guaranteed promissory notes on the terms and conditions set forth in the Existing Note Purchase Agreement (the “**Shelf Notes**” and together with the Initial Notes, collectively, the “**Notes**”). The aggregate principal amount of the Initial Notes outstanding (prior to the effectiveness of this Agreement) is \$50,000,000, all of which are held by the Noteholders. The Company has requested that the Noteholders agree to amend the Existing Note Purchase Agreement as set forth herein and the Noteholders have consented to such request upon the terms and conditions set forth in this Agreement.

2. DEFINED TERMS.

Capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them in the Existing Note Purchase Agreement.

3. AMENDMENTS TO EXISTING NOTE PURCHASE AGREEMENT.

Subject to Section 5, the Noteholder and the Company hereby agree to each of the amendments to the Existing Note Purchase Agreement as provided for by this Amendment No. 1 to Note Purchase and Shelf Agreement (this “**Agreement**”) in the manner specified in Exhibit A. Such amendments are referred to herein, collectively, as the “**Amendments**”.

4. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

To induce the Noteholders to enter into this Agreement and to consent to the Amendments, the Company represents and warrants as follows:

4.1. Organization and Existence.

The Company is a corporation duly formed, validly existing and in good standing under the laws of the Commonwealth of Virginia, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and to perform the provisions hereof.

4.2. Agreement Authorized; Obligations Enforceable.

This Agreement has been duly authorized by all necessary corporate action on the part of the Company, and this Agreement constitutes, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.3. Compliance with Laws, Other Instruments, etc.

The execution, delivery and performance by the Company of this Agreement will not (a) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other agreement or instrument to which the Company or any Subsidiary is bound or by which the Company or any Subsidiary or any of their respective properties may be bound or affected, (b) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to the Company or any Subsidiary or (c) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company or any Subsidiary.

4.4. Governmental Authorizations, etc.

No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Company of this Agreement.

4.5. Defaults.

No event has occurred and no condition exists that, upon the execution and delivery of this Agreement and the effectiveness of the Amendments, would constitute a Default or an Event of Default.

5. EFFECTIVENESS OF AMENDMENTS.

The Amendments shall become effective as of the first date written above (the “**Effective Date**”) upon execution and delivery of this Agreement by the parties hereto.

6. EXPENSES.

Whether or not the Amendments become effective, the Company will promptly (and in any event within thirty (30) days of receiving any statement or invoice therefor) pay all fees, expenses and costs relating to this Agreement, including, but not limited to, the reasonable fees of special counsel to the Noteholders, Bingham McCutchen LLP, incurred by the Noteholders in connection with the preparation, negotiation and delivery of this Agreement and any other documents related thereto. Nothing in this Section shall limit the Company’s obligations pursuant to Section 15 of the Existing Note Purchase Agreement.

7. MISCELLANEOUS.

7.1. Part of Existing Note Purchase Agreement; Future References, etc.

This Agreement shall be construed in connection with and as a part of the Existing Note Purchase Agreement and, except as expressly amended by this Agreement, all terms, conditions and covenants contained in the Existing Note Purchase Agreement are hereby ratified and shall be and remain in full force and effect. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Agreement may refer to the Existing Note Purchase Agreement without making specific reference to this Agreement, but nevertheless all such references shall include this Agreement unless the context otherwise requires.

7.2. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

7.3. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

[Remainder of page intentionally left blank; next page is signature page.]

If you are in agreement with the foregoing, please so indicate by signing the acceptance below on the accompanying counterpart of this agreement and returning it to the Company, whereupon it will become a binding agreement among the Noteholders and the Company.

OLD DOMINION FREIGHT LINE, INC.

By: /s/ J. Wes Frye

Name: J. Wes Frye
Title: SVP-Finance/CFO & Asst.
Secretary

The undersigned Guarantor hereby consents to the Amendments and confirms its obligations as Guarantor under the Guaranty Agreement:

ODIS, INC.

By: /s/ J. Wes Frye

Name: J. Wes Frye
Title: President

The foregoing Agreement is hereby accepted as of the date first written above.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By: /s/ Christopher H. Carey

Name: Christopher H. Carey
Title: Vice President

PRUCO LIFE INSURANCE COMPANY

By: /s/ Chris Carey

Name: Chris Carey
Title: Asst VP

PRUCO LIFE INSURANCE COMPANY OF NEW JERSEY

By: /s/ Chris Carey

Name: Chris Carey
Title: Asst VP

HARTFORD LIFE INSURANCE COMPANY

**By: Prudential Private Placement Investors, L.P.,
As Investment Advisor**
**By: Prudential Private Placement Investors, Inc.
General Partner**

By: /s/ Christopher H. Carey

Name: Christopher H. Carey
Title: Vice President

ANNEX 1

NOTEHOLDERS AND PRINCIPAL AMOUNTS

<u>Name of Noteholder</u>	<u>Aggregate Principal Amount of 6.93% Senior Guaranteed Notes Held</u>	<u>Aggregate Principal Amount of Shelf Notes Held</u>
The Prudential Insurance Company of America	\$ 34,800,000	
	\$ 3,000,000	\$ 0
Hartford Life Insurance Company	\$ 5,000,000	\$ 0
Pruco Life Insurance Company	\$ 2,000,000	\$ 0
Pruco Life Insurance Company of New Jersey	\$ 5,200,000	\$ 0

Annex 1-1

AMENDMENTS

1. **SECTION 10.11** – *Restrictions on Dividends of Subsidiaries*. Section 10 of the Existing Note Purchase Agreement is hereby amended by adding a new Section 10.11 as follows:

“10.11. Restrictions on Dividends of Subsidiaries, etc.

Notwithstanding anything contained herein to the contrary, the Company will not, and will not permit any of its Wholly-Owned Subsidiaries to, enter into any agreement which would restrict any Wholly-Owned Subsidiary’s ability or right to pay dividends to, or make advances to or Investments in, the Company or, if such Wholly-Owned Subsidiary is not directly owned by the Company, the “parent” Wholly-Owned Subsidiary of such Wholly-Owned Subsidiary.”

2. **SCHEDULE B** – *Definitions*. The following definitions set forth in Schedule B to the Existing Note Purchase Agreement are hereby amended as follows:

(a) The definition of **“Funded Debt”** is hereby amended by adding the following proviso at the end thereof:

“; *provided, however*, that Funded Debt shall not include any Guaranty by any Subsidiary of the Debt of the Company under or in respect of the Bank Credit Agreement or any replacement, refinancing or refunding thereof, in whole, pursuant to a successor loan or credit agreement with any other bank or other financing source or under or in respect of the Prior Note Agreements, so long as (x) such Subsidiary shall have executed and delivered to the holders of the Notes a Guaranty pursuant to which such Subsidiary has agreed to guarantee the obligations of the Company under this Agreement and the Notes and such Guaranty is and continues to remain in full force and effect, and (y) the obligations of such Subsidiary under any Guaranty of the Company’s obligations under the Bank Credit Agreement and/or the Prior Note Agreements are, by their terms, *pari passu* with, or subordinated in priority or right of payment to, the obligations of the Subsidiary under the Guaranty executed pursuant to clause (x) above.”

(b) Clause (c) of the definition of **“Restricted Investment”** is hereby amended and restated in its entirety as follows:

“(c) Investments (i) in one or more Wholly-Owned Subsidiaries or any Person that concurrently with such Investment becomes a Wholly-Owned Subsidiary, or (ii) by any Wholly-Owned Subsidiary in the Company;”

3. **SCHEDULE B** – *Definitions*. Schedule B to the Existing Note Purchase Agreement is hereby amended by adding the following new definition:

“Bank Credit Agreement” means that certain Credit Agreement dated as of June __, 2003 by and between the Company and Wachovia Bank, National Association, as Agent (as such term is defined therein) and each of the lenders named therein, as the same may be amended, restated or otherwise modified from time to time.

“1996 Note Agreement” means that certain Note Purchase Agreement dated as of June

15, 1996 by and among the Company and each of the purchasers named on Schedule A thereto, as the same may be amended, restated or otherwise modified from time to time.

“1998 Note Agreement” means that certain Note Purchase Agreement dated as of February 25, 1998 by and among the Company and each of the purchasers named on Schedule A thereto, as the same may be amended, restated or otherwise modified from time to time.

“Prior Note Agreements” means, collectively, the 1996 Note Agreement and the 1998 Note Agreement.

FIRST AMENDMENT

to the

LOAN AGREEMENT,
dated JULY 10, 2002,

between

OLD DOMINION FREIGHT LINE, INC.

and

FIRST UNION COMMERCIAL CORPORATION

Dated as of June 30, 2003

FIRST AMENDMENT

THIS FIRST AMENDMENT, dated June 30, 2003 (this "Amendment"), is made in respect of the Loan Agreement, dated as of July 10, 2002, among **OLD DOMINION FREIGHT LINE, INC.**, and **FIRST UNION COMMERCIAL CORPORATION** (the "Loan Agreement"). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Loan Agreement. Unless otherwise specified, section references herein refer to sections set forth in the Loan Agreement, as amended by this Amendment.

STATEMENT OF AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender, for themselves and their successors and assigns, agree as follows:

ARTICLE I

AMENDMENT TO NOTES

Each Note is hereby amended by replacing Section 15 thereof with a new Section 15, which shall read in full as follows:

15. INCORPORATION OF LOAN COVENANTS. Borrower has entered into that certain credit agreement (the "Credit Agreement") dated as of the 30th day of June, 2003, with Wachovia Bank, National Association, as Agent. Each covenant (and its corresponding definitions) in Article VII of the Credit Agreement (collectively, the "Covenants") is hereby incorporated into this Note by reference and shall be binding and enforceable against Borrower. In the event of the amendment, modification, or termination of the Credit Agreement or the Covenants set forth therein for any reason whatsoever, such Covenants as contained in the Credit Agreement as of the date hereof shall continue to be Covenants of the Borrower under this Note and shall continue to be binding on and enforceable against Borrower notwithstanding the earlier termination, modification or amendment.

ARTICLE II

WAIVER

The Lender hereby waives any default under the Loan Agreement and Note caused solely by the execution and delivery (but not the performance) of the Credit Agreement; provided that each of the Lender and the Borrower will work in good faith to cure such default by July 31, 2003.

ARTICLE III

EFFECTIVENESS

This Amendment shall become effective as of June 30, 2003 (the "First Amendment Effective Date") when the Lender shall have received counterparts of this Amendment, duly executed by the Borrower and the Lender. On the First Amendment Effective Date, the Loan Agreement will be automatically amended as set forth herein. On and after the First Amendment Effective Date, the rights and obligations of the parties hereto shall be governed by the Loan Agreement as amended by this Amendment; provided, that the rights and obligations of the parties hereto with respect to the period prior to the First Amendment Effective Date shall continue to be governed by the terms of the Loan Agreement.

ARTICLE IV

MODIFICATION OF LOAN DOCUMENTS

Any individual or collective reference to the Loan Agreement in any of the other Loan Documents (including without limitation the Notes) shall be deemed a reference on and after the First Amendment Effective Date to the Loan Agreement, as amended by this Amendment, and as the Loan Agreement may be further amended, restated, supplemented or modified from time to time and any substitute or replacement therefor or renewals thereof.

ARTICLE V

GENERAL

5.1 *Full Force and Effect.* As expressly amended hereby, the Loan Agreement shall continue in full force and effect in accordance with the provisions thereof, and no change or modification in any of the terms thereof except as specifically set forth herein has been effected. As used in the Loan Agreement, "hereinafter," "hereto," "hereof," and words of similar import shall, unless the context otherwise requires, mean the Loan Agreement as amended by this Amendment.

5.2 *Applicable Law.* This Amendment shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina (without regard to the conflicts of law provisions thereof).

5.3 *Counterparts.* This Amendment may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one instrument.

5.4 *Expenses and Indemnity.* The Borrower agrees to pay all out-of-pocket expenses incurred by the Lenders in connection with the preparation, execution and delivery of this Amendment and in connection with any action now or hereafter taken with respect to Article II of this Amendment, in each case, including without limitation all reasonable attorneys' fees.

5.5 *Further Assurance.* The Borrower shall execute and deliver to the Lenders such documents, certificates and opinions as the Lender may reasonably request to effect the Amendment contemplated by this Amendment.

5.6 *Headings.* The headings of this Amendment are for the purposes of reference only and shall not affect the construction of this Amendment.

IN WITNESS WHEREOF, the Borrower and the Lender have executed this Amendment as of the date hereof.

OLD DOMINION FREIGHT LINE, INC., as
Borrower

By: /s/ J. Wes Frye

Name: J. Wes Frye

Title: SVP-Finance/CFO & Asst Secretary

**FIRST UNION COMMERCIAL
CORPORATION,** as Lender

By: /s/ Robert N. Crumrine Jr.

Name: Robert N. Crumrine Jr.

Title: Director/Vice President

Wachovia Bank, N.A.
301 South College Street
Charlotte, NC 28288-0760

[GRAPHIC APPEARS HERE]

May 14, 2003

WACHOVIA SECURITIES

J. Wes Frye
SVP, Chief Financial Officer
Old Dominion Freight Line, Inc.
500 Old Dominion Way
Thomasville, NC 27360

Dear J. Wes Frye:

This letter is being delivered to you in connection with the credit facility due May 30, 2003 and in consideration of the new credit facilities scheduled to close by June 30, 2003. We wanted to inform you that Wachovia Bank, National Association has extended the existing credit facility maturity date through July 1, 2003.

Sincerely,

/s/ Andrew Payne

Andrew Payne
Director
Wachovia Securities

Wachovia Securities is the trade name for the corporate and investment banking services of Wachovia Corporation and its subsidiaries, including Wachovia Capital Markets, LLC ("WCM"), member NYSE, NASD, SIPC.

Modified Traditional Numbering Used

CREDIT AGREEMENT

among

OLD DOMINION FREIGHT LINE, INC.,

THE LENDERS NAMED HEREIN,

and

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Agent

\$80,000,000 Senior Unsecured Revolving Credit Facility

Lead Arranger and Sole Book-Runner:
WACHOVIA SECURITIES, INC.

Dated as of June 30, 2003

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT, dated as of the 30th day of June, 2003, is made among **OLD DOMINION FREIGHT LINE, INC.**, a Virginia corporation (the "Borrower"), the banks and financial institutions listed on the signature pages hereto or that become parties hereto after the date hereof, and **WACHOVIA BANK, NATIONAL ASSOCIATION** ("Wachovia"), as agent for the Lenders. Capitalized terms used herein shall have the meanings given to such terms in **Article I**.

RECITALS

A. The Borrower has requested that the Lenders make available to the Borrower a revolving credit facility in the aggregate principal amount of \$80,000,000. The Borrower will use the proceeds of this facility to refinance certain existing indebtedness, to pay or reimburse certain fees and expenses in connection herewith, and for working capital, the issuance of letters of credit, and general corporate purposes, all as more fully described herein.

B. The Lenders are willing to make available to the Borrower the revolving credit facility described herein subject to and on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual provisions, covenants and agreements herein contained, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Defined Terms.

For purposes of this Agreement, in addition to the terms defined elsewhere herein, the following terms shall have the meanings set forth below (such meanings to be equally applicable to the singular and plural forms thereof):

"Account Designation Letter" shall mean a letter from the Borrower to the Agent, duly completed and signed by an Authorized Officer and in form and substance satisfactory to the Agent, listing any one or more accounts to which the Borrower may from time to time request the Agent to forward the proceeds of any Loans made hereunder.

"Acquisition" shall mean any transaction or series of related transactions, consummated on or after the date hereof, by which the Borrower directly, or indirectly through one or more Subsidiaries, (i) acquires any going business, or all or substantially all of the assets, of any Person, whether through purchase of assets, merger or otherwise, or (ii) acquires securities or other ownership interests of any Person having at least a majority of combined voting power of the then outstanding securities or other ownership interests of such Person.

“Acquisition Amount” shall mean, with respect to any Acquisition, the sum (without duplication) of (i) the amount of cash paid by the Borrower and its Subsidiaries in connection with such Acquisition, (ii) the Fair Market Value of all Capital Stock of the Borrower issued or given in connection with such Acquisition, (iii) the amount (determined by using the face amount or the amount payable at maturity, whichever is greater) of all Indebtedness incurred, assumed or acquired by the Borrower and its Subsidiaries in connection with such Acquisition, (iv) all additional purchase price amounts in connection with such Acquisition in the form of earnouts and other contingent obligations that should be recorded as a liability on the balance sheet of the Borrower and its Subsidiaries or expensed, in either event in accordance with GAAP, Regulation S-X under the Securities Act of 1933, as amended, or any other rule or regulation of the Securities and Exchange Commission, (v) all amounts paid in respect of covenants not to compete, consulting agreements and other affiliated contracts in connection with such Acquisition, (vi) the amount of all transaction fees and expenses (including, without limitation, legal, accounting and finders’ fees and expenses) incurred by the Borrower and its Subsidiaries in connection with such Acquisition and (vii) the aggregate fair market value of all other consideration given by the Borrower and its Subsidiaries in connection with such Acquisition.

“Adjusted Base Rate” shall mean, at any time with respect to any Base Rate Loan, a rate per annum equal to the Base Rate as in effect at such time plus the Applicable Margin Percentage for Base Rate Loans as in effect at such time.

“Adjusted Debt to Capital Ratio” shall mean, as of the last day of any fiscal quarter, the ratio of (i) Consolidated Funded Debt, plus the Net Present Value of Operating Leases of the Borrower and its Subsidiaries, plus the aggregate face amount of all outstanding letters of credit (whether or not drawn) issued on behalf of the Borrower and its Subsidiaries to (ii) Consolidated Total Capitalization, plus the Net Present Value of Operating Leases of the Borrower and its Subsidiaries, plus the aggregate face amount of all outstanding letters of credit (whether or not drawn) issued on behalf of the Borrower and its Subsidiaries.

“Adjusted LIBOR Rate” shall mean, at any time with respect to any LIBOR Loan, a rate per annum equal to the LIBOR Rate as in effect at such time plus the Applicable Margin Percentage for LIBOR Loans as in effect at such time.

“Affiliate” shall mean, as to any Person, each other Person that directly, or indirectly through one or more intermediaries, owns or controls, is controlled by or under common control with, such Person or is a director or officer of such Person. For purposes of this definition, with respect to any Person “control” shall mean (i) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the beneficial ownership of securities or other ownership interests of such Person having 10% or more of the combined voting power of the then outstanding securities or other ownership interests of such Person ordinarily (and apart from rights accruing under special circumstances) having the right to vote in the election of directors or other governing body of such Person.

“Agent” shall mean Wachovia, in its capacity as Agent appointed under **Article X**, and its successors and permitted assigns in such capacity.

“Agreement” shall mean this Credit Agreement, as amended, modified or supplemented from time to time.

“Applicable Margin Percentage” shall mean, at any time from and after the Closing Date, the applicable percentage (i) to be added to the Base Rate pursuant to **Section 2.8** for purposes of determining the Adjusted Base Rate, (ii) to be added to the LIBOR Rate pursuant to **Section 2.8** for purposes of determining the Adjusted LIBOR Rate, and (iii) to be used in calculating the commitment fee payable pursuant to **Section 2.9(a)**, in each case as determined under the following matrix with reference to the Adjusted Debt to Capital Ratio:

<u>Adjusted Debt to Capital Ratio</u>	<u>Applicable Margin Percentage for Base Rate Loans</u>	<u>Applicable Margin Percentage for LIBOR Loans</u>	<u>Applicable Margin Percentage for Commitment Fee</u>
Greater than or equal to 0.475 to 1.0	0.25%	1.25%	0.30%
Greater than or equal to 0.325 to 1.0 but less than 0.475 to 1.0	0.00%	1.00%	0.25%
Less than 0.325 to 1.0	0.00%	0.75%	0.20%

On each Adjustment Date (as hereinafter defined), the Applicable Margin Percentage for all Loans and the commitment fee payable pursuant to **Section 2.9(a)** shall be adjusted effective as of such date (based upon the calculation of the Adjusted Debt to Capital Ratio as of the last day of the fiscal period to which such Adjustment Date relates) in accordance with the above matrix; provided, however, that, notwithstanding the foregoing or anything else herein to the contrary, if at any time the Borrower shall have failed to deliver the financial statements and a Compliance Certificate as required by **Section 6.1(a)** or **Section 6.1(b)**, as the case may be, and **Section 6.2(a)**, or if at any time an Event of Default shall have occurred and be continuing, then at the election of the Required Lenders, at all times from and including the date on which such statements and Compliance Certificate are required to have been delivered (or the date of occurrence of such Event of Default, as the case may be) to the date on which the same shall have been delivered (or such Event of Default cured or waived, as the case may be), each Applicable Margin Percentage shall be determined in accordance with the above matrix as if the Adjusted Debt to Capital Ratio were greater than or equal to 0.475 to 1.0 (notwithstanding the actual Adjusted Debt to Capital Ratio). For purposes of this definition, “Adjustment Date” shall mean, with respect to any fiscal period of the Borrower beginning with the fiscal quarter ending June 30, 2003, the tenth (10th) day (or, if such day is not a Business Day, the next succeeding Business Day) after delivery by the Borrower in accordance with **Section 6.1(a)** or **Section 6.1(b)**, as the case may be, of (i) financial statements as of the end of and for such fiscal period and (ii) a duly completed Compliance Certificate with respect to such fiscal period. Until the first Adjustment Date, each Applicable Margin Percentage shall be determined in accordance with the above matrix based upon the Adjusted Debt to Capital Ratio as if the Adjusted Debt to Capital Ratio were greater than or equal to 0.325 to 1.0 but less than 0.475 to 1.0 (notwithstanding the actual Adjusted Debt to Capital Ratio).

“Assignee” shall have the meaning given to such term in **Section 11.7(a)**.

“Assignment and Acceptance” shall mean an Assignment and Acceptance entered into between a Lender and an Assignee and accepted by the Agent and the Borrower, in substantially the form of **Exhibit D**.

“Authorized Officer” shall mean, with respect to any action specified herein, any officer of the Borrower duly authorized by resolution of the board of directors of the Borrower to take such action on its behalf, and whose signature and incumbency shall have been certified to the Agent by the secretary or an assistant secretary of the Borrower.

“Bankruptcy Code” shall mean 11 U.S.C. §§ 101 et seq., as amended from time to time, and any successor statute.

“Base Rate” shall mean the higher of (i) the per annum interest rate publicly announced from time to time by Wachovia in Charlotte, North Carolina, to be its prime rate (which may not necessarily be its best lending rate), as adjusted to conform to changes as of the opening of business on the date of any such change in such prime rate, and (ii) the Federal Funds Rate plus 0.5% per annum, as adjusted to conform to changes as of the opening of business on the date of any such change in the Federal Funds Rate.

“Base Rate Loan” shall mean, at any time, any Loan that bears interest at such time at the Adjusted Base Rate.

“Borrowing” shall mean the incurrence by the Borrower (including as a result of conversions and continuations of outstanding Loans pursuant to **Section 2.11**) on a single date of a group of Loans of a single Type (or a Swingline Loan made by the Swingline Lender) and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

“Borrowing Date” shall have the meaning given to such term in **Section 2.2(b)**.

“Business Day” shall mean (i) any day other than a Saturday or Sunday, a legal holiday or a day on which commercial banks in Charlotte, North Carolina are required by law to be closed and (ii) in respect of any determination relevant to a LIBOR Loan, any such day that is also a day on which tradings are conducted in the London interbank Eurodollar market.

“Capital Stock” shall mean (i) with respect to any Person that is a corporation, any and all shares, interests or equivalents in capital stock (whether voting or nonvoting, and whether common or preferred) of such corporation, and (ii) with respect to any Person that is not a corporation, any and all partnership, membership, limited liability company or other equity interests of such Person; and in each case, any and all warrants, rights or options to purchase any of the foregoing.

“Capitalized Lease Obligations” shall mean any Indebtedness represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP, and the amount of such Indebtedness shall be the capitalized amount of such obligations determined in accordance with GAAP.

“Cash Collateral Account” shall have the meaning given to such term in **Section 3.8**.

“Cash Equivalents” shall mean (i) securities issued or unconditionally guaranteed by the United States of America or any agency or instrumentality thereof, backed by the full faith and credit of the United States of America and maturing within 90 days from the date of acquisition, (ii) commercial paper issued by any Person organized under the laws of the United States of America, maturing within 90 days from the date of acquisition and, at the time of acquisition, having a rating of at least A-1 or the equivalent thereof by Standard & Poor’s Ratings Services or at least P-1 or the equivalent thereof by Moody’s Investors Service, Inc., (iii) time deposits and certificates of deposit maturing within 90 days from the date of issuance and issued by a bank or trust company organized under the laws of the United States of America or any state thereof that has combined capital and surplus of at least \$500,000,000 and that has (or is a subsidiary of a bank holding company that has) a long-term unsecured debt rating of at least A or the equivalent thereof by Standard & Poor’s Ratings Services or at least A2 or the equivalent thereof by Moody’s Investors Service, Inc., (iv) repurchase obligations with a term not exceeding seven (7) days with respect to underlying securities of the types described in clause (i) above entered into with any bank or trust company meeting the qualifications specified in clause (iii) above, and (v) money market funds at least 95% of the assets of which are continuously invested in securities of the type described in clause (i) above.

“Closing Date” shall mean the date upon which this Agreement becomes effective pursuant to **Section 4.1**.

“Commitment” shall mean, with respect to any Lender at any time, the amount set forth opposite such Lender’s name on its signature page hereto under the caption “Commitment” or, if such Lender has entered into one or more Assignment and Acceptances, the amount set forth for such Lender at such time in the Register maintained by the Agent pursuant to **Section 11.7(b)** as such Lender’s “Commitment,” as such amount may be reduced at or prior to such time pursuant to the terms hereof.

“Compliance Certificate” shall mean a fully completed and duly executed certificate in the form of **Exhibit C**, together with a Covenant Compliance Worksheet.

“Consolidated Funded Debt” shall mean, as of any date of determination, the aggregate (without duplication) of all Funded Debt of the Borrower and its Subsidiaries as of such date.

“Consolidated Interest Expense” shall mean, for any period, the total interest expense of the Borrower and its Subsidiaries during such period, determined in accordance with GAAP, including all commitment fees and other ongoing fees (including the commitment fee provided for under **Section 2.9(a)**).

“Consolidated Interest Income” shall mean, for any period, the total interest income of the Borrower and its Subsidiaries during such period, determined in accordance with GAAP.

“Consolidated Net Income” shall mean, for any period, net income (or loss) for the Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“Consolidated Tangible Net Worth” shall mean, as of any date of determination, the total shareholders’ equity (including Capital Stock, additional paid-in capital and retained earnings after deducting treasury stock) of the Borrower and its Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP, but excluding (i) the unamortized amount, if any, of intangible assets and goodwill (including, without limitation, franchises, licenses, patents, trademarks, trade names, copyrights, service marks and brand names) as reflected on the balance sheet of the Borrower, (ii) any Indebtedness owed to the Borrower or any Subsidiary by any Affiliate, (iii) any write-up in the book value of any fixed asset resulting from a revaluation thereof subsequent to the Closing Date, and (iv) the amount, if any, at which shares of Capital Stock of the Borrower or any Subsidiary appear on the asset side of the balance sheet of the Borrower.

“Consolidated Total Capitalization” shall mean, as of any date of determination, the sum of (i) Consolidated Funded Debt as of such date and (ii) Consolidated Tangible Net Worth.

“Contingent Obligation” shall mean, with respect to any Person, any direct or indirect liability of such Person with respect to any Indebtedness, liability or other obligation (the “primary obligation”) of another Person (the “primary obligor”), whether or not contingent, (i) to purchase, repurchase or otherwise acquire such primary obligation or any property constituting direct or indirect security therefore primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor in respect thereof to make payment of such primary obligation, (ii) to advance or provide funds (A) for the payment or discharge of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, (iii) to purchase property, securities or services from the primary obligor primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor in respect thereof to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss or failure or inability of the primary obligor to perform in respect thereof; provided, however, that, with respect to the Borrower and its Subsidiaries, the term Contingent Obligation shall not include endorsements for collection or deposit in the ordinary course of business.

“Control Group” shall mean (i) Earl E. Congdon, John R. Congdon, and David S. Congdon, (ii) the spouse of any Person described in clause (i) above, (iii) any direct descendants of any Person described in clauses (i) and (ii) above, and (iv) any charitable trust, foundation, estate planning trust, family limited partnership or family limited liability company controlled by one or more of the Persons described in clauses (i) through (iii) above.

“Covenant Compliance Worksheet” shall mean a fully completed worksheet in the form of Attachment A to **Exhibit C**.

“Credit Documents” shall mean this Agreement, the Notes, the Letters of Credit, the Fee Letter, the Subsidiary Guaranty, and all other agreements, instruments, documents and certificates now or hereafter executed and delivered to the Agent or any Lender by or on behalf of the Borrower or any of its Subsidiaries with respect to this Agreement and the transactions

contemplated hereby, in each case as amended, modified, supplemented or restated from time to time.

“Default” shall mean any event or condition that, with the passage of time or giving of notice, or both, would constitute an Event of Default.

“Disqualified Capital Stock” shall mean, with respect to any Person, any Capital Stock of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event or otherwise, (i) matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, pursuant to a sinking fund obligation or otherwise, (ii) is redeemable or subject to any mandatory repurchase requirement at the sole option of the holder thereof, or (iii) is convertible into or exchangeable for (whether at the option of the issuer or the holder thereof) (a) debt securities or (b) any Capital Stock referred to in (i) or (ii) above, in each case under (i), (ii) or (iii) above at any time on or prior to the first anniversary of the Maturity Date; provided, however, that only the portion of Capital Stock that so matures or is mandatorily redeemable, is so redeemable at the option of the holder thereof, or is so convertible or exchangeable on or prior to such date shall be deemed to be Disqualified Capital Stock.

“Dollars” or “\$” shall mean dollars of the United States of America.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute, and all rules and regulations from time to time promulgated thereunder.

“EBIT” shall mean, for any period, the earnings (or loss) before provision for income taxes and interest for such fiscal period, as reflected on the financial statements of the Borrower and its Subsidiaries delivered pursuant to **Section 6.1(a)** or **Section 6.1(b)**, as applicable, and (i) including without limitation (A) earnings of any Subsidiary of the Borrower accrued prior to the date it became a Subsidiary of the Borrower pursuant to a Permitted Acquisition, (B) earnings of any Person, substantially all of the assets of which have been acquired in any manner by the Borrower or any of its Subsidiaries pursuant to a Permitted Acquisition, realized by such Person on account of such assets prior to the date of such acquisition, (C) earnings of any Person prior to any date such Person has merged or consolidated with the Borrower or any Subsidiary pursuant to a Permitted Acquisition and as permitted by **Section 8.1**, and (ii) excluding (A) any gain or loss arising from the sale of non-operating assets, (B) any gain arising from any write-up of assets, (C) any gain arising from the acquisition of any securities of the Borrower or any of its Subsidiaries, and (D) any gain or loss arising from extraordinary or nonrecurring items, all determined in accordance with GAAP.

“ERISA Affiliate” shall mean any Person (including any trade or business, whether or not incorporated) that would be deemed to be under “common control” with, or a member of the same “controlled group” as, the Borrower or any of its Subsidiaries, within the meaning of Sections 414(b), (c), (m) or (o) of the Internal Revenue Code or Section 4001 of ERISA.

“ERISA Event” shall mean any of the following with respect to a Plan or Multiemployer Plan, as applicable: (i) a Reportable Event with respect to a Plan or a Multiemployer Plan, (ii) a

complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan that results in liability under Section 4201 or 4204 of ERISA, or the receipt by the Borrower or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA, (iii) the distribution by the Borrower or any ERISA Affiliate under Section 4041 or 4041A of ERISA of a notice of intent to terminate any Plan or the taking of any action to terminate any Plan, (iv) the commencement of proceedings by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Borrower or any ERISA Affiliate of a notice from any Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan, (v) the institution of a proceeding by any fiduciary of any Multiemployer Plan against the Borrower or any ERISA Affiliate to enforce Section 515 of ERISA, which is not dismissed within thirty (30) days, (vi) the imposition upon the Borrower or any ERISA Affiliate of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, or the imposition or threatened imposition of any Lien upon any assets of the Borrower or any ERISA Affiliate as a result of any alleged failure to comply with the Internal Revenue Code or ERISA in respect of any Plan, (vii) the engaging in or otherwise becoming liable for a nonexempt Prohibited Transaction by the Borrower or any ERISA Affiliate, (viii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Internal Revenue Code by any fiduciary of any Plan for which the Borrower or any of its ERISA Affiliates may be directly or indirectly liable or (ix) the adoption of an amendment to any Plan that, pursuant to Section 401(a)(29) of the Internal Revenue Code or Section 307 of ERISA, would result in the loss of tax-exempt status of the trust of which such Plan is a part if the Borrower or an ERISA Affiliate fails to timely provide security to such Plan in accordance with the provisions of such sections.

“Eligible Assignee” shall mean (i) a commercial bank organized under the laws of the United States or any state thereof and having total assets in excess of \$1,000,000,000, (ii) a commercial bank organized under the laws of any other country that is a member of the Organization for Economic Cooperation and Development or any successor thereto (the “OECD”) or a political subdivision of any such country and having total assets in excess of \$1,000,000,000, provided that such bank or other financial institution is acting through a branch or agency located in the United States, in the country under the laws of which it is organized or in another country that is also a member of the OECD, (iii) the central bank of any country that is a member of the OECD, (iv) a finance company, insurance company or other financial institution or fund that is engaged in making, purchasing or otherwise investing in loans in the ordinary course of its business and having total assets in excess of \$500,000,000, (v) any Affiliate of an existing Lender or (vi) any other Person approved by the Required Lenders, which approval shall not be unreasonably withheld.

“Environmental Claims” shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of its business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law (collectively, “Claims”), including, without limitation, (i) any and all Claims

by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to human health or the environment.

“Environmental Laws” shall mean any and all federal, state and local laws, statutes, ordinances, rules, regulations, permits, licenses, approvals, rules of common law and orders of courts or Governmental Authorities, relating to the protection of human health or occupational safety or the environment, now or hereafter in effect and in each case as amended from time to time, including, without limitation, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Substances.

“Equity Issuance” shall mean the issuance, sale or other disposition by the Borrower or any of its Subsidiaries of its Capital Stock, any rights, warrants or options to purchase or acquire any shares of its Capital Stock or any other security or instrument representing, convertible into or exchangeable for an equity interest in the Borrower or any of its Subsidiaries; provided, however, that the term Equity Issuance shall not include (i) the issuance or sale of Capital Stock by any of the Subsidiaries of the Borrower to the Borrower or any other Subsidiary, or (ii) any Capital Stock of the Borrower issued or sold in connection with any Permitted Acquisition and constituting all or a portion of the applicable purchase price.

“Event of Default” shall have the meaning given to such term in **Section 9.1**.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended from time to time, and any successor statute, and all rules and regulations from time to time promulgated thereunder.

“Existing Letters of Credit” shall have the meaning given to such term in **Section 3.1**.

“Fair Market Value” shall mean, with respect to any Capital Stock of the Borrower given in connection with an Acquisition, the value given to such Capital Stock for purposes of such Acquisition by the parties thereto, as determined in good faith pursuant to the relevant acquisition agreement or otherwise in connection with such Acquisition.

“Federal Funds Rate” shall mean, for any period, a fluctuating per annum interest rate (rounded upwards, if necessary, to the nearest 1/100 of one percentage point) equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three federal funds brokers of recognized standing selected by the Agent.

“Federal Reserve Board” shall mean the Board of Governors of the Federal Reserve System or any successor thereto.

“Fee Letter” shall mean the letter from Wachovia to the Borrower, dated May 22, 2003, relating to certain fees payable by the Borrower in respect of the transactions contemplated by this Agreement, as amended, modified or supplemented from time to time.

“Financial Officer” shall mean, with respect to the Borrower, the chief financial officer, vice president—finance, principal accounting officer or treasurer of the Borrower.

“Fixed Charge Coverage Ratio” shall mean, as of the last day of any fiscal quarter, the ratio of (i) the sum of EBIT and Gross Rents, minus Consolidated Interest Income, each for the period of four consecutive fiscal quarters then ending, to (ii) the sum of (X) Consolidated Interest Expense, (Y) Gross Rents and (Z) the aggregate amount (without duplication) of all scheduled payments of principal on Funded Debt required to have been made by the Borrower and its Subsidiaries (whether or not such payments are actually made), minus Consolidated Interest Income, in each case for the period of four consecutive fiscal quarters then ending.

“Funded Debt” shall mean, as of any date of determination with respect to any Person, all Indebtedness for borrowed money of such Person, whether direct or contingent, including, without limitation, reimbursement and all other obligations outstanding with respect to surety bonds and letters of credit (but excluding the amount of undrawn letters of credit and surety bonds of such Person), Capitalized Lease Obligations, the deferred purchase price of any property or asset or Indebtedness evidenced by a promissory note, bond, guaranty or similar written obligations for the payment of money (including, but not limited to, conditional sales or similar title retention agreements).

“GAAP” shall mean generally accepted accounting principles, as set forth in the statements, opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and maintained, as in effect from time to time (subject to the provisions of **Section 1.2**).

“Governmental Authority” shall mean any nation or government, any state or other political subdivision thereof and any central bank thereof, any municipal, local, city or county government, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

“Gross Rents” shall mean, for any period, the aggregate amount of all payments which the Borrower and its Subsidiaries are required to make during such period pursuant to the terms of any lease by the Borrower or any Subsidiary of any building (including, without limitation, any leased terminals or similar facilities of the Borrower or any Subsidiary) or revenue producing equipment, including renewals thereof.

“Hazardous Substances” shall mean any substances or materials (i) that are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants or toxic substances under any Environmental Law, (ii) that are defined by any Environmental Law as toxic, explosive, corrosive, ignitable, infectious, radioactive, mutagenic or otherwise hazardous, (iii) the presence of which require investigation or response under any Environmental Law,

(iv) that constitute a nuisance, trespass or health or safety hazard to Persons or neighboring properties, (v) that consist of underground or aboveground storage tanks, whether empty, filled or partially filled with any substance, or (vi) that contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or wastes, crude oil, nuclear fuel, natural gas or synthetic gas.

“Indebtedness” shall mean, with respect to any Person (without duplication), (i) all indebtedness and obligations of such Person for borrowed money or in respect of loans or advances of any kind, (ii) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments, (iii) all reimbursement obligations of such Person with respect to surety bonds, letters of credit and bankers’ acceptances (in each case, whether or not drawn or matured and in the stated amount thereof), (iv) all obligations of such Person to pay the deferred purchase price of property or services, (v) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (vi) all obligations of such Person as lessee under leases that are or are required to be, in accordance with GAAP, recorded as capital leases, to the extent such obligations are required to be so recorded, (vii) all obligations and liabilities of such Person incurred in connection with any transaction or series of transactions providing for the financing of assets through one or more securitizations or in connection with, or pursuant to, any synthetic lease or similar off-balance sheet financing, (viii) all Disqualified Capital Stock issued by such Person, with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any (for purposes hereof, the “maximum fixed repurchase price” of any Disqualified Capital Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Capital Stock, such fair market value shall be determined reasonably and in good faith by the board of directors or other governing body of the issuer of such Disqualified Capital Stock), (ix) all Contingent Obligations of such Person and (x) all indebtedness referred to in clauses (i) through (ix) above secured by any Lien on any property or asset owned or held by such Person regardless of whether the indebtedness secured thereby shall have been assumed by such Person or is nonrecourse to the credit of such Person.

“Interest Period” shall have the meaning given to such term in **Section 2.10**.

“Internal Revenue Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, and all rules and regulations from time to time promulgated thereunder.

“Issuing Lender” shall mean Wachovia in its capacity as issuer of the Letters of Credit, and its successors in such capacity.

“LIBOR Loan” shall mean, at any time, any Loan that bears interest at such time at the Adjusted LIBOR Rate.

“LIBOR Rate” shall mean, with respect to each LIBOR Loan comprising part of the same Borrowing for any Interest Period, an interest rate per annum obtained by dividing (i)(y) the rate of interest (rounded upward, if necessary, to the nearest 1/16 of one percentage point) appearing on Telerate Page 3750 (or any successor page) or (z) if no such rate is available, the rate of interest determined by the Agent to be the rate or the arithmetic mean of rates (rounded upward, if necessary, to the nearest 1/16 of one percentage point) at which Dollar deposits in immediately available funds are offered by Wachovia to first-tier banks in the London interbank Eurodollar market, in each case under (y) and (z) above at approximately 11:00 a.m., London time, two (2) Business Days prior to the first day of such Interest Period for a period substantially equal to such Interest Period and in an amount substantially equal to the amount of Wachovia’s LIBOR Loan comprising part of such Borrowing, by (ii) the amount equal to 1.00 minus the Reserve Requirement (expressed as a decimal) for such Interest Period.

“Lender” shall mean each financial institution signatory hereto and each other financial institution that becomes a “Lender” hereunder pursuant to **Section 11.7**, and their respective successors and assigns.

“Lending Office” shall mean, with respect to any Lender, the office of such Lender designated as its “Lending Office” on its signature page hereto or in an Assignment and Acceptance, or such other office as may be otherwise designated in writing from time to time by such Lender to the Borrower and the Agent. A Lender may designate separate Lending Offices as provided in the foregoing sentence for the purposes of making or maintaining different Types of Loans, and, with respect to LIBOR Loans, such office may be a domestic or foreign branch or Affiliate of such Lender.

“Letter of Credit Exposure” shall mean, with respect to any Lender at any time, such Lender’s ratable share (based on the proportion that its Commitment bears to the aggregate Commitments at such time) of the sum of (i) the aggregate Stated Amount of all Letters of Credit outstanding at such time and (ii) the aggregate amount of all Reimbursement Obligations outstanding at such time.

“Letter of Credit Notice” shall have the meaning given to such term in **Section 3.2**.

“Letters of Credit” shall have the meaning given to such term in **Section 3.1**.

“Lien” shall mean any mortgage, pledge, hypothecation, assignment, security interest, lien (statutory or otherwise), preference, priority, charge or other encumbrance of any nature, whether voluntary or involuntary, including, without limitation, the interest of any vendor or lessor under any conditional sale agreement, title retention agreement, capital lease or any other lease or arrangement having substantially the same effect as any of the foregoing.

“Loans” shall mean any or all of the Revolving Loans and the Swingline Loans.

“Margin Stock” shall have the meaning given to such term in Regulation U.

“Material Adverse Change” shall mean a material adverse change in the financial condition, operations, prospects, business, properties or assets of the Borrower and its Subsidiaries, taken as a whole.

“Material Adverse Effect” shall mean a material adverse effect upon (i) the financial condition, operations, prospects, business, properties or assets of the Borrower and its Subsidiaries, taken as a whole, (ii) the ability of the Borrower or any Subsidiary to perform its obligations under this Agreement or any of the other Credit Documents to which it is a party or (iii) the legality, validity or enforceability of this Agreement or any of the other Credit Documents or the rights and remedies of the Agent and the Lenders hereunder and thereunder.

“Material Contract” shall have the meaning given to such term in **Section 5.18**.

“Maturity Date” shall mean June 30, 2006.

“Multiemployer Plan” shall mean any “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA to which the Borrower or any ERISA Affiliate makes, is making or is obligated to make contributions or has made or been obligated to make contributions.

“Net Present Value of Operating Leases” shall mean, as of the last day of any fiscal quarter with respect to any Person, the net present value of operating leases of real and personal property of such Person as of the last day of the immediately preceding fiscal quarter, calculated on a basis of a discount rate of 10%.

“Notes” shall mean any or all of the Revolving Notes and the Swingline Note.

“Notice of Borrowing” shall have the meaning given to such term in **Section 2.2(b)**.

“Notice of Conversion/Continuation” shall have the meaning given to such term in **Section 2.11(b)**.

“Notice of Swingline Borrowing” shall have the meaning given to such term in **Section 2.2(d)**.

“Obligations” shall mean all principal of and interest (including, to the greatest extent permitted by law, post-petition interest) on the Loans, all Reimbursement Obligations, all fees, expenses, indemnities and other obligations owing, due or payable at any time by the Borrower to the Agent, any Lender, the Issuing Lender, the Swingline Lender or any other Person entitled thereto, under this Agreement or any of the other Credit Documents.

“PBGC” shall mean the Pension Benefit Guaranty Corporation and any successor thereto.

“Participant” shall have the meaning given to such term in **Section 11.7(d)**.

“Permitted Acquisition” shall mean (a) any Acquisition with respect to which all of the following conditions are satisfied: (i) each business acquired shall be within the permitted lines of business described in **Section 8.8**, (ii) any Capital Stock given as consideration in connection therewith shall be Capital Stock of the Borrower, (iii) in the case of an Acquisition involving the acquisition of control of Capital Stock of any Person, immediately after giving effect to such Acquisition such Person (or the surviving Person, if the Acquisition is effected through a merger or consolidation) shall be the Borrower or a Wholly Owned Subsidiary, and (iv) all of the conditions and requirements of **Sections 6.8** and **6.9** applicable to such Acquisition are satisfied;

or (b) any other Acquisition to which the Required Lenders (or the Agent on their behalf) shall have given their prior written consent (which consent may be in their sole discretion and may be given subject to such additional terms and conditions as the Required Lenders shall establish) and with respect to which all of the conditions and requirements set forth in this definition and in **Section 6.8**, and in or pursuant to any such consent, have been satisfied or waived in writing by the Required Lenders (or the Agent on their behalf).

“Permitted Liens” shall have the meaning given to such term in **Section 8.3**.

“Person” shall mean any corporation, association, joint venture, partnership, limited liability company, organization, business, individual, trust, government or agency or political subdivision thereof or any other legal entity.

“Plan” shall mean any “employee pension benefit plan” within the meaning of Section 3(2) of ERISA that is subject to the provisions of Title IV of ERISA (other than a Multiemployer Plan) and to which the Borrower or any ERISA Affiliate may have any liability.

“Prohibited Transaction” shall mean any transaction described in (i) Section 406 of ERISA that is not exempt by reason of Section 408 of ERISA or by reason of a Department of Labor prohibited transaction individual or class exemption or (ii) Section 4975(c) of the Internal Revenue Code that is not exempt by reason of Section 4975(c)(2) or 4975(d) of the Internal Revenue Code.

“Projections” shall have the meaning given to such term in **Section 5.11(b)**.

“Refunded Swingline Loans” shall have the meaning given to such term in **Section 2.2(e)**.

“Register” shall have the meaning given to such term in **Section 11.7(b)**.

“Regulations D, T, U and X” shall mean Regulations D, T, U and X, respectively, of the Federal Reserve Board, and any successor regulations.

“Reimbursement Obligation” shall have the meaning given to such term in **Section 3.4**.

“Reportable Event” shall mean (i) any “reportable event” within the meaning of Section 4043(c) of ERISA for which the 30-day notice under Section 4043(a) of ERISA has not been waived by the PBGC (including any failure to meet the minimum funding standard of, or timely make any required installment under, Section 412 of the Internal Revenue Code or Section 302 of ERISA, regardless of the issuance of any waivers in accordance with Section 412(d) of the Internal Revenue Code), (ii) any such “reportable event” subject to advance notice to the PBGC under Section 4043(b)(3) of ERISA, (iii) any application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Internal Revenue Code, and (iv) a cessation of operations described in Section 4062(e) of ERISA.

“Required Lenders” shall mean, at any time, (i) the Lenders holding outstanding Loans (excluding Swingline Loans) and Unused Commitments (or, after the termination of the Commitments, outstanding Loans (excluding Swingline Loans), Letter of Credit Exposure and

participations in outstanding Swingline Loans) representing more than fifty-one percent (51%) of the aggregate at such time of all outstanding Loans (excluding Swingline Loans) and Unutilized Commitments (or, after the termination of the Commitments, the aggregate at such time of all outstanding Loans (excluding Swingline Loans), Letter of Credit Exposure and participations in outstanding Swingline Loans) and (ii) at least two (2) Lenders if there are at least two (2) Lenders who are party to this Agreement at such time.

“Requirement of Law” shall mean, with respect to any Person, the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person, and any statute, law, treaty, rule, regulation, order, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject or otherwise pertaining to any or all of the transactions contemplated by this Agreement and the other Credit Documents.

“Reserve Requirement” shall mean, with respect to any Interest Period, the reserve percentage (expressed as a decimal) in effect from time to time during such Interest Period, as provided by the Federal Reserve Board, applied for determining the maximum reserve requirements (including, without limitation, basic, supplemental, marginal and emergency reserves) applicable to Wachovia under Regulation D with respect to “Eurocurrency liabilities” within the meaning of Regulation D, or under any similar or successor regulation with respect to Eurocurrency liabilities or Eurocurrency funding.

“Responsible Officer” shall mean, with respect to the Borrower, the president, the chief executive officer, the chief financial officer, any executive officer, or any other Financial Officer of the Borrower, and any other officer or similar official thereof responsible for the administration of the obligations of the Borrower in respect of this Agreement.

“Restricted Payments” shall have the meaning given to such term in **Section 8.6**.

“Revolving Loans” shall have the meaning given to such term in **Section 2.1(a)**.

“Revolving Notes” shall mean the promissory notes of the Borrower in substantially the form of **Exhibit A-1**, together with any amendments, modifications and supplements thereto, substitutions therefor and restatements thereof.

“Stated Amount” shall mean, with respect to any Letter of Credit at any time, the aggregate amount available to be drawn thereunder at such time (regardless of whether any conditions for drawing could then be met).

“Subsidiary” shall mean, with respect to any Person, any corporation or other Person of which more than fifty percent (50%) of the outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors, board of managers or other governing body of such Person, is at the time, directly or indirectly, owned or controlled by such Person and one or more of its other Subsidiaries or a combination thereof (irrespective of whether, at the time, securities of any other class or classes of any such corporation or other Person shall or might have voting power by reason of the happening of any contingency). When used without

reference to a parent entity, the term “Subsidiary” shall be deemed to refer to a Subsidiary of the Borrower.

“Subsidiary Guarantor” shall mean any Subsidiary of the Borrower that is a guarantor under the Subsidiary Guaranty.

“Subsidiary Guaranty” shall mean a guaranty agreement made by the Subsidiary Guarantors in favor of the Agent and the Lenders, in substantially the form of **Exhibit E**, as amended, modified or supplemented from time to time.

“Sweep Program” shall mean the Wachovia Sweep Plus Loan Program, as such program is in effect from time to time between the Borrower and Wachovia.

“Swingline Commitment” shall mean \$10,000,000 or, if less, the aggregate Commitments at the time of determination, as such amount may be reduced

“Swingline Lender” shall mean Wachovia in its capacity as maker of Swingline Loans, and its successors in such capacity.

“Swingline Loans” shall have the meaning given to such term in **Section 2.1(b)**.

“Swingline Maturity Date” shall mean the date that is five (5) Business Days prior to the Maturity Date.

“Swingline Note” shall mean the promissory note of the Borrower in substantially the form of **Exhibit A-2**, together with any amendments, modifications and supplements thereto, substitutions therefor and restatements thereof.

“Terminating Senior Indebtedness” shall mean the existing indebtedness of the Borrower and its Subsidiaries pursuant to the Credit Agreement between the Borrower and Wachovia Bank, National Association (formerly known as First Union National Bank), dated as of May 31, 2000, as amended, modified or supplemented.

“Termination Date” shall mean the Maturity Date or such earlier date of termination of the Commitments pursuant to **Section 2.5** or **Section 9.2**.

“Type” shall have the meaning given to such term in **Section 2.2(a)**.

“Unfunded Pension Liability” shall mean, with respect to any Plan or Multiemployer Plan, the excess of its benefit liabilities under Section 4001(a)(16) of ERISA over the current value of its assets, determined in accordance with the applicable assumptions used for funding under Section 412 of the Internal Revenue Code for the applicable plan year.

“Unutilized Commitment” shall mean, with respect to any Lender at any time, such Lender’s Commitment at such time less the sum of (i) the aggregate principal amount of all Revolving Loans made by such Lender that are outstanding at such time and (ii) such Lender’s Letter of Credit Exposure at such time.

“Unutilized Swingline Commitment” shall mean, with respect to the Swingline Lender at any time, the Swingline Commitment at such time less the aggregate principal amount of all Swingline Loans that are outstanding at such time.

“Wachovia” shall have the meaning given to such term in the introductory paragraph of this Agreement.

“Wholly Owned” shall mean, with respect to any Subsidiary of any Person, that 100% of the outstanding Capital Stock of such Subsidiary (excluding directors’ qualifying shares) is owned, directly or indirectly, by such Person.

1.2 Accounting Terms.

Except as specifically provided otherwise in this Agreement, all accounting terms used herein that are not specifically defined shall have the meanings customarily given them in accordance with GAAP. Notwithstanding anything to the contrary in this Agreement, for purposes of calculation of the financial covenants set forth in **Article VII**, all accounting determinations and computations hereunder shall be made in accordance with GAAP as in effect as of the date of this Agreement applied on a basis consistent with the application used in preparing the most recent financial statements of the Borrower referred to in **Section 5.11(a)**. In the event that any changes in GAAP after such date are required to be applied to the Borrower and would affect the computation of the financial covenants contained in **Article VII**, such changes shall be followed in this Agreement only from and after the date this Agreement shall have been amended to take into account any such changes. The foregoing shall not be construed to prohibit the Borrower from changing its financial statements so that such financial statements comply with GAAP.

1.3 Other Terms; Construction.

Unless otherwise specified or unless the context otherwise requires, all references herein to sections, annexes, schedules and exhibits are references to sections, annexes, schedules and exhibits in and to this Agreement, and all terms defined in this Agreement shall have the defined meanings when used in any other Credit Document or any certificate or other document made or delivered pursuant hereto. All references herein to the Lenders or any of them shall be deemed to include the Issuing Lender unless specifically provided otherwise or unless the context otherwise requires.

ARTICLE II

AMOUNT AND TERMS OF THE LOANS

2.1 Commitments.

(a) Each Lender severally agrees, subject to and on the terms and conditions of this Agreement, to make loans (each, a “Revolving Loan,” and collectively, the “Revolving Loans”) to the Borrower, from time to time on any Business Day during the period from and including the Closing Date to but not including the Termination Date, in an aggregate principal amount at any time outstanding not greater than the excess, if any, of its Commitment at such time over its

Letter of Credit Exposure at such time, provided that no Borrowing of Revolving Loans shall be made if, immediately after giving effect thereto, the sum of (x) the aggregate principal amount of Revolving Loans outstanding at such time, (y) the aggregate Letter of Credit Exposure of all Lenders at such time and (z) the aggregate principal amount of Swingline Loans outstanding at such time (excluding the aggregate amount of any Swingline Loans to be repaid with proceeds of Revolving Loans made pursuant to such Borrowing) would exceed the aggregate Commitments at such time. Subject to and on the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Revolving Loans.

(b) The Swingline Lender agrees, subject to and on the terms and conditions of this Agreement and the Sweep Program (as long as it remains in effect), to make loans (each, a "Swingline Loan," and collectively, the "Swingline Loans") to the Borrower, from time to time on any Business Day during the period from and including the Closing Date to but not including the Swingline Maturity Date (or, if earlier, the Termination Date), in an aggregate principal amount at any time outstanding not exceeding the Swingline Commitment, notwithstanding that the aggregate principal amount of Swingline Loans outstanding at any time, when added to the aggregate principal amount of the Revolving Loans made by the Swingline Lender in its capacity as a Lender outstanding at such time and its Letter of Credit Exposure at such time, may exceed its Commitment at such time, but provided that no Borrowing of Swingline Loans shall be made if, immediately after giving effect thereto, the sum of (x) the aggregate principal amount of Revolving Loans outstanding at such time, (y) the aggregate Letter of Credit Exposure of all Lenders at such time and (z) the aggregate principal amount of Swingline Loans outstanding at such time would exceed the aggregate Commitments at such time. Subject to and on the terms and conditions of this Agreement and the Sweep Program (as long as it remains in effect), the Borrower may borrow, repay (including by means of a Borrowing of Revolving Loans pursuant to **Section 2.2(e)**) and reborrow Swingline Loans. By their execution of this Agreement, the Borrower, Wachovia, and the Lenders hereby agree that effective as of the Closing Date (i) the aggregate outstanding principal balance of loans (not exceeding the Swingline Commitment) made under the Sweep Program shall be Swingline Loans under this Agreement and the Sweep Program and subject to the terms hereof and thereof, (ii) Wachovia shall be the Swingline Lender hereunder with respect to such Swingline Loans, and (iii) the applicable provisions of the Terminating Senior Indebtedness with respect to such Swingline Loans are replaced by this Agreement.

2.2 Borrowings.

(a) The Revolving Loans shall, at the option of the Borrower and subject to the terms and conditions of this Agreement, be either Base Rate Loans or LIBOR Loans (each, a "Type" of Loan), provided that (i) all Loans comprising the same Borrowing shall, unless otherwise specifically provided herein, be of the same Type, and (ii) no Borrowing of LIBOR Loans may be made at any time prior to the third (3rd) Business Day after the Closing Date. The Swingline Loans shall be made and maintained as Base Rate Loans at all times.

(b) In order to make a Borrowing (other than (x) Borrowings of Swingline Loans which shall be made pursuant to **Section 2.2(d)**, (y) Borrowings for the purpose of repaying Refunded Swingline Loans, which shall be made pursuant to **Section 2.2(e)**, and (z) Borrowings involving continuations or conversions of outstanding Loans, which shall be made pursuant to

Section 2.11), the Borrower will give the Agent written notice not later than 11:00 a.m., Charlotte time, three (3) Business Days prior to each Borrowing to be comprised of LIBOR Loans and not later than 11:00 a.m. on the requested Borrowing Date for each Borrowing to be comprised of Base Rate Loans; provided, however, that requests for the Borrowing of any Revolving Loans to be made on the Closing Date may, at the discretion of the Agent, be given later than the times specified hereinabove. Each such notice (each, a “Notice of Borrowing”) shall be irrevocable, shall be given in the form of **Exhibit B-1** and shall specify (1) the aggregate principal amount and initial Type of the Loans to be made pursuant to such Borrowing, (2) in the case of a Borrowing of LIBOR Loans, the initial Interest Period to be applicable thereto, and (3) the requested date of such Borrowing (the “Borrowing Date”), which shall be a Business Day. Upon its receipt of a Notice of Borrowing, the Agent will promptly notify each Lender of the proposed Borrowing. Notwithstanding anything to the contrary contained herein:

(i) the aggregate principal amount of each Borrowing (other than Borrowings of Swingline Loans which shall be made pursuant to **Section 2.2(d)**) shall not be less than \$3,000,000 or, if greater, an integral multiple of \$500,000 in excess thereof (or, if less, in the amount of the aggregate Unutilized Commitments);

(ii) if the Borrower shall have failed to designate the Type of Loans comprising a Borrowing, the Borrower shall be deemed to have requested a Borrowing comprised of Base Rate Loans; and

(iii) if the Borrower shall have failed to select the duration of the Interest Period to be applicable to any Borrowing of LIBOR Loans, then the Borrower shall be deemed to have selected an Interest Period with a duration of one month.

(c) Not later than 1:00 p.m., Charlotte time, on the requested Borrowing Date, each Lender will make available to the Agent at its office referred to in **Section 11.5** (or at such other location as the Agent may designate) an amount, in Dollars and in immediately available funds, equal to the amount of the Loan to be made by such Lender. To the extent the Lenders have made such amounts available to the Agent as provided hereinabove, the Agent will make the aggregate of such amounts available to the Borrower not later than 3:00 p.m. on the requested Borrowing Date, in accordance with **Section 2.3(a)** and in like funds as received by the Agent.

(d) Borrowings for Swingline Loans will be made pursuant to the Sweep Program as long as the Sweep Program is in effect. However, upon termination of the Sweep Program, the Borrower will give the Agent and the Swingline Lender written notice not later than 11:00 a.m., Charlotte time, on the requested Borrowing Date, in order to make a Borrowing of a Swingline Loan. Each such notice (each, a “Notice of Swingline Borrowing”) shall be irrevocable, shall be given in the form of **Exhibit B-2** and shall specify (i) the principal amount of the Swingline Loan to be made pursuant to such Borrowing (which shall not be less than \$500,000 and, if greater, shall be in an integral multiple of \$100,000 in excess thereof (or, if less, in the amount of the Unutilized Swingline Commitment)) and (ii) the requested Borrowing Date, which shall be a Business Day. Not later than 2:00 p.m., Charlotte time, on the requested Borrowing Date, the Swingline Lender will make available to the Agent at its office referred to in **Section 11.5** (or at such other location as the Agent may designate) an amount, in Dollars and in immediately available funds, equal to the amount of the requested Swingline Loan. To the extent the

Swingline Lender has made such amount available to the Agent as provided hereinabove (if the Agent is different from the Swingline Lender), the Agent will make such amount available to the Borrower in accordance with **Section 2.3(a)** and in like funds as received by the Agent.

(e) With respect to any outstanding Swingline Loans, the Swingline Lender may at any time (regardless of whether an Event of Default has occurred and is continuing or whether the Sweep Program is in effect) in its sole and absolute discretion, and is hereby authorized and empowered by the Borrower to, cause a Borrowing of Revolving Loans to be made for the purpose of repaying such Swingline Loans by delivering to the Agent (if the Agent is different from the Swingline Lender) and each other Lender (on behalf of, and with a copy to, the Borrower), not later than 11:00 a.m., Charlotte time, one (1) Business Day prior to the proposed Borrowing Date therefor, a notice (which shall be deemed to be a Notice of Borrowing given by the Borrower) requesting the Lenders to make Revolving Loans (which shall be made initially as Base Rate Loans) on such Borrowing Date in an aggregate amount equal to the amount of such Swingline Loans (the "Refunded Swingline Loans") outstanding on the date such notice is given that the Swingline Lender requests to be repaid. Not later than 1:00 p.m., Charlotte time, on the requested Borrowing Date, each Lender (other than the Swingline Lender) will make available to the Agent at its office referred to in **Section 11.5** (or at such other location as the Agent may designate) an amount, in Dollars and in immediately available funds, equal to the amount of the Revolving Loan to be made by such Lender. To the extent the Lenders have made such amounts available to the Agent as provided hereinabove, the Agent will make the aggregate of such amounts available to the Swingline Lender in like funds as received by the Agent, which shall apply such amounts in repayment of the Refunded Swingline Loans. Notwithstanding any provision of this Agreement to the contrary, on the relevant Borrowing Date, the Refunded Swingline Loans (including the Swingline Lender's ratable share thereof, in its capacity as a Lender) shall be deemed to be repaid with the proceeds of the Revolving Loans made as provided above (including a Revolving Loan deemed to have been made by the Swingline Lender), and such Refunded Swingline Loans deemed to be so repaid shall no longer be outstanding as Swingline Loans but shall be outstanding as Revolving Loans. If any portion of any such amount repaid (or deemed to be repaid) to the Swingline Lender shall be recovered by or on behalf of the Borrower from the Swingline Lender in any bankruptcy, insolvency or similar proceeding or otherwise, the loss of the amount so recovered shall be shared ratably among all the Lenders in the manner contemplated by **Section 2.15(b)**.

(f) If, as a result of any bankruptcy, insolvency or similar proceeding with respect to the Borrower, Revolving Loans are not made pursuant to subsection (e) above in an amount sufficient to repay any amounts owed to the Swingline Lender in respect of any outstanding Swingline Loans, or if the Swingline Lender is otherwise precluded for any reason from giving a notice on behalf of the Borrower as provided for hereinabove, the Swingline Lender shall be deemed to have sold without recourse, representation or warranty, and each Lender shall be deemed to have purchased and hereby agrees to purchase, a participation in such outstanding Swingline Loans in an amount equal to its ratable share (based on the proportion that its Commitment bears to the aggregate Commitments at such time) of the unpaid amount thereof together with accrued interest thereon. Upon one (1) Business Day's prior notice from the Swingline Lender, each Lender (other than the Swingline Lender) will make available to the Agent at its office referred to in **Section 11.5** (or at such other location as the Agent may designate) an amount, in Dollars and in immediately available funds, equal to its respective

participation. To the extent the Lenders have made such amounts available to the Agent as provided hereinabove, the Agent will make the aggregate of such amounts available to the Swingline Lender in like funds as received by the Agent. In the event any such Lender fails to make available to the Agent the amount of such Lender's participation as provided in this subsection (f), the Swingline Lender shall be entitled to recover such amount on demand from such Lender, together with interest thereon for each day from the date such amount is required to be made available for the account of the Swingline Lender until the date such amount is made available to the Swingline Lender at the Federal Funds Rate for the first three (3) Business Days and thereafter at the Adjusted Base Rate applicable to Revolving Loans. Promptly following its receipt of any payment by or on behalf of the Borrower in respect of a Swingline Loan, the Swingline Lender will pay to each Lender that has acquired a participation therein such Lender's ratable share of such payment.

(g) Notwithstanding any provision of this Agreement to the contrary, the obligation of each Lender (other than the Swingline Lender) to make Revolving Loans for the purpose of repaying any Refunded Swingline Loans pursuant to subsection (e) above and each such Lender's obligation to purchase a participation in any unpaid Swingline Loans pursuant to subsection (f) above shall be absolute and unconditional and shall not be affected by any circumstance or event whatsoever, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right that such Lender may have against the Swingline Lender, the Agent, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of any Default or Event of Default, (iii) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Borrower or any of its Subsidiaries, (iv) any breach of this Agreement or the Sweep Program by any party hereto or (v) whether the Sweep Program is in effect.

2.3 Disbursements; Funding Reliance; Domicile of Loans.

(a) The Borrower hereby authorizes the Agent to disburse the proceeds of each Borrowing in accordance with the terms of any written instructions from any of the Authorized Officers or pursuant to the terms of the Sweep Program, as applicable, provided that the Agent shall not be obligated under any circumstances to forward amounts to any account not listed in an Account Designation Letter or pursuant to the Sweep Program. The Borrower may at any time deliver to the Agent an Account Designation Letter listing any additional accounts or deleting any accounts listed in a previous Account Designation Letter.

(b) Unless the Agent has received, prior to 1:00 p.m., Charlotte time, on the relevant Borrowing Date, written notice from a Lender that such Lender will not make available to the Agent such Lender's ratable portion, if any, of the relevant Borrowing, the Agent may assume that such Lender has made such portion available to the Agent in immediately available funds on such Borrowing Date in accordance with the applicable provisions of **Section 2.2**, and the Agent may, in reliance upon such assumption, but shall not be obligated to, make a corresponding amount available to the Borrower on such Borrowing Date. If and to the extent that such Lender shall not have made such portion available to the Agent, and the Agent shall have made such corresponding amount available to the Borrower, such Lender, on the one hand, and the Borrower, on the other, severally agree to pay to the Agent forthwith on demand such corresponding amount, together with interest thereon for each day from the date such amount is

made available to the Borrower until the date such amount is repaid to the Agent, (i) in the case of such Lender, at the Federal Funds Rate, and (ii) in the case of the Borrower, at the rate of interest applicable at such time to the Type of Loans comprising such Borrowing, as determined under the provisions of **Section 2.8**. If such Lender shall repay to the Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement. The failure of any Lender to make any Loan required to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan as part of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender as part of any Borrowing. Any such repayment by the Borrower shall not prejudice its rights with respect to a Lender who has not made its portion of a Borrowing available to the Agent.

(c) Each Lender may, at its option, make and maintain any Loan at, to or for the account of any of its Lending Offices, provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan to or for the account of such Lender in accordance with the terms of this Agreement.

2.4 Notes.

(a) The Loans made by each Lender and the Swingline Lender, as applicable, shall be evidenced (i) in the case of Revolving Loans, by a Revolving Note appropriately completed in substantially the form of **Exhibit A-1** and (ii) in the case of the Swingline Loans, by a Swingline Note appropriately completed in substantially the form of **Exhibit A-2**.

(b) Each Revolving Note issued to a Lender shall (i) be executed by the Borrower, (ii) be payable to the order of such Lender, (iii) be dated as of the Closing Date (or, in the case of a Revolving Note issued after the Closing Date, dated the effective date of the applicable Assignment and Acceptance), (iv) be in a stated principal amount equal to such Lender's Commitment, (v) bear interest in accordance with the provisions of **Section 2.8**, as the same may be applicable from time to time to the Loans made by such Lender, and (vi) be entitled to all of the benefits of this Agreement and the other Credit Documents and subject to the provisions hereof and thereof.

(c) The Swingline Note shall (i) be executed by the Borrower, (ii) be payable to the order of the Swingline Lender, (iii) be dated as of the Closing Date, (iv) be in a stated principal amount equal to the Swingline Commitment, (v) bear interest in accordance with the provisions of **Section 2.8**, as the same may be applicable from time to time to the Swingline Loans, and (vi) be entitled to all of the benefits of this Agreement and the other Credit Documents and subject to the provisions hereof and thereof.

(d) Each Lender will record on its internal records the amount and Type of each Loan made by it and each payment received by it in respect thereof and will, in the event of any transfer of any of its Notes, either endorse on the reverse side thereof or on a schedule attached thereto (or any continuation thereof) the outstanding principal amount and Type of the Loans evidenced thereby as of the date of transfer or provide such information on a schedule to the Assignment and Acceptance relating to such transfer; provided, however, that the failure of any

Lender to make any such recordation or provide any such information, or any error therein, shall not affect the Borrower's obligations under this Agreement or the Notes.

2.5 Termination and Reduction of Commitments and Swingline Commitment

(a) The Commitments shall be automatically and permanently terminated on the Termination Date. The Swingline Commitment shall be automatically and permanently terminated on the Swingline Maturity Date, unless sooner terminated pursuant to any other provision of this **Section 2.5** or **Section 9.2**.

(b) At any time and from time to time after the date hereof, upon not less than five (5) Business Days' prior written notice to the Agent (and, in the case of a termination or reduction of the Unutilized Swingline Commitment, the Swingline Lender), the Borrower may terminate in whole or reduce in part the aggregate Unutilized Commitments or the Unutilized Swingline Commitment, provided that any such partial reduction shall be in an aggregate amount of not less than \$3,000,000 (\$1,000,000 in the case of the Unutilized Swingline Commitment) or, if greater, an integral multiple of \$500,000 in excess thereof (\$100,000 in the case of the Unutilized Swingline Commitment). The amount of any termination or reduction made under this subsection (b) may not thereafter be reinstated.

(c) Each reduction of the Commitments pursuant to this Section shall be applied ratably among the Lenders according to their respective Commitments. Notwithstanding any provision of this Agreement to the contrary, any reduction of the Commitments pursuant to this Section that has the effect of reducing the aggregate Commitments to an amount less than the amount of the Swingline Commitment at such time shall result in an automatic corresponding reduction of the Swingline Commitment to the amount of the aggregate Commitments (as so reduced), without any further action on the part of the Borrower or the Swingline Lender.

2.6 Mandatory Payments and Prepayments.

(a) Except to the extent due or paid sooner pursuant to the provisions of this Agreement, (i) the aggregate outstanding principal of the Revolving Loans shall be due and payable in full on the Maturity Date and (ii) the aggregate outstanding principal of the Swingline Loans shall be due and payable in full on the Swingline Maturity Date.

(b) In the event that, at any time, the sum of (x) the aggregate principal amount of Revolving Loans outstanding at such time, (y) the aggregate Letter of Credit Exposure of all Lenders at such time and (z) the aggregate principal amount of Swingline Loans outstanding at such time (excluding the aggregate amount of any Swingline Loans to be repaid with proceeds of Revolving Loans made on the date of determination) shall exceed the aggregate Commitments at such time (after giving effect to any concurrent termination or reduction thereof), (i) the Borrower will immediately prepay the outstanding principal amount of the Swingline Loans, (ii) to the extent of any excess remaining after prepayment in full of outstanding Swingline Loans, the Borrower will immediately prepay the outstanding principal amount of the Revolving Loans in the amount of such excess, and (iii) to the extent of any excess remaining after prepayment in full of outstanding Swingline Loans and outstanding Revolving Loans, the

Borrower will pay into the Cash Collateral Account as cover for Letter of Credit Exposure, as more particularly described in **Section 3.8**, in the amount of such excess.

(c) Each payment or prepayment pursuant to the provisions of this Section shall be applied ratably among the Lenders holding the Loans being prepaid, in proportion to the principal amount held by each.

(d) Each payment or prepayment of a LIBOR Loan made pursuant to the provisions of this Section on a day other than the last day of the Interest Period applicable thereto shall be made together with all amounts required under **Section 2.18** to be paid as a consequence thereof.

2.7 Voluntary Prepayments.

(a) At any time and from time to time, the Borrower shall have the right to prepay the Loans, in whole or in part, without premium or penalty (except as provided in clause (C) below), (i) pursuant to the Sweep Program, if such program is in effect, with respect to Swingline Loans, or (ii) otherwise upon written notice given to the Agent not later than 11:00 a.m., Charlotte time, three (3) Business Days prior to each intended prepayment of LIBOR Loans and one (1) Business Day prior to each intended prepayment of Base Rate Loans (other than Swingline Loans, which may be prepaid on a same-day basis), provided that (A) each partial prepayment shall be in an aggregate principal amount of not less than \$3,000,000 or, if greater, an integral multiple of \$500,000 in excess thereof (\$500,000 and \$100,000, respectively, in the case of Swingline Loans), (B) no partial prepayment of LIBOR Loans made pursuant to any single Borrowing shall reduce the aggregate outstanding principal amount of the remaining LIBOR Loans under such Borrowing to less than \$3,000,000 or to any greater amount not an integral multiple of \$500,000 in excess thereof, and (C) unless made together with all amounts required under **Section 2.18** to be paid as a consequence of such prepayment, a prepayment of a LIBOR Loan may be made only on the last day of the Interest Period applicable thereto. Each such notice shall specify the proposed date of such prepayment and the aggregate principal amount and Type of the Loans to be prepaid (and, in the case of LIBOR Loans, the Interest Period of the Borrowing pursuant to which made), and shall be irrevocable and shall bind the Borrower to make such prepayment on the terms specified therein. Loans prepaid pursuant to this subsection (a) may be reborrowed, subject to the terms and conditions of this Agreement.

(b) Each prepayment of the Loans made pursuant to subsection (a) above shall be applied ratably among the Lenders holding the Loans being prepaid, in proportion to the principal amount held by each.

2.8 Interest.

(a) The Borrower will pay interest in respect of the unpaid principal amount of each Loan, from the date of Borrowing thereof until such principal amount shall be paid in full, at the rate equal to the sum of the rate provided for in the Sweep Program for Swingline Loans plus the Adjusted LIBOR Rate, as long as the Sweep Program remains in effect, and otherwise (i) at the Adjusted Base Rate, as in effect from time to time during such periods as such Loan is a Base Rate Loan, and (ii) at the Adjusted LIBOR Rate, as in effect from time to time during such periods as such Loan is a LIBOR Loan.

(b) Upon the occurrence and during the continuance of any default by the Borrower in the payment of any principal of or interest on any Loan, any fees or other amount hereunder when due (whether at maturity, pursuant to acceleration or otherwise), and (at the election of the Required Lenders) upon the occurrence and during the continuance of any other Event of Default, all outstanding principal amounts of the Loans and, to the greatest extent permitted by law, all interest accrued on the Loans and all other accrued and outstanding fees and other amounts hereunder, shall bear interest at a rate per annum equal to the interest rate applicable from time to time thereafter to such Loans (whether the rate provided for in the Sweep Program, the Adjusted Base Rate or the Adjusted LIBOR Rate) plus 2% (or, in the case of fees and other amounts, at the Adjusted Base Rate plus 2%), and, in each case, such default interest shall be payable on demand. To the greatest extent permitted by law, interest shall continue to accrue after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any law pertaining to insolvency or debtor relief.

(c) Accrued (and theretofore unpaid) interest shall be payable as follows:

(i) in respect of each Base Rate Loan (including any Base Rate Loan or portion thereof paid or prepaid pursuant to the provisions of **Section 2.6**, except as provided hereinbelow), in arrears on the last Business Day of each calendar quarter, beginning with the first such day to occur after the Closing Date; provided, that in the event the Loans are repaid or prepaid in full and the Commitments have been terminated, then accrued interest in respect of all Base Rate Loans shall be payable together with such repayment or prepayment on the date thereof;

(ii) in respect of each LIBOR Loan (including any LIBOR Loan or portion thereof paid or prepaid pursuant to the provisions of **Section 2.6**, except as provided hereinbelow), in arrears (y) on the last Business Day of the Interest Period applicable thereto (subject to the provisions of clause (iv) in **Section 2.10**) and (z) in addition, in the case of a LIBOR Loan with an Interest Period having a duration of six months or longer, on each date on which interest would have been payable under clause (y) above had successive Interest Periods of three months' duration been applicable to such LIBOR Loan; provided, that in the event all LIBOR Loans made pursuant to a single Borrowing are repaid or prepaid in full, then accrued interest in respect of such LIBOR Loans shall be payable together with such repayment or prepayment on the date thereof;

(iii) in respect of each Swingline Loan, pursuant to the terms of the Sweep Program as long as it remains in effect but otherwise in accordance with clause (i) of this **Section 2.8(c)**; provided, that in the event the Loans are repaid or prepaid in full and the Commitments have been terminated, then accrued interest in respect of all Swingline Loans shall be payable together with such repayment or prepayment on the date thereof; and

(iv) in respect of any Loan, at maturity (whether pursuant to acceleration or otherwise) and, after maturity, on demand.

(d) Nothing contained in this Agreement or in any other Credit Document shall be deemed to establish or require the payment of interest to any Lender at a rate in excess of the

maximum rate permitted by applicable law. If the amount of interest payable for the account of any Lender on any interest payment date would exceed the maximum amount permitted by applicable law to be charged by such Lender, the amount of interest payable for its account on such interest payment date shall be automatically reduced to such maximum permissible amount. In the event of any such reduction affecting any Lender, if from time to time thereafter the amount of interest payable for the account of such Lender on any interest payment date would be less than the maximum amount permitted by applicable law to be charged by such Lender, then the amount of interest payable for its account on such subsequent interest payment date shall be automatically increased to such maximum permissible amount, provided that at no time shall the aggregate amount by which interest paid for the account of any Lender has been increased pursuant to this sentence exceed the aggregate amount by which interest paid for its account has theretofore been reduced pursuant to the previous sentence.

(e) The Agent shall promptly notify the Borrower and the Lenders upon determining the interest rate for each Borrowing of LIBOR Loans after its receipt of the relevant Notice of Borrowing or Notice of Conversion/Continuation, and upon each change in the Base Rate; provided, however, that the failure of the Agent to provide the Borrower or the Lenders with any such notice shall neither affect any obligations of the Borrower or the Lenders hereunder nor result in any liability on the part of the Agent to the Borrower or any Lender. Each such determination (including each determination of the Reserve Requirement) shall, absent manifest error, be conclusive and binding on all parties hereto.

2.9 Fees.

The Borrower agrees to pay:

(a) To the Agent, for the account of each Lender, a commitment fee for each calendar quarter (or portion thereof) for the period from the date of this Agreement to the Termination Date, at a per annum rate equal to the Applicable Margin Percentage in effect for such fee from time to time during such quarter, on such Lender's ratable share (based on the proportion that its Commitment bears to the aggregate Commitments) of the average daily aggregate Unutilized Commitments, payable in arrears (i) on the last Business Day of each calendar quarter, beginning with the first such day to occur after the Closing Date, and (ii) on the Termination Date;

(b) To the Agent, for the account of each Lender, a letter of credit fee for each calendar quarter (or portion thereof) in respect of all Letters of Credit outstanding during such quarter, at a per annum rate equal to the Applicable Margin Percentage in effect from time to time during such quarter for Loans that are maintained as LIBOR Loans, on such Lender's ratable share (based on the proportion that its Commitment bears to the aggregate Commitments) of the daily average aggregate Stated Amount of such Letters of Credit, payable in arrears (i) on the last Business Day of each calendar quarter, beginning with the first such day to occur after the Closing Date, and (ii) on the later of the Termination Date and the date of termination of the last outstanding Letter of Credit;

(c) To the Issuing Lender, for its own account, a facing fee for each calendar quarter (or portion thereof) in respect of all Letters of Credit outstanding during such quarter, at a per annum rate of 0.125% on the daily average aggregate Stated Amount of such Letters of Credit,

payable in arrears (i) on the last Business Day of each calendar quarter, beginning with the first such day to occur after the Closing Date, and (ii) on the later of the Termination Date and the date of termination of the last outstanding Letter of Credit;

(d) To the Issuing Lender, for its own account, such commissions, issuance fees, transfer fees and other fees and charges incurred in connection with the issuance and administration of each Letter of Credit as are customarily charged from time to time by the Issuing Lender for the performance of such services in connection with similar letters of credit, or as may be otherwise agreed to by the Issuing Lender, but without duplication of amounts payable under subsection (c) above; and

(e) To the Agent, for its own account, the annual administrative fee described in paragraph (3) of the Fee Letter, on the terms, in the amount and at the times set forth therein.

2.10 Interest Periods.

Concurrently with the giving of a Notice of Borrowing or Notice of Conversion/Continuation in respect of any Borrowing comprised of Base Rate Loans to be converted into, or LIBOR Loans to be continued as, LIBOR Loans, the Borrower shall have the right to elect, pursuant to such notice, the interest period (each, an "Interest Period") to be applicable to such LIBOR Loans, which Interest Period shall, at the option of the Borrower, be a one, two, three or six-month period; provided, however, that:

(i) all LIBOR Loans comprising a single Borrowing shall at all times have the same Interest Period;

(ii) the initial Interest Period for any LIBOR Loan shall commence on the date of the Borrowing of such LIBOR Loan (including the date of any continuation of, or conversion into, such LIBOR Loan), and each successive Interest Period applicable to such LIBOR Loan shall commence on the day on which the next preceding Interest Period applicable thereto expires;

(iii) LIBOR Loans may not be outstanding under more than six (6) separate Interest Periods at any one time (for which purpose Interest Periods shall be deemed to be separate even if they are coterminous);

(iv) if any Interest Period otherwise would expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless such next succeeding Business Day falls in another calendar month, in which case such Interest Period shall expire on the next preceding Business Day;

(v) the Borrower may not select any Interest Period that begins prior to the third (3rd) Business Day after the Closing Date or that expires after the Maturity Date; and

(vi) if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month during which such Interest Period would

otherwise expire, such Interest Period shall expire on the last Business Day of such calendar month.

2.11 Conversions and Continuations.

(a) With respect to Loans not constituting Swingline Loans made pursuant to the Sweep Program, the Borrower shall have the right, on any Business Day occurring on or after the Closing Date, to elect (i) to convert all or a portion of the outstanding principal amount of any Base Rate Loans (other than Swingline Loans made after the Sweep Program has been terminated) into LIBOR Loans, or to convert any LIBOR Loans the Interest Periods for which end on the same day into Base Rate Loans, or (ii) upon the expiration of any Interest Period, to continue all or a portion of the outstanding principal amount of any LIBOR Loans the Interest Periods for which end on the same day for an additional Interest Period, provided that (w) any such conversion of LIBOR Loans into Base Rate Loans shall involve an aggregate principal amount of not less than \$3,000,000 or, if greater, an integral multiple of \$500,000 in excess thereof; any such conversion of Base Rate Loans into, or continuation of, LIBOR Loans shall involve an aggregate principal amount of not less than \$3,000,000 or, if greater, an integral multiple of \$500,000 in excess thereof; and no partial conversion of LIBOR Loans made pursuant to a single Borrowing shall reduce the outstanding principal amount of such LIBOR Loans to less than \$3,000,000 or to any greater amount not an integral multiple of \$500,000 in excess thereof, (x) except as otherwise provided in **Section 2.16(d)**, LIBOR Loans may be converted into Base Rate Loans only on the last day of the Interest Period applicable thereto (and, in any event, if a LIBOR Loan is converted into a Base Rate Loan on any day other than the last day of the Interest Period applicable thereto, the Borrower will pay, upon such conversion, all amounts required under **Section 2.18** to be paid as a consequence thereof), (y) no such conversion or continuation shall be permitted with regard to any Base Rate Loans that are Swingline Loans, and (z) no conversion of Base Rate Loans into LIBOR Loans or continuation of LIBOR Loans shall be permitted during the continuance of a Default or Event of Default.

(b) The Borrower shall make each such election by giving the Agent written notice not later than 11:00 a.m., Charlotte time, three (3) Business Days prior to the intended effective date of any conversion of Base Rate Loans into, or continuation of, LIBOR Loans and one (1) Business Day prior to the intended effective date of any conversion of LIBOR Loans into Base Rate Loans. Each such notice (each, a "Notice of Conversion/Continuation") shall be irrevocable, shall be given in the form of **Exhibit B-3** and shall specify (x) the date of such conversion or continuation (which shall be a Business Day), (y) in the case of a conversion into, or a continuation of, LIBOR Loans, the Interest Period to be applicable thereto, and (z) the aggregate amount and Type of the Loans being converted or continued. Upon the receipt of a Notice of Conversion/Continuation, the Agent will promptly notify each Lender of the proposed conversion or continuation. In the event that the Borrower shall fail to deliver a Notice of Conversion/Continuation as provided herein with respect to any outstanding LIBOR Loans, such LIBOR Loans shall automatically be converted to Base Rate Loans upon the expiration of the then current Interest Period applicable thereto (unless repaid pursuant to the terms hereof). In the event the Borrower shall have failed to select in a Notice of Conversion/Continuation the duration of the Interest Period to be applicable to any conversion into, or continuation of, LIBOR Loans, then the Borrower shall be deemed to have selected an Interest Period with a duration of one month.

2.12 Method of Payments: Computations.

(a) All payments by the Borrower hereunder shall be made without setoff, counterclaim or other defense, in Dollars and in immediately available funds to the Agent, for the account of the Lenders entitled to such payment or the Swingline Lender, as the case may be (except as otherwise (i) expressly provided herein as to payments required to be made directly to the Issuing Lender and the Lenders and (ii) provided in the Sweep Program) at its office referred to in **Section 11.5**, prior to 12:00 noon, Charlotte time, on the date payment is due. Any payment made as required hereinabove, but after 12:00 noon, Charlotte time, shall be deemed to have been made on the next succeeding Business Day. If any payment falls due on a day that is not a Business Day, then such due date shall be extended to the next succeeding Business Day (except that in the case of LIBOR Loans to which the provisions of clause (iv) in **Section 2.10** are applicable, such due date shall be the next preceding Business Day), and such extension of time shall then be included in the computation of payment of interest, fees or other applicable amounts.

(b) The Agent will distribute to the Lenders like amounts relating to payments made to the Agent for the account of the Lenders as follows: (i) if the payment is received by 12:00 noon, Charlotte time, in immediately available funds, the Agent will make available to each relevant Lender on the same date, by wire transfer of immediately available funds, such Lender's ratable share of such payment (based on the percentage that the amount of the relevant payment owing to such Lender bears to the total amount of such payment owing to all of the relevant Lenders), and (ii) if such payment is received after 12:00 noon, Charlotte time, or in other than immediately available funds, the Agent will make available to each such Lender its ratable share of such payment by wire transfer of immediately available funds on the next succeeding Business Day (or in the case of uncollected funds, as soon as practicable after collected). If the Agent shall not have made a required distribution to the appropriate Lenders as required hereinabove after receiving a payment for the account of such Lenders, the Agent will pay to each such Lender, on demand, its ratable share of such payment with interest thereon at the Federal Funds Rate for each day from the date such amount was required to be disbursed by the Agent until the date repaid to such Lender. The Agent will distribute to the Issuing Lender like amounts relating to payments made to the Agent for the account of the Issuing Lender in the same manner, and subject to the same terms and conditions, as set forth hereinabove with respect to distributions of amounts to the Lenders.

(c) Unless the Agent shall have received written notice from the Borrower prior to the date on which any payment is due to any Lender hereunder that such payment will not be made in full, the Agent may assume that the Borrower has made such payment in full to the Agent on such date, and the Agent may, in reliance on such assumption, but shall not be obligated to, cause to be distributed to such Lender on such due date an amount equal to the amount then due to such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Agent, and without limiting the obligation of the Borrower to make such payment in accordance with the terms hereof, such Lender shall repay to the Agent forthwith on demand such amount so distributed to such Lender, together with interest thereon for each day from the date such amount is so distributed to such Lender until the date repaid to the Agent, at the Federal Funds Rate.

(d) All computations of interest and fees hereunder (including computations of the Reserve Requirement) shall be made on the basis of a year consisting of (i) in the case of interest on Base Rate Loans, 365/366 days, as the case may be, or (ii) in all other instances, 360 days; and in each case under (i) and (ii) above, with regard to the actual number of days (including the first day, but excluding the last day) elapsed.

2.13 Recovery of Payments.

(a) The Borrower agrees that to the extent the Borrower makes a payment or payments to or for the account of the Agent, any Lender or the Issuing Lender, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy, insolvency or similar state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, the Obligation intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been received.

(b) If any amounts distributed by the Agent to any Lender are subsequently returned or repaid by the Agent to the Borrower or its representative or successor in interest, whether by court order or by settlement approved by the Lender in question, such Lender will, promptly upon receipt of notice thereof from the Agent, pay the Agent such amount. If any such amounts are recovered by the Agent from the Borrower or its representative or successor in interest, the Agent will redistribute such amounts to the Lenders on the same basis as such amounts were originally distributed.

2.14 Use of Proceeds.

The proceeds of the Loans shall be used (i) first, to repay the Terminating Senior Indebtedness in full (other than the Existing Letters of Credit), (ii) second, to pay or reimburse reasonable transaction fees and expenses in connection with the closing of the transactions contemplated hereby, and (iii) thereafter, for working capital, the issuance of Letters of Credit, and general corporate purposes and in accordance with the terms and provisions of this Agreement.

2.15 Pro Rata Treatment.

(a) Except in the case of Swingline Loans, all fundings, continuations and conversions of Loans shall be made by the Lenders pro rata on the basis of their respective Commitments (in the case of the initial funding of Loans pursuant to **Section 2.2**) or on the basis of their respective outstanding Loans (in the case of continuations and conversions of Loans pursuant to **Section 2.11**, and additionally in all cases in the event the Commitments have expired or have been terminated), as the case may be from time to time. All payments on account of principal or interest on any Loans, fees or any other Obligations owing to or for the account of any one or more Lenders shall be apportioned ratably among such Lenders in proportion to the amounts of such principal, interest, fees or other Obligations owed to them respectively.

(b) Each Lender agrees that if it shall receive any amount hereunder (whether by voluntary payment, realization upon security, exercise of the right of setoff or banker's lien,

counterclaim or cross action, or otherwise, other than pursuant to **Section 11.7**) applicable to the payment of any of the Obligations that exceeds its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of such Obligations due and payable to all Lenders at such time) of payments on account of such Obligations then or therewith obtained by all the Lenders to which such payments are required to have been made, such Lender shall forthwith purchase from the other Lenders such participations in such Obligations as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each such other Lender shall be rescinded and each such other Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery, together with an amount equal to such other Lender's ratable share (according to the proportion of (i) the amount of such other Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to the provisions of this subsection may, to the fullest extent permitted by law, exercise any and all rights of payment (including, without limitation, setoff, banker's lien or counterclaim) with respect to such participation as fully as if such participant were a direct creditor of the Borrower in the amount of such participation. If under any applicable bankruptcy, insolvency or similar law, any Lender receives a secured claim in lieu of a setoff to which this subsection applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this subsection to share in the benefits of any recovery on such secured claim.

2.16 Increased Costs; Change in Circumstances; Illegality; etc.

(a) If the introduction of or any change in any applicable law, rule or regulation or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, in each case after the date hereof, or compliance by any Lender with any guideline or request from any such Governmental Authority (whether or not having the force of law) given or made after the date hereof, shall (i) subject such Lender to any tax or other charge, or change the basis of taxation of payments to such Lender, in respect of any of its LIBOR Loans or any other amounts payable hereunder or its obligation to make, fund or maintain any LIBOR Loans (other than any change in the rate or basis of tax on the overall net income of such Lender or its applicable Lending Office), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement (but excluding any reserves to the extent actually included within the Reserve Requirement in the calculation of the LIBOR Rate) against assets of, deposits with or for the account of, or credit extended by, such Lender or its applicable Lending Office, or (iii) impose on such Lender or its applicable Lending Office any other condition, and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBOR Loans or issuing or participating in Letters of Credit or to reduce the amount of any sum received or receivable by such Lender hereunder (including in respect of Letters of Credit), the Borrower will, promptly upon demand therefor by such Lender, pay to such Lender such additional amounts as shall compensate such Lender for such increase in costs or reduction in return; provided that the Borrower shall not be obligated to reimburse any Lender for such increase or reduction for any period ninety (90) days prior to such Lender

providing notice if such Lender was aware of the circumstances that existed which would cause such increase or reduction during such period.

(b) If any Lender shall have reasonably determined that the introduction of or any change in any applicable law, rule or regulation regarding capital adequacy or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, in each case after the date hereof, or compliance by such Lender with any guideline or request from any such Governmental Authority (whether or not having the force of law) given or made after the date hereof, has or would have the effect, as a consequence of such Lender's Commitment, Loans or issuance of or participations in Letters of Credit hereunder, of reducing the rate of return on the capital of such Lender or any Person controlling such Lender to a level below that which such Lender or controlling Person could have achieved but for such introduction, change or compliance (taking into account such Lender's or controlling Person's policies with respect to capital adequacy), the Borrower will, promptly upon demand therefor by such Lender therefor, pay to such Lender such additional amounts as will compensate such Lender or controlling Person for such reduction in return; provided that the Borrower shall not be obligated to reimburse any Lender for such additional amounts for any period ninety (90) days prior to such Lender providing notice if such Lender was aware of the circumstances that existed which would cause such additional amounts during such period.

(c) If, on or prior to the first day of any Interest Period, (y) the Agent shall have determined that adequate and reasonable means do not exist for ascertaining the applicable LIBOR Rate for such Interest Period or (z) the Agent shall have received written notice from the Required Lenders of their determination that the rate of interest referred to in the definition of "LIBOR Rate" upon the basis of which the Adjusted LIBOR Rate for LIBOR Loans for such Interest Period is to be determined will not adequately and fairly reflect the cost to such Lenders of making or maintaining LIBOR Loans during such Interest Period, the Agent will forthwith so notify the Borrower and the Lenders. Upon such notice, (i) all then outstanding LIBOR Loans shall automatically, on the expiration date of the respective Interest Periods applicable thereto (unless then repaid in full), be converted into Base Rate Loans, (ii) the obligation of the Lenders to make, to convert Base Rate Loans into, or to continue, LIBOR Loans shall be suspended (including pursuant to the Borrowing to which such Interest Period applies), and (iii) any Notice of Borrowing or Notice of Conversion/Continuation given at any time thereafter with respect to LIBOR Loans shall be deemed to be a request for Base Rate Loans, in each case until the Agent or the Required Lenders, as the case may be, shall have determined that the circumstances giving rise to such suspension no longer exist (and the Required Lenders, if making such determination, shall have so notified the Agent), and the Agent shall have so notified the Borrower and the Lenders.

(d) Notwithstanding any other provision in this Agreement, if, at any time after the date hereof and from time to time, any Lender shall have determined in good faith that the introduction of or any change in any applicable law, rule or regulation or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or compliance with any guideline or request from any such Governmental Authority (whether or not having the force of law), has or would have the effect of making it unlawful for such Lender to make or to continue to make or maintain LIBOR Loans, such

Lender will forthwith so notify the Agent and the Borrower. Upon such notice, (i) each of such Lender's then outstanding LIBOR Loans shall automatically, on the expiration date of the respective Interest Period applicable thereto (or, to the extent any such LIBOR Loan may not lawfully be maintained as a LIBOR Loan until such expiration date, upon such notice), be converted into a Base Rate Loan, (ii) the obligation of such Lender to make, to convert Base Rate Loans into, or to continue, LIBOR Loans shall be suspended (including pursuant to any Borrowing for which the Agent has received a Notice of Borrowing but for which the Borrowing Date has not arrived), and (iii) any Notice of Borrowing or Notice of Conversion/Continuation given at any time thereafter with respect to LIBOR Loans shall, as to such Lender, be deemed to be a request for a Base Rate Loan, in each case until such Lender shall have determined that the circumstances giving rise to such suspension no longer exist and shall have so notified the Agent, and the Agent shall have so notified the Borrower.

(e) Determinations by the Agent or any Lender for purposes of this Section of any increased costs, reduction in return, market contingencies, illegality or any other matter shall, absent manifest error, be conclusive, provided that such determinations are made in good faith and in the same manner as the Agent or such Lender, as the case may be, makes such determinations for its other borrowers who are similarly situated. No failure by the Agent or any Lender at any time to demand payment of any amounts payable under this Section shall constitute a waiver of its right to demand payment of any additional amounts arising at any subsequent time. Nothing in this Section shall require or be construed to require the Borrower to pay any interest, fees, costs or other amounts in excess of that permitted by applicable law.

2.17 Taxes.

(a) Any and all payments by the Borrower hereunder or under any Note shall be made, in accordance with the terms hereof and thereof, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on, or measured by, the overall net income (or franchise taxes imposed in lieu thereof) of the Agent or any Lender by reason of any present or former connection between the Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision thereof, other than such a connection arising solely from the Agent or such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or the Notes (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under any Note to the Agent or any Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), the Agent or such Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower will make such deductions, (iii) the Borrower will pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law and (iv) the Borrower will deliver to the Agent or such Lender, as the case may be, evidence of such payment.

(b) The Borrower will indemnify the Agent and each Lender for the full amount of Taxes (including, without limitation, any Taxes imposed by any jurisdiction on amounts payable

under this Section) paid by the Agent or such Lender, as the case may be, and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally asserted. This indemnification shall be made within 30 days from the date the Agent or such Lender, as the case may be, makes written demand therefor.

(c) Each of the Agent and the Lenders agrees that if it subsequently recovers, or receives a permanent net tax benefit with respect to, any amount of Taxes (i) previously paid by it and as to which it has been indemnified by or on behalf of the Borrower or (ii) previously deducted by the Borrower (including, without limitation, any Taxes deducted from any additional sums payable under clause (i) of subsection (a) above), the Agent or such Lender, as the case may be, shall reimburse the Borrower to the extent of the amount of any such recovery or permanent net tax benefit (but only to the extent of indemnity payments made, or additional amounts paid, by or on behalf of the Borrower under this Section with respect to the Taxes giving rise to such recovery or tax benefit); provided, however, that the Borrower, upon the request of the Agent or such Lender, agrees to repay to the Agent or such Lender, as the case may be, the amount paid over to the Borrower (together with any penalties, interest or other charges), in the event the Agent or such Lender is required to repay such amount to the relevant taxing authority or other Governmental Authority. The determination by the Agent or any Lender of the amount of any such recovery or permanent net tax benefit shall, in the absence of manifest error, be conclusive and binding.

(d) If any Lender is incorporated or organized under the laws of a jurisdiction other than the United States of America or any state thereof (a “Non-U.S. Lender”) and is entitled to an exemption from or a reduction of United States withholding tax pursuant to the Internal Revenue Code, such Non-U.S. Lender will deliver to each of the Agent and the Borrower, on or prior to the Closing Date (or, in the case of a Non-U.S. Lender that becomes a party to this Agreement as a result of an assignment after the Closing Date, on the effective date of such assignment), (i) in the case of a Non-U.S. Lender that is a “bank” for purposes of Section 881(c)(3)(A) of the Internal Revenue Code, a properly completed Internal Revenue Service Form 4224, 1001, W-8BEN, W-8ECI or W-8 EXP, as applicable (or successor forms), certifying that such Non-U.S. Lender is entitled to an exemption from or a reduction of withholding or deduction for or on account of United States federal income taxes in connection with payments under this Agreement or any of the Notes, together with a properly completed Internal Revenue Service Form W-8 or W-9, as applicable (or successor forms), and (ii) in the case of a Non-U.S. Lender that is not a “bank” for purposes of Section 881(c)(3)(A) of the Internal Revenue Code, a certificate in form and substance reasonably satisfactory to the Agent and the Borrower and to the effect that (x) such Non-U.S. Lender is not a “bank” for purposes of Section 881(c)(3)(A) of the Internal Revenue Code, is not subject to regulatory or other legal requirements as a bank in any jurisdiction, and has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any governmental authority, any application made to a rating agency or qualification for any exemption from any tax, securities law or other legal requirements, (y) is not a 10-percent shareholder for purposes of Section 881(c)(3)(B) of the Internal Revenue Code and (z) is not a controlled foreign corporation receiving interest from a related person for purposes of Section 881(c)(3)(C) of the Internal Revenue Code, together with a properly completed Internal Revenue Service Form W-8 or W-9, as applicable (or successor forms). Each such Non-U.S. Lender further agrees to deliver to each of the Agent and the Borrower an additional copy of each such relevant form on or before the date that such form

expires or becomes obsolete or after the occurrence of any event (including a change in its applicable Lending Office) requiring a change in the most recent forms so delivered by it, in each case certifying that such Non-U.S. Lender is entitled to an exemption from or a reduction of withholding or deduction for or on account of United States federal income taxes in connection with payments under this Agreement or any of the Notes, unless an event (including, without limitation, any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required, which event renders all such forms inapplicable or the exemption to which such forms relate unavailable and such Non-U.S. Lender notifies the Agent and the Borrower that it is not entitled to receive payments without deduction or withholding of United States federal income taxes. Each such Non-U.S. Lender will promptly notify the Agent and the Borrower of any changes in circumstances that would modify or render invalid any claimed exemption or reduction.

(e) The Borrower shall not be required to indemnify any Non-U.S. Lender, or to pay any additional amounts to any Non-U.S. Lender, in respect of United States federal withholding tax to the extent that (i) the obligation to withhold amounts with respect to United States federal withholding tax existed on the date such Non-U.S. Lender became a party to this Agreement; provided, however, that this clause (i) shall not apply to the extent that (y) the indemnity payments or additional amounts any Lender would be entitled to receive (without regard to this clause (i)) do not exceed the indemnity payment or additional amounts that the person making the assignment, participation or transfer to such Lender would have been entitled to receive in the absence of such assignment, participation or transfer, or (z) such assignment, participation or transfer was requested by the Borrower, (ii) the obligation to pay such additional amounts would not have arisen but for a failure by such Non-U.S. Lender to comply with the provisions of **Section 2.17(d)**, or (iii) any of the representations or certifications made by a Non-U.S. Lender pursuant to **Section 2.17(d)** are incorrect at the time a payment hereunder is made, other than by reason of any change in treaty, law or regulation having effect after the date such representations or certifications were made.

(f) At the Borrower's request and at the Borrower's cost, each Lender shall take reasonable steps (i) to contest such Lender's liability for Taxes that have not been paid or (ii) to seek a refund of Taxes. Nothing in this **Section 2.17(f)** shall obligate any Lender to disclose any information regarding its tax affairs or computations to the Borrower, other than reasonable evidence and supportive calculations relating to the requested payment.

2.18 Compensation.

The Borrower will compensate each Lender upon demand for all losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund or maintain LIBOR Loans) that such Lender may incur or sustain (i) if for any reason (other than a default by such Lender) a Borrowing or continuation of, or conversion into, a LIBOR Loan does not occur on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation, (ii) if any repayment, prepayment or conversion of any LIBOR Loan occurs on a date other than the last day of an Interest Period applicable thereto (including as a consequence of acceleration of the maturity of the Loans pursuant to **Section 9.2**), (iii) if any prepayment of any LIBOR Loan is not made on any date specified in a notice of prepayment

given by the Borrower or (iv) as a consequence of any other failure by the Borrower to make any payments with respect to any LIBOR Loan when due hereunder. Calculation of all amounts payable to a Lender under this Section shall be made as though such Lender had actually funded its relevant LIBOR Loan through the purchase of a Eurodollar deposit bearing interest at the LIBOR Rate in an amount equal to the amount of such LIBOR Loan, having a maturity comparable to the relevant Interest Period; provided, however, that each Lender may fund its LIBOR Loans in any manner it sees fit and the foregoing assumption shall be utilized only for the calculation of amounts payable under this Section. Determinations by any Lender for purposes of this Section of any such losses, expenses or liabilities shall, absent manifest error, be conclusive, provided that such determinations are made in good faith and in the same manner as such Lender makes such determinations for its other borrowers who are similarly situated.

2.19 Substitution of Lender.

If any Lender has demanded compensation under **Section 2.16** or **2.17**, the Borrower shall have the right to designate a substitute lender or lenders (which may be one or more of the Lenders) mutually satisfactory to the Borrower and the Agent, the Swingline Lender and the Issuing Lender to purchase for cash, pursuant to an Assignment and Acceptance, the outstanding Loans and Letter of Credit Exposure of such Lender and assume the Commitment of such Lender, without recourse to or warranty by, or expense to, such Lender, for a purchase price equal to the principal amount of all such Lender's outstanding Loans and funded Letter of Credit Exposure plus any accrued but unpaid interest thereon and the accrued but unpaid fees in respect of such Lender's Commitment hereunder and all other amounts payable by the Borrower to such Lender hereunder plus such amount, if any, as would be payable pursuant to **Section 2.18** if the outstanding Loans of such Lender were prepaid on the date of such consummation of such assignment.

ARTICLE III

LETTERS OF CREDIT

3.1 Issuance; Existing Letters of Credit.

Subject to and upon the terms and conditions herein set forth, so long as no Default or Event of Default has occurred and is continuing, the Issuing Lender will, at any time and from time to time on and after the Closing Date and prior to the earlier of (i) the seventh day prior to the Maturity Date and (ii) the Termination Date, and upon request by the Borrower in accordance with the provisions of **Section 3.2**, issue for the account of the Borrower one or more irrevocable standby letters of credit denominated in Dollars and in a form customarily used or otherwise approved by the Issuing Lender (together with all amendments, modifications and supplements thereto, substitutions therefor and renewals and restatements thereof, collectively, the "Letters of Credit"). By their execution of this Agreement, the Borrower, Wachovia, and the Lenders hereby agree that effective as of the Closing Date (i) the letters of credit listed on **Schedule 3.1** (the "Existing Letters of Credit") shall be Letters of Credit under this Agreement and subject to the terms hereof, (ii) Wachovia shall be the Issuing Lender hereunder with respect to the Existing Letters of Credit, and (iii) the applicable provisions of the Terminating Senior Indebtedness with respect to the Existing Letters of Credit are replaced by this Agreement. The Stated Amount of

each Letter of Credit shall not be less than \$100,000 unless such amount is acceptable to the Issuing Lender. Notwithstanding the foregoing:

(a) No Letter of Credit shall be issued if its Stated Amount, upon issuance, (i) when added to the aggregate Letter of Credit Exposure of the Lenders at such time, would exceed \$30,000,000 or (ii) when added to the sum of (x) the aggregate principal amount of Revolving Loans outstanding at such time, (y) the aggregate Letter of Credit Exposure of all Lenders at such time and (z) the aggregate principal amount of Swingline Loans outstanding at such time, would exceed the aggregate Commitments at such time;

(b) No Letter of Credit shall be issued that by its terms expires later than the seventh day prior to the Maturity Date or, in any event, more than one (1) year after its date of issuance; provided, however, that a Letter of Credit may, if requested by the Borrower, provide by its terms, and on terms acceptable to the Issuing Lender, for renewal for successive periods of one year or less (but not beyond the seventh day prior to the Maturity Date), unless and until the Issuing Lender shall have delivered a notice of nonrenewal to the beneficiary of such Letter of Credit; and

(c) The Issuing Lender shall be under no obligation to issue any Letter of Credit if, at the time of such proposed issuance, (i) any order, judgment or decree of any Governmental Authority or arbitrator shall purport by its terms to enjoin or restrain the Issuing Lender from issuing such Letter of Credit, or any Requirement of Law applicable to the Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction not in effect on the Closing Date or any reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date and that the Issuing Lender in good faith deems material to it, or any unreimbursed loss, cost or expense that was not applicable, in effect or known to the Issuing Lender as of the Closing Date and that the Issuing Lender in good faith deems material to it, or (ii) the Issuing Lender shall have actual knowledge, or shall have received notice from any Lender, prior to the issuance of such Letter of Credit that one or more of the conditions specified in **Sections 4.1** (if applicable) or **4.2** are not then satisfied (or have not been waived in writing as required herein) or that the issuance of such Letter of Credit would violate the provisions of subsection (a) above.

3.2 Notices.

Whenever the Borrower desires the issuance of a Letter of Credit, the Borrower will give the Issuing Lender written notice with a copy to the Agent not later than 11:00 a.m., Charlotte time, three (3) Business Days (or such shorter period as is acceptable to the Issuing Lender in any given case) prior to the requested date of issuance thereof. Each such notice (each, a "Letter of Credit Notice") shall be irrevocable, shall be given in the form of **Exhibit B-4** and shall specify (i) the requested date of issuance, which shall be a Business Day, (ii) the requested Stated Amount and expiry date of the Letter of Credit, and (iii) the name and address of the requested beneficiary or beneficiaries of the Letter of Credit. The Borrower will also complete any application procedures and documents required by the Issuing Lender in

connection with the issuance of any Letter of Credit. Upon its issuance of any Letter of Credit, the Issuing Lender will promptly notify the Agent of such issuance, and the Agent will give prompt notice thereof to each Lender.

3.3 Participations.

Immediately upon the issuance of any Letter of Credit, the Issuing Lender shall be deemed to have sold and transferred to each Lender, and each Lender shall be deemed irrevocably and unconditionally to have purchased and received from the Issuing Lender, without recourse or warranty, an undivided interest and participation, pro rata (based on the percentage of the aggregate Commitments represented by such Lender's Commitment), in such Letter of Credit, each drawing made thereunder and the obligations of the Borrower under this Agreement with respect thereto and any security therefor or guaranty pertaining thereto; provided, however, that the fee relating to Letters of Credit described in **Section 2.9(c)** shall be payable directly to the Issuing Lender as provided therein, and the Lenders shall have no right to receive any portion thereof. Upon any change in the Commitments of any of the Lenders pursuant to **Section 11.7(a)**, with respect to all outstanding Letters of Credit and Reimbursement Obligations there shall be an automatic adjustment to the participations pursuant to this Section to reflect the new pro rata shares of the assigning Lender and the Assignee.

3.4 Reimbursement.

The Borrower hereby agrees to reimburse the Issuing Lender by making payment to the Agent, for the account of the Issuing Lender, in immediately available funds, for any payment made by the Issuing Lender under any Letter of Credit in accordance with the terms of such Letter of Credit (each such amount so paid until reimbursed, together with interest thereon payable as provided hereinbelow, a "Reimbursement Obligation") immediately after, and in any event within one (1) Business Day after its receipt of notice of, such payment (provided that any such Reimbursement Obligation shall be deemed timely satisfied (but nevertheless subject to the payment of interest thereon as provided hereinbelow) if satisfied pursuant to a Borrowing of Revolving Loans made on or prior to the next Business Day following the date of the Borrower's receipt of notice of such payment), together with interest on the amount so paid by the Issuing Lender, to the extent not reimbursed prior to 1:00 p.m., Charlotte time, on the date of such payment or disbursement, for the period from the date of the respective payment to the date the Reimbursement Obligation created thereby is satisfied, at the Adjusted Base Rate applicable to Revolving Loans as in effect from time to time during such period, such interest also to be payable on demand. The Issuing Lender will provide the Agent and the Borrower with prompt notice of any payment or disbursement made under any Letter of Credit, although the failure to give, or any delay in giving, any such notice shall not release, diminish or otherwise affect the Borrower's obligations under this Section or any other provision of this Agreement. The Agent will promptly pay to the Issuing Lender any such amounts received by it under this Section.

3.5 Payment by Revolving Loans.

In the event that the Issuing Lender makes any payment under any Letter of Credit and the Borrower shall not have timely satisfied in full its Reimbursement Obligation to the Issuing Lender pursuant to **Section 3.4**, and to the extent that any amounts then held in the Cash

Collateral Account established pursuant to **Section 3.8** shall be insufficient to satisfy such Reimbursement Obligation in full, the Issuing Lender will promptly notify the Agent, and the Agent will promptly notify each Lender, of such failure. If the Agent gives such notice prior to 11:00 a.m., Charlotte time, on any Business Day, each Lender will make available to the Agent, for the account of the Issuing Lender, its pro rata share (based on the percentage of the aggregate Commitments represented by such Lender's Commitment) of the amount of such payment on such Business Day in immediately available funds. If the Agent gives such notice after 11:00 a.m., Charlotte time, on any Business Day, each such Lender shall make its pro rata share of such amount available to the Agent on the next succeeding Business Day. If and to the extent any Lender shall not have so made its pro rata share of the amount of such payment available to the Agent, such Lender agrees to pay to the Agent, for the account of the Issuing Lender, forthwith on demand such amount, together with interest thereon at the Federal Funds Rate for each day from such date until the date such amount is paid to the Agent. The failure of any Lender to make available to the Agent its pro rata share of any payment under any Letter of Credit shall not relieve any other Lender of its obligation hereunder to make available to the Agent its pro rata share of any payment under any Letter of Credit on the date required, as specified above, but no Lender shall be responsible for the failure of any other Lender to make available to the Agent such other Lender's pro rata share of any such payment. Each such payment by a Lender under this Section of its pro rata share of an amount paid by the Issuing Lender shall constitute a Revolving Loan by such Lender (the Borrower being deemed to have given a timely Notice of Borrowing therefor) and shall be treated as such for all purposes of this Agreement; provided that for purposes of determining the aggregate Unutilized Commitments immediately prior to giving effect to the application of the proceeds of such Revolving Loans, the Reimbursement Obligation being satisfied thereby shall be deemed not to be outstanding at such time.

3.6 Payment to Lenders.

Whenever the Issuing Lender receives a payment in respect of a Reimbursement Obligation as to which the Agent has received, for the account of the Issuing Lender, any payments from the Lenders pursuant to **Section 3.5**, the Issuing Lender will promptly pay to the Agent, and the Agent will promptly pay to each Lender that has paid its pro rata share thereof, in immediately available funds, an amount equal to such Lender's ratable share (based on the proportionate amount funded by such Lender to the aggregate amount funded by all Lenders) of such Reimbursement Obligation.

3.7 Obligations Absolute.

The Reimbursement Obligations of the Borrower, and the obligations of the Lenders under **Section 3.5** to make payments to the Agent, for the account of the Issuing Lender, with respect to Letters of Credit, shall be irrevocable, shall remain in effect until the Issuing Lender shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit, and, except to the extent resulting from any gross negligence or willful misconduct on the part of the Issuing Lender, shall be absolute and unconditional, shall not be subject to counterclaim, setoff or other defense or any other qualification or exception whatsoever and shall be made in accordance with the terms and conditions of this Agreement under all circumstances, including, without limitation, any of the following circumstances:

(a) Any lack of validity or enforceability of this Agreement, any of the other Credit Documents or any documents or instruments relating to any Letter of Credit;

(b) Any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations in respect of any Letter of Credit;

(c) The existence of any claim, setoff, defense or other right that the Borrower may have at any time against a beneficiary named in a Letter of Credit, any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), the Agent, the Issuing Lender (but without prejudicing the Borrower's rights with respect thereto), any Lender or other Person, whether in connection with this Agreement, any Letter of Credit, the transactions contemplated hereby or any unrelated transactions (including any underlying transaction between the Borrower and the beneficiary named in any such Letter of Credit);

(d) Any draft, certificate or any other document presented under the Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect (provided that such draft, certificate or other document appears on its face to comply with the terms of such Letter of Credit), any errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, telecopier or otherwise, or any errors in translation or in interpretation of technical terms;

(e) Any defense based upon the failure of any drawing under a Letter of Credit to conform to the terms of the Letter of Credit (provided that any draft, certificate or other document presented pursuant to such Letter of Credit appears on its face to comply with the terms thereof, including without limitation the expiry date of such Letter of Credit), any nonapplication or misapplication by the beneficiary or any transferee of the proceeds of such drawing or any other act or omission of such beneficiary or transferee in connection with such Letter of Credit;

(f) The exchange, release, surrender or impairment of any security for the Obligations;

(g) The occurrence of any Default or Event of Default; or

(h) Any other circumstance or event whatsoever, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or a guarantor.

Any action taken or omitted to be taken by the Issuing Lender under or in connection with any Letter of Credit, if taken or omitted in the absence of gross negligence or willful misconduct, shall be binding upon the Borrower and each Lender and shall not create or result in any liability of the Issuing Lender to the Borrower or any Lender. It is expressly understood and agreed that, for purposes of determining whether a wrongful payment under a Letter of Credit resulted from the Issuing Lender's gross negligence or willful misconduct, (i) the Issuing Lender's acceptance of documents that appear on their face to comply with the terms of such Letter of Credit, without responsibility for further investigation, regardless of any notice or information to the contrary, (ii) the Issuing Lender's exclusive reliance on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including the amount of any draft presented

under such Letter of Credit, whether or not the amount due to the beneficiary thereunder equals the amount of such draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect (so long as such document appears on its face to comply with the terms of such Letter of Credit), and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever, and (iii) any noncompliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, be deemed not to constitute gross negligence or willful misconduct of the Issuing Lender.

3.8 Cash Collateral Account.

At any time and from time to time (i) after the occurrence and during the continuance of an Event of Default, the Agent, at the direction or with the consent of the Required Lenders, may require the Borrower to deliver to the Agent such additional amount of cash as is equal to the aggregate Stated Amount of all Letters of Credit at any time outstanding (whether or not any beneficiary under any Letter of Credit shall have drawn or be entitled at such time to draw thereunder) and (ii) in the event of a prepayment under **Section 2.6(b)**, the Agent will retain such amount as may then be required to be retained, such amounts in each case under clauses (i) and (ii) above to be held by the Agent in a cash collateral account (the "Cash Collateral Account"). The Borrower hereby grants to the Agent, for the benefit of the Issuing Lender and the Lenders, a Lien upon and security interest in the Cash Collateral Account and all amounts held therein from time to time as security for Letter of Credit Exposure, and for application to the Borrower's Reimbursement Obligations as and when the same shall arise. The Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest on the investment of such amounts in Cash Equivalents, which investments shall be made at the direction of the Borrower (unless a Default or Event of Default shall have occurred and be continuing, in which case the determination as to investments shall be made at the option and in the discretion of the Agent), amounts in the Cash Collateral Account shall not bear interest. Interest and profits, if any, on such investments shall accumulate in such account. In the event of a drawing, and subsequent payment by the Issuing Lender, under any Letter of Credit at any time during which any amounts are held in the Cash Collateral Account, the Agent will deliver to the Issuing Lender an amount equal to the Reimbursement Obligation created as a result of such payment (or, if the amounts so held are less than such Reimbursement Obligation, all of such amounts) to reimburse the Issuing Lender therefor. Any amounts remaining in the Cash Collateral Account after the expiration of all Letters of Credit and reimbursement in full of the Issuing Lender for all of its obligations thereunder shall be held by the Agent, for the benefit of the Borrower, to be applied against the Obligations in such order and manner as the Agent may direct. If the Borrower is required to provide cash collateral pursuant to **Section 2.6(b)**, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower on demand, provided that after giving effect to such return (i) the sum of (y) the aggregate principal amount of all Loans outstanding at such time and (z) the aggregate Letter of Credit Exposure of all Lenders at such time would not exceed the aggregate Commitments at such time and (ii) no Default or Event of Default shall have occurred and be continuing at such time. If the Borrower is required to provide cash collateral as a result of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived.

3.9 Effectiveness.

Notwithstanding any termination of the Commitments or repayment of the Loans, or both, the obligations of the Borrower under this Article shall remain in full force and effect until the Issuing Lender and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

ARTICLE IV

CONDITIONS OF BORROWING

4.1 Conditions of Initial Borrowing.

This Agreement shall become effective when the following conditions are satisfied:

(a) The Agent shall have received the following, each dated as of the Closing Date (unless otherwise specified) and, except for the Notes, in sufficient copies for each Lender:

(i) Counterparts hereof signed by each of the parties hereto (or, in the case of any party as to which an executed counterpart hereof shall not have been received, receipt by the Agent in form satisfactory to it of telegraphic, telecopy, or other written confirmation from such party of execution of a counterpart hereof by such party), including, without limitation, Lenders holding Commitments in an aggregate amount of \$80,000,000;

(ii) (A) A Note for each Lender that is a party hereto as of the Closing Date, in the amount of such Lender's Commitment, each duly completed in accordance with the relevant provisions of **Section 2.4** and executed by the Borrower and (B) a Swingline Note for the Swingline Lender, in the amount of the Swingline Commitment, duly completed in accordance with the relevant provisions of **Section 2.4** and executed by the Borrower;

(iii) the Subsidiary Guaranty, duly completed and executed by each Subsidiary of the Borrower; and

(iv) the favorable opinion of Womble Carlyle Sandridge & Rice, PLLC, special counsel to the Borrower, addressed to the Agent and the Lenders and in form and substance reasonably satisfactory to the Agent.

(b) The Agent shall have received a certificate, signed by the president, the chief executive officer or the chief financial officer of the Borrower, in form and substance satisfactory to the Agent, certifying that (i) all representations and warranties of the Borrower contained in this Agreement and the other Credit Documents are true and correct as of the Closing Date, both immediately before and after giving effect to the consummation of the transactions contemplated hereby, the making of the initial Loans hereunder and the application of the proceeds thereof, (ii) no Default or Event of Default has occurred and is continuing, both immediately before and after giving effect to the consummation of the transactions contemplated hereby, the making of the initial Loans hereunder and the application of the proceeds thereof,

(iii) both immediately before and after giving effect to the consummation of the transactions contemplated hereby, the making of the initial Loans hereunder and the application of the proceeds thereof, no Material Adverse Change has occurred since December 31, 2002, and, to the best of its knowledge, there exists no event, condition or state of facts that could reasonably be expected to result in a Material Adverse Change, and (iv) all conditions to the initial extensions of credit hereunder set forth in this Section and in **Section 4.2** have been satisfied or waived as required hereunder.

(c) The Agent shall have received a certificate of the secretary or an assistant secretary of each of the Borrower and its Subsidiaries, in form and substance satisfactory to the Agent, certifying (i) that attached thereto is a true and complete copy of the articles or certificate of incorporation and all amendments thereto of the Borrower or such Subsidiary, as the case may be, certified as of a recent date by the Secretary of State (or comparable Governmental Authority) of its jurisdiction of organization, and that the same has not been amended since the date of such certification, (ii) that attached thereto is a true and complete copy of the bylaws of the Borrower or such Subsidiary, as the case may be, as then in effect and as in effect at all times from the date on which the resolutions referred to in clause (iii) below were adopted to and including the date of such certificate, and (iii) that attached thereto is a true and complete copy of resolutions adopted by the board of directors of the Borrower or such Subsidiary, as the case may be, authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party, and as to the incumbency and genuineness of the signature of each officer of the Borrower or such Subsidiary, as the case may be, executing this Agreement or any of such other Credit Documents, and attaching all such copies of the documents described above.

(d) The Agent shall have received (i) a certificate as of a recent date of the good standing of each of the Borrower and its Subsidiaries under the laws of its jurisdiction of organization, from the Secretary of State (or comparable Governmental Authority) of such jurisdiction, (ii) a certificate as of a recent date of the qualification of each of the Borrower and its Subsidiaries to conduct business as a foreign corporation in each jurisdiction where it is so qualified as of the Closing Date, from the Secretary of State (or comparable Governmental Authority) of such jurisdiction, and (iii) to the extent provided, a tax clearance, tax good standing or similar certificate or letter from the Department of Revenue (or comparable Governmental Authority) (A) in North Carolina and in Virginia as to the Borrower and (B) in Delaware as to the Subsidiary Guarantor.

(e) All legal, tax, accounting, business and other matters and all corporate or other proceedings incident to the transactions contemplated hereby shall be satisfactory in form and substance to the Agent; all approvals, permits and consents of any Governmental Authorities or other Persons required in connection with the execution and delivery of this Agreement and the other Credit Documents and the consummation of the transactions contemplated hereby and thereby shall have been obtained, without the imposition of conditions that are not acceptable to the Agent, and all related filings, if any, shall have been made, and all such approvals, permits, consents and filings shall be in full force and effect and the Agent shall have received such copies thereof as it shall have requested; all applicable waiting periods shall have expired without any adverse action being taken by any Governmental Authority having jurisdiction; and no action, proceeding, investigation, regulation or legislation shall have been instituted,

threatened or proposed before, and no order, injunction or decree shall have been entered by, any court or other Governmental Authority, in each case to enjoin, restrain or prohibit, to obtain substantial damages in respect of, or that is otherwise related to or arises out of, this Agreement, any of the other Credit Documents or the consummation of the transactions contemplated hereby or thereby, or that, in the opinion of the Agent, could reasonably be expected to have a Material Adverse Effect.

(f) Since December 31, 2002, both immediately before and after giving effect to the consummation of the transactions contemplated by this Agreement, there shall not have occurred any Material Adverse Change or any event, condition or state of facts that could reasonably be expected to result in a Material Adverse Change.

(g) The Borrower shall have paid (i) to Wachovia Securities, Inc., the fee described in paragraph (1) of the Fee Letter, (ii) to the Agent, for the ratable benefit of the Lenders (including the Agent), the fee described in paragraph (2) of the Fee Letter, (iii) to the Agent, the initial payment of the annual administrative fee described in paragraph (3) of the Fee Letter, and (iv) all other fees and expenses of the Agent and the Lenders required hereunder or under any other Credit Document to be paid on or prior to the Closing Date (including fees and expenses of counsel) in connection with this Agreement and the transactions contemplated hereby.

(h) The Agent shall have received the Projections as described in **Section 5.11(b)**, which shall be in form and substance satisfactory to the Agent.

(i) The Agent shall have received a Covenant Compliance Worksheet, duly completed and certified by the chief financial officer of the Borrower and in form and substance satisfactory to the Agent, demonstrating the Borrower's compliance with the financial covenants set forth in **Sections 7.1** through **7.3**, determined as of the date hereof, after giving effect to the making of the initial Loans hereunder and the consummation of the transactions contemplated hereby.

(j) The Agent shall have received evidence satisfactory to it that (i) concurrently with the making of the initial Loans hereunder, (x) all principal, interest and other amounts outstanding with respect to the Terminating Senior Indebtedness shall be repaid and satisfied in full and (y) all commitments to extend credit under the agreements and instruments relating thereto shall be terminated, and (ii) any letters of credit outstanding with respect to the Terminating Senior Indebtedness (other than the Existing Letters of Credit) shall have been terminated or canceled.

(k) The Agent shall have received evidence in form and substance reasonably satisfactory to it that all of the requirements of **Section 6.6** have been satisfied.

(l) The Agent shall have received an Account Designation Letter, together with written instructions from an Authorized Officer, including wire transfer information, directing the payment of the proceeds of the initial Loans to be made hereunder.

(m) The Agent and each Lender shall have received such other documents, certificates, opinions and instruments in connection with the transactions contemplated hereby as it shall have reasonably requested.

4.2 Conditions of All Borrowings.

The obligation of each Lender and the Swingline Lender to make any Loans hereunder, including the initial Loans (but excluding Revolving Loans made for the purpose of repaying Refunded Swingline Loans pursuant to **Section 2.2(e)**), and the obligation of the Issuing Lender to issue any Letters of Credit hereunder, is subject to the satisfaction of the following conditions precedent on the relevant Borrowing Date or date of issuance:

(a) The Agent shall have received a Notice of Borrowing in accordance with **Section 2.2(b)**, or (together with the Swingline Lender) a Notice of Swingline Borrowing in accordance with **Section 2.2(d)**, or (together with the Issuing Lender) a Letter of Credit Notice in accordance with **Section 3.2**, as applicable;

(b) Each of the representations and warranties contained in **Article V** and in the other Credit Documents shall be true and correct on and as of such Borrowing Date (including the Closing Date, in the case of the initial Loans made hereunder) or date of issuance with the same effect as if made on and as of such date, both immediately before and after giving effect to the Loans to be made or Letter of Credit to be issued on such date (except to the extent any such representation or warranty is expressly stated to have been made as of a specific date, in which case such representation or warranty shall be true and correct as of such date); and

(c) No Default or Event of Default shall have occurred and be continuing on such date, both immediately before and after giving effect to the Loans to be made or Letter of Credit to be issued on such date.

Each giving of a Notice of Borrowing, a Notice of Swingline Borrowing, or a Letter of Credit Notice, and the consummation of each Borrowing or issuance of a Letter of Credit, shall be deemed to constitute a representation by the Borrower that the statements contained in subsections (b) and (c) above are true, both as of the date of such notice or request and as of the relevant Borrowing Date or date of issuance.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

To induce the Agent and the Lenders to enter into this Agreement and to induce the Lenders to extend the credit contemplated hereby, the Borrower represents and warrants to the Agent and the Lenders as follows:

5.1 Corporate Organization and Power.

Each of the Borrower and its Subsidiaries (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (ii) has the full corporate power and authority to execute, deliver and perform the Credit Documents to which it is or will be a party, to own and hold its property and to engage in its business as presently conducted, and (iii) is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the nature of its business or the ownership of its

properties requires it to be so qualified, except where the failure to be so qualified would not, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect.

5.2 Authorization; Enforceability.

Each of the Borrower and its Subsidiaries has taken, or on the Closing Date will have taken, all necessary corporate action to execute, deliver and perform each of the Credit Documents to which it is or will be a party, and has, or on the Closing Date (or any later date of execution and delivery) will have, validly executed and delivered each of the Credit Documents to which it is or will be a party. This Agreement constitutes, and each of the other Credit Documents upon execution and delivery will constitute, the legal, valid and binding obligation of each of the Borrower and its Subsidiaries that is a party hereto or thereto, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, by general equitable principles or by principles of good faith and fair dealing.

5.3 No Violation.

The execution, delivery and performance by each of the Borrower and its Subsidiaries of this Agreement and each of the other Credit Documents to which it is or will be a party, and compliance by it with the terms hereof and thereof, do not and will not (i) violate any provision of its articles or certificate of incorporation or bylaws or contravene any other Requirement of Law applicable to it, (ii) conflict with, result in a breach of or constitute (with notice, lapse of time or both) a default under any indenture, agreement or other instrument to which it is a party, by which it or any of its properties is bound or to which it is subject, or (iii) result in or require the creation or imposition of any Lien upon any of its properties or assets. No Subsidiary is a party to any agreement or instrument or otherwise subject to any restriction or encumbrance that restricts or limits its ability to make dividend payments or other distributions in respect of its Capital Stock, to repay Indebtedness owed to the Borrower or any other Subsidiary, to make loans or advances to the Borrower or any other Subsidiary, or to transfer any of its assets or properties to the Borrower or any other Subsidiary, in each case other than such restrictions or encumbrances existing under or by reason of the Credit Documents or applicable Requirements of Law.

5.4 Governmental and Third-Party Authorization; Permits.

(a) No consent, approval, authorization or other action by, notice to, or registration or filing with, any Governmental Authority or other Person is or will be required as a condition to or otherwise in connection with the due execution, delivery and performance by each of the Borrower and its Subsidiaries of this Agreement or any of the other Credit Documents to which it is or will be a party or the legality, validity or enforceability hereof or thereof, other than (i) consents, authorizations and filings that have been (or on or prior to the Closing Date will have been) made or obtained and that are (or on the Closing Date will be) in full force and effect, which consents, authorizations and filings are listed on **Schedule 5.4**, and (ii) consents and filings the failure to obtain or make which would not, individually or in the aggregate, have a Material Adverse Effect.

(b) Each of the Borrower and its Subsidiaries has, and is in good standing with respect to, all governmental approvals, licenses, permits and authorizations necessary to conduct its business as presently conducted and to own or lease and operate its properties, except for those the failure to obtain which would not be reasonably likely, individually or in the aggregate, to have a Material Adverse Effect.

5.5 Litigation.

There are no actions, investigations, suits or proceedings pending or, to the knowledge of the Borrower, threatened, at law, in equity or in arbitration, before any court, other Governmental Authority or other Person, (i) against or affecting the Borrower, any of its Subsidiaries or any of their respective properties that would, if adversely determined, be reasonably likely to have a Material Adverse Effect, or (ii) with respect to this Agreement or any of the other Credit Documents.

5.6 Taxes.

Each of the Borrower and its Subsidiaries has timely filed all federal, state and local tax returns and reports required to be filed by it (except for those the failure to file would not be reasonably likely to, individually or in the aggregate, to have a Material Adverse Effect) and has paid all taxes, assessments, fees and other charges levied upon it or upon its properties that are shown thereon as due and payable, other than those that are being contested in good faith and by proper proceedings and for which adequate reserves have been established in accordance with GAAP. Such returns accurately reflect in all material respects all liability for taxes of the Borrower and its Subsidiaries for the periods covered thereby. There is no ongoing audit or examination or, to the knowledge of the Borrower, other investigation by any Governmental Authority of the tax liability of the Borrower or any of its Subsidiaries, and there is no unresolved claim by any Governmental Authority concerning the tax liability of the Borrower or any of its Subsidiaries for any period for which tax returns have been or were required to have been filed, other than claims for which adequate reserves have been established in accordance with GAAP. Neither the Borrower nor any of its Subsidiaries has waived or extended or has been requested to waive or extend the statute of limitations relating to the payment of any taxes.

5.7 Subsidiaries.

Schedule 5.7 sets forth a list, as of the Closing Date, of all of the Subsidiaries of the Borrower and, as to each such Subsidiary, the percentage ownership (direct and indirect) of the Borrower in each class of its capital stock and each direct owner thereof. Except for the shares of capital stock expressly indicated on **Schedule 5.7** as of the Closing Date, there are no shares of capital stock, warrants, rights, options or other equity securities, or other Capital Stock of any Subsidiary of the Borrower outstanding or reserved for any purpose. All outstanding shares of capital stock of each Subsidiary of the Borrower are duly and validly issued, fully paid and nonassessable. The Borrower is the sole legal, record and beneficial owner of, and has good and valid title to, all such capital stock, free and clear of all Liens.

5.8 Full Disclosure.

All factual information heretofore or contemporaneously furnished to the Agent or any Lender in writing by or on behalf of the Borrower or any of its Subsidiaries for purposes of or in connection with this Agreement and the transactions contemplated hereby is, and all other such factual information hereafter furnished to the Agent or any Lender in writing by or on behalf of the Borrower or any of its Subsidiaries will be, true and accurate in all material respects on the date as of which such information is dated or certified (or, if such information has been amended or supplemented, on the date as of which any such amendment or supplement is dated or certified) and not made incomplete by omitting to state a material fact necessary to make the statements contained therein, in light of the circumstances under which such information was provided, not misleading.

5.9 Margin Regulations.

Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. No proceeds of the Loans will be used, directly or indirectly, to purchase or carry any Margin Stock, to extend credit for such purpose or for any other purpose that would violate or be inconsistent with Regulations T, U or X or any provision of the Exchange Act. Not more than 25% of the value of the assets of the Borrower and its Subsidiaries is represented by Margin Stock.

5.10 No Material Adverse Change.

There has been no Material Adverse Change since December 31, 2002, and there exists no event, condition or state of facts that could reasonably be expected to result in a Material Adverse Change.

5.11 Financial Matters.

(a) The Borrower has heretofore furnished to the Agent copies of (i) the audited consolidated balance sheets of the Borrower and its Subsidiaries as of December 31, 2002, and the related statements of income, cash flows and stockholders' equity for the fiscal years then ended, together with the opinion of Ernst & Young LLP thereon, and (ii) the unaudited consolidated balance sheet of the Borrower and its Subsidiaries as of March 31, 2003, and the related statements of income, cash flows and stockholders' equity for the three (3)-month period then ended. Such financial statements have been prepared in accordance with GAAP (subject, with respect to the unaudited financial statements, to the absence of notes required by GAAP and to normal year-end adjustments) and present fairly the financial condition of the Borrower and its Subsidiaries on a consolidated basis as of the respective dates thereof and the consolidated results of operations of the Borrower and its Subsidiaries for the respective periods then ended. Except as fully reflected in the most recent financial statements referred to above and the notes thereto as of the Closing Date, there are no material liabilities or obligations with respect to the Borrower or any of its Subsidiaries of any nature whatsoever (whether absolute, contingent or otherwise and whether or not due).

(b) The Borrower has prepared, and has heretofore furnished to the Agent a copy of, annual projected balance sheets and statements of income and cash flows of the Borrower for the

three-year period beginning with the year ending December 31, 2003, giving effect to the initial extensions of credit made under this Agreement, including, without limitation, the assumption of the Existing Letters of Credit under this Agreement, and the payment of transaction fees and expenses related to the foregoing (the "Projections"). In the opinion of management of the Borrower, the assumptions used in the preparation of the Projections were fair, complete and reasonable when made and continue to be fair, complete and reasonable as of the Closing Date. The Projections have been prepared in good faith by the executive and financial personnel of the Borrower, are complete as of the Closing Date and represent as of the Closing Date a reasonable estimate of the future performance and financial condition of the Borrower, subject to the uncertainties and approximations inherent in any projections.

(c) Each of the Borrower and its Subsidiaries, after giving effect to the consummation of the transactions contemplated hereby, (i) has capital sufficient to carry on its businesses as conducted and as proposed to be conducted, (ii) has assets with a fair saleable value, determined on a going concern basis, (y) not less than the amount required to pay the probable liability on its existing debts as they become absolute and matured and (z) greater than the total amount of its liabilities (including identified contingent liabilities, valued at the amount that can reasonably be expected to become absolute and matured), and (iii) does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay such debts and liabilities as they mature.

5.12 Ownership of Properties.

Each of the Borrower and its Subsidiaries (i) has good and marketable title to all material real properties owned by it, (ii) holds interests as lessee under valid leases in full force and effect with respect to all material leased real and personal property used in connection with its business, (iii) possesses or has rights to use licenses, patents, copyrights, trademarks, service marks, trade names and other assets sufficient to enable it to continue to conduct its business substantially as heretofore conducted and without any material conflict with the rights of others, and (iv) has good title to all of its other material properties and assets reflected in the most recent financial statements referred to in **Section 5.11(a)** (except as sold or otherwise disposed of since the date thereof in the ordinary course of business), in each case under (i), (ii), (iii) and (iv) above free and clear of all Liens other than Permitted Liens.

5.13 ERISA.

(a) Each of the Borrower and its ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA, and each Plan is and has been administered in compliance in all material respects with all applicable Requirements of Law, including, without limitation, the applicable provisions of ERISA and the Internal Revenue Code. No ERISA Event (i) has occurred within the five-year period prior to the Closing Date, (ii) has occurred and is continuing, or (iii) to the knowledge of the Borrower, is reasonably expected to occur with respect to any Plan. No Plan has any Unfunded Pension Liability as of the most recent annual valuation date applicable thereto, and neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(b) Neither the Borrower nor any ERISA Affiliate has had a complete or partial withdrawal from any Multiemployer Plan, and neither the Borrower nor any ERISA Affiliate

would become subject to any liability under ERISA if the Borrower or any ERISA Affiliate were to withdraw completely from all Multiemployer Plans as of the most recent valuation date. No Multiemployer Plan is in “reorganization” or is “insolvent” within the meaning of such terms under ERISA.

5.14 Environmental Matters.

(a) No Hazardous Substances are or have been generated, used, located, released, treated, disposed of or stored by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, by any other Person (including any predecessor in interest) or otherwise, in, on or under any portion of any real property, leased or owned, of the Borrower or any of its Subsidiaries, except where the failure to do so is not reasonably likely to result in a Material Adverse Effect, and no portion of any such real property or, to the knowledge of the Borrower, any other real property at any time leased, owned or operated by the Borrower or any of its Subsidiaries, has been contaminated by any Hazardous Substance to the extent that is reasonably likely to result in a Material Adverse Effect; and no portion of any real property, leased or owned, of the Borrower or any of its Subsidiaries has been or is presently the subject of an environmental audit, assessment or remedial action to the extent that is reasonably likely to result in a Material Adverse Effect.

(b) No portion of any real property, leased or owned, of the Borrower or any of its Subsidiaries has been used by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, by any other Person, as or for a mine, a landfill, a dump or other disposal facility, a gasoline service station, or (other than for petroleum substances stored in the ordinary course of business) a petroleum products storage facility; no portion of such real property or any other real property at any time leased, owned or operated by the Borrower or any of its Subsidiaries has, pursuant to any Environmental Law, been placed on the “National Priorities List” or “CERCLIS List” (or any similar federal, state or local list) of sites subject to possible environmental problems.

(c) All activities and operations of the Borrower and its Subsidiaries are in compliance with the requirements of all applicable Environmental Laws, except to the extent the failure so to comply, individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect. Each of the Borrower and its Subsidiaries has obtained all licenses and permits under Environmental Laws necessary to its respective operations except where the failure to do so is not reasonably likely to result in a Material Adverse Effect; all such licenses and permits are being maintained in good standing except where the failure to do so is not reasonably likely to result in a Material Adverse Effect; and each of the Borrower and its Subsidiaries is in compliance with all terms and conditions of such licenses and permits, except for such licenses and permits the failure to obtain, maintain or comply with which would not be reasonably likely, individually or in the aggregate, to have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries is involved in any suit, action or proceeding, or has received any notice, complaint or other request for information from any Governmental Authority or other Person, with respect to any actual or alleged Environmental Claims that, if adversely determined, would be reasonably likely, individually or in the aggregate, to have a Material Adverse Effect; and, to the knowledge of the Borrower, there are no threatened actions, suits, proceedings or investigations with respect to any such Environmental Claims, nor any

basis therefore that, if adversely determined, would be reasonably likely to have a Material Adverse Effect.

5.15 Compliance with Laws.

Each of the Borrower and its Subsidiaries: (i) has timely filed all material reports, documents and other materials required to be filed by it under all applicable Requirements of Law with any Governmental Authority, (ii) has retained all material records and documents required to be retained by it under all applicable Requirements of Law, and (iii) is otherwise in compliance with all applicable Requirements of Law in respect of the conduct of its business and the ownership and operation of its properties, except in each case under clauses (i), (ii) and (iii) above for such Requirements of Law the failure to comply with which, individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect.

5.16 Regulated Industries.

Neither the Borrower nor any of its Subsidiaries is (i) an “investment company,” a company “controlled” by an “investment company,” or an “investment advisor,” within the meaning of the Investment Company Act of 1940, as amended, or (ii) a “holding company,” a “subsidiary company” of a “holding company,” or an “affiliate” of a “holding company” or of a “subsidiary company” of a “holding company,” within the meaning of the Public Utility Holding Company Act of 1935, as amended.

5.17 Insurance.

Schedule 5.17 sets forth a true and complete summary of all material insurance policies or arrangements carried or maintained by the Borrower and its Subsidiaries as of the Closing Date, indicating in each case the insurer, policy number, expiration, amount and type of coverage and deductibles. The assets, properties and business of the Borrower and its Subsidiaries are insured against such hazards and liabilities, under such coverages and in such amounts, as are customarily maintained by prudent companies similarly situated and under policies issued by insurers of recognized responsibility.

5.18 Material Contracts.

Schedule 5.18 lists, as of the Closing Date, each “material contract” (within the meaning of Item 601(b)(10) of Regulation S-K under the Exchange Act) to which the Borrower or any of its Subsidiaries is a party, by which any of them or their respective properties is bound or to which any of them is subject (collectively, “Material Contracts”), and also indicates the parties, subject matter and term thereof. As of the Closing Date, (i) each Material Contract is in full force and effect and is enforceable by the Borrower or the Subsidiary that is a party thereto in accordance with its terms, and (ii) neither the Borrower nor any of its Subsidiaries (nor, to the knowledge of the Borrower, any other party thereto) is in breach of or default under any Material Contract in any material respect or has given notice of termination or cancellation of any Material Contract.

5.19 Trade Relations.

To the best of the Borrower's knowledge, there exists no actual or threatened termination, cancellation or limitation of, or any modification or change in, any business relationship of the Borrower or its Subsidiaries which would be reasonably likely to have a Material Adverse Effect, including, without limitation, any business relationship with any customer or any group of customers or any supplier or group of suppliers.

5.20 Labor Relations.

Neither the Borrower nor any of its Subsidiaries is engaged in any unfair labor practice within the meaning of the National Labor Relations Act of 1947, as amended. There is (i) no unfair labor practice complaint before the National Labor Relations Board, or grievance or arbitration proceeding arising out of or under any collective bargaining agreement, pending or, to the knowledge of the Borrower, threatened, against the Borrower or any of its Subsidiaries, (ii) no strike, lock-out, slowdown, stoppage, walkout or other labor dispute pending or, to the knowledge of the Borrower, threatened, against the Borrower or any of its Subsidiaries, and (iii) to the knowledge of the Borrower, no petition for certification or union election or union organizing activities taking place with respect to the Borrower or any of its Subsidiaries.

5.21 Leases.

Schedule 5.21A lists, as of the Closing Date, all capitalized leases to which the Borrower or any of its Subsidiaries is a party, by which any of them or any of their respective properties is bound or to which any of them is subject, including, in each case, the name of the lessor, the description of the leased property, whether real or personal, and the location of such property. **Schedule 5.21B** lists, as of the Closing Date, all material operating leases to which the Borrower or any of its Subsidiaries is a party, by which any of them or any of their respective properties is bound or to which any of them is subject, including, in each case, the name of the lessor, the description of the leased property, whether real or personal, and the location of such property. The Borrower and its Subsidiaries, enjoy peaceful and undisturbed possession under all of their leases listed on **Schedule 5.21A** and **Schedule 5.21B** and all such leases are valid and subsisting and in full force and effect except such leases that if not in existence would not be reasonably likely to have a Material Adverse Effect.

ARTICLE VI

AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that, until the termination of the Commitments, the termination or expiration of all Letters of Credit and the payment in full of all principal and interest with respect to the Loans and all Reimbursement Obligations together with all other amounts then due and owing hereunder:

6.1 Financial Statements.

The Borrower will deliver to each Lender:

(a) Concurrently with filing its Quarterly Report on Form 10-Q with the Securities and Exchange Commission and in any event within sixty (60) days after the end of each of the

first three fiscal quarters of each fiscal year, beginning with the fiscal quarter ending June 30, 2003, unaudited consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal quarter and unaudited consolidated statements of income, cash flows and stockholders' equity for the Borrower and its Subsidiaries for the fiscal quarter then ended and (in the case of the second and third fiscal quarters) for that portion of the fiscal year then ended, in each case setting forth comparative consolidated figures as of the end of and for the corresponding period in the preceding fiscal year, all in reasonable detail and prepared in accordance with GAAP (subject to the absence of notes required by GAAP and subject to normal year-end adjustments) applied on a basis consistent with that of the preceding quarter or containing disclosure of the effect on the financial condition or results of operations of any change in the application of accounting principles and practices during such quarter; provided that delivery within the time period specified above of copies of the Borrower's Quarterly Report on Form 10-Q prepared in compliance with the requirements therefore and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this **Section 6.1(a)**; and

(b) Concurrently with filing its Annual Report on Form 10-K with the Securities and Exchange Commission and in any event within one hundred twenty (120) days after the end of each fiscal year, beginning with the fiscal year ending December 31, 2003, an audited consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year and audited consolidated statements of income, cash flows and stockholders' equity for the Borrower and its Subsidiaries for the fiscal year then ended, including the notes thereto, in each case setting forth comparative figures as of the end of and for the preceding fiscal year, all in reasonable detail and certified by the independent certified public accounting firm regularly retained by the Borrower or another independent certified public accounting firm of recognized national standing reasonably acceptable to the Required Lenders, together with (y) a report thereon by such accountants that is not qualified as to going concern or scope of audit and to the effect that such financial statements present fairly the consolidated financial condition and results of operations of the Borrower and its Subsidiaries as of the dates and for the periods indicated in accordance with GAAP applied on a basis consistent with that of the preceding year or containing disclosure of the effect on the financial condition or results of operations of any change in the application of accounting principles and practices during such year, and (z) a report by such accountants to the effect that, based on and in connection with their examination of the financial statements of the Borrower and its Subsidiaries, they obtained no knowledge of the occurrence or existence of any Default or Event of Default relating to accounting or financial reporting matters, or a statement specifying the nature and period of existence of any such Default or Event of Default disclosed by their audit; provided, however, that such accountants shall not be liable by reason of the failure to obtain knowledge of any Default or Event of Default that would not be disclosed or revealed in the course of their audit examination, and; provided further that the delivery within the time period specified above of the Borrower's Annual Report on Form 10-K for such fiscal year (together with the Borrower's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements therefor and filed with the Securities and Exchange Commission, together with the accountant's report described in clauses (y) and (z) above, shall be deemed to satisfy the requirements of this **Section 6.1(b)**.

6.2 Other Business and Financial Information.

The Borrower will deliver to each Lender:

(a) Concurrently with each delivery of the financial statements described in **Section 6.1**, a Compliance Certificate with respect to the period covered by the financial statements then being delivered, executed by a Financial Officer of the Borrower, together with a Covenant Compliance Worksheet reflecting the computation of the financial covenants set forth in **Sections 7.1** through **7.3** as of the last day of the period covered by such financial statements;

(b) As soon as available and in any event within forty-five (45) days after the end of each fiscal year, beginning with the fiscal year ending December 31, 2003, a consolidated financial forecast for the Borrower and its Subsidiaries for the next fiscal year (prepared on an annual basis and updated periodically as may be requested by the Agent, but no more frequently than quarterly), consisting of a consolidated balance sheet and consolidated statements of income and cash flows, together with a certificate of a Financial Officer of the Borrower to the effect that such forecast have been prepared in good faith and are reasonable estimates of the financial position and results of operations of the Borrower and its Subsidiaries for the period covered thereby subject to the uncertainties and approximations inherent in any projections; and as soon as reasonably available from time to time thereafter, any modifications or revisions to or restatements of such forecast that are prepared by the Borrower;

(c) Promptly upon receipt thereof, copies of any "management letter" submitted to the Borrower or any of its Subsidiaries by its certified public accountants in connection with each annual, interim or special audit, and promptly upon completion thereof, any response reports from the Borrower or any such Subsidiary in respect thereof;

(d) Promptly upon the sending, filing or receipt thereof, copies of (i) all financial statements, reports, notices and proxy statements that the Borrower or any of its Subsidiaries shall send or make available generally to its shareholders, (ii) all regular, periodic and special reports, registration statements and prospectuses (other than on Form S-8) that the Borrower or any of its Subsidiaries shall render to or file with the Securities and Exchange Commission, the National Association of Securities Dealers, Inc. or any national securities exchange, and (iii) all press releases and other statements made available generally by the Borrower or any of its Subsidiaries to the public concerning material developments in the business of the Borrower or any of its Subsidiaries;

(e) Promptly upon (and in any event within five (5) Business Days after) any Responsible Officer of the Borrower obtaining knowledge thereof, written notice of any of the following:

(i) the occurrence of any Default or Event of Default, together with a written statement of a Responsible Officer of the Borrower specifying the nature of such Default or Event of Default, the period of existence thereof and the action that the Borrower has taken and proposes to take with respect thereto;

(ii) the institution or threatened institution of any action, suit, investigation or proceeding against or affecting the Borrower or any of its Subsidiaries, including any such investigation or proceeding by any Governmental Authority (other than routine

periodic inquiries, investigations or reviews), that would, if adversely determined, be reasonably likely, individually or in the aggregate, to have a Material Adverse Effect, and any material development in any litigation or other proceeding previously reported pursuant to **Section 5.5** or this subsection;

(iii) the receipt by the Borrower or any of its Subsidiaries from any Governmental Authority of (y) any notice asserting any failure by the Borrower or any of its Subsidiaries to be in compliance with applicable Requirements of Law which is reasonably likely to have a Material Adverse Effect or that threatens the taking of any action against the Borrower or such Subsidiary or sets forth circumstances that, if taken or adversely determined, would be reasonably likely to have a Material Adverse Effect, or (z) any notice of any actual or threatened suspension, limitation or revocation of, failure to renew, or imposition of any restraining order, escrow or impoundment of funds in connection with, any license, permit, accreditation or authorization of the Borrower or any of its Subsidiaries, where any such action would be reasonably likely to have a Material Adverse Effect;

(iv) the occurrence of any ERISA Event, together with (x) a written statement of a Responsible Officer of the Borrower specifying the details of such ERISA Event and the action that the Borrower has taken and proposes to take with respect thereto, (y) a copy of any notice with respect to such ERISA Event that may be required to be filed with the PBGC and (z) a copy of any notice delivered by the PBGC to the Borrower or such ERISA Affiliate with respect to such ERISA Event;

(v) the occurrence of any material default under, or any proposed or threatened termination or cancellation of, any Material Contract or other material contract or agreement to which the Borrower or any of its Subsidiaries is a party, the termination or cancellation of which would be reasonably likely to have a Material Adverse Effect;

(vi) the occurrence of any of the following: (x) the assertion of any Environmental Claim against or affecting the Borrower, any of its Subsidiaries or any of their respective real property, leased or owned; (y) the receipt by the Borrower or any of its Subsidiaries of notice of any alleged violation of or noncompliance with any Environmental Laws; or (z) the taking of any remedial action by the Borrower, any of its Subsidiaries or any other Person in response to the actual or alleged generation, storage, release, disposal or discharge of any Hazardous Substances on, to, upon or from any real property leased or owned by the Borrower or any of its Subsidiaries; but in each case under clauses (x), (y) and (z) above, only to the extent the same would be reasonably likely to have a Material Adverse Effect; and

(vii) any other matter or event that has, or would be reasonably likely to have, a Material Adverse Effect, together with a written statement of a Responsible Officer of the Borrower setting forth the nature and period of existence thereof and the action that the Borrower has taken and proposes to take with respect thereto; and

(f) As promptly as reasonably possible, such other information about the business, condition (financial or otherwise), operations or properties of the Borrower or any of its

Subsidiaries (including any Plan and any information required to be filed under ERISA) as the Agent or any Lender may from time to time reasonably request. Information required to be delivered pursuant to **Sections 6.1(a), 6.1(b) and 6.2(d)** shall be deemed to have been delivered on the date that the Borrower copies each Lender on its corresponding EDGAR filing; provided that the Borrower shall deliver paper copies of the information referred to in **Sections 6.1(a), 6.1(b) and 6.2(d)** to any Lender which requests such delivery.

6.3 Existence; Franchises; Maintenance of Properties.

The Borrower will, and will cause each of its Subsidiaries to, (i) maintain and preserve in full force and effect its legal existence, except as expressly permitted otherwise by **Section 8.1**, (ii) obtain, maintain and preserve in full force and effect all other rights, franchises, licenses, permits, certifications, approvals and authorizations required by Governmental Authorities and necessary to the ownership, occupation or use of its properties or the conduct of its business, except to the extent the failure to do so would not be reasonably likely to have a Material Adverse Effect, and (iii) keep all material properties in good working order and condition (normal wear and tear excepted) and from time to time make all necessary repairs to and renewals and replacements of such properties, except to the extent that any of such properties are obsolete or are being replaced.

6.4 Compliance with Laws.

The Borrower will, and will cause each of its Subsidiaries to, comply in all respects with all Requirements of Law applicable in respect of the conduct of its business and the ownership and operation of its properties, except to the extent the failure so to comply would not be reasonably likely to have a Material Adverse Effect.

6.5 Payment of Obligations.

The Borrower will, and will cause each of its Subsidiaries to, (i) pay all liabilities and obligations as and when due (subject to any applicable subordination provisions), except to the extent failure to do so would not be reasonably likely to have a Material Adverse Effect, and (ii) pay and discharge all taxes, assessments and governmental charges or levies imposed upon it, upon its income or profits or upon any of its properties, prior to the date on which such payment is delinquent and penalties would attach thereto, and all lawful claims that, if unpaid, might become a material Lien upon any of the properties of the Borrower or any of its Subsidiaries; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to pay any such tax, assessment, charge, levy or claim that is being contested in good faith and by proper proceedings and as to which the Borrower or such Subsidiary is maintaining adequate reserves with respect thereto in accordance with GAAP.

6.6 Insurance.

The Borrower will, and will cause each of its Subsidiaries to, maintain with financially sound and reputable insurance companies insurance with respect to its assets, properties and business, against such hazards and liabilities, of such types and in such amounts, as is customarily maintained by companies in the same or similar businesses similarly situated.

6.7 Maintenance of Books and Records: Inspection.

The Borrower will, and will cause each of its Subsidiaries to, (i) maintain adequate books, accounts and records, in which full, true and correct entries shall be made of all financial transactions in relation to its business and properties, and prepare all financial statements required under this Agreement, in each case in accordance with GAAP and in compliance with the requirements of any Governmental Authority having jurisdiction over it, and (ii) permit employees or agents of the Agent or any Lender to visit and inspect its properties and examine or audit its books, records, working papers and accounts and make copies and memoranda of them, and to discuss its affairs, finances and accounts with its officers and employees and, upon notice to the Borrower, the independent public accountants of the Borrower and its Subsidiaries (and by this provision the Borrower authorizes such accountants to discuss the finances and affairs of the Borrower and its Subsidiaries), all at such times and from time to time, upon reasonable notice and during business hours, as may be reasonably requested.

6.8 Permitted Acquisitions.

(a) Subject to the provisions of subsection (b) below and the requirements contained in the definition of Permitted Acquisition, and subject to the other terms and conditions of this Agreement, the Borrower may from time to time on or after the Closing Date effect Permitted Acquisitions, provided that, with respect to each Permitted Acquisition:

(i) no Default or Event of Default shall have occurred and be continuing at the time of the consummation of such Permitted Acquisition or would exist immediately after giving effect thereto; and

(ii) the Acquisition Amount with respect thereto (regardless of the form of consideration), together with the aggregate of the Acquisition Amounts (regardless of the form of consideration) for all other Permitted Acquisitions, shall not exceed \$35,000,000.

(b) Not less than ten (10) Business Days prior to the consummation of any Permitted Acquisition with respect to which the Acquisition Amount exceeds \$10,000,000, the Borrower shall have delivered to the Agent and each Lender the following:

(i) a reasonably detailed description of the material terms of such Permitted Acquisition (including, without limitation, the purchase price and method and structure of payment) and of each Person or business that is the subject of such Permitted Acquisition (each, a "Target"); and

(ii) a certificate, in form and substance reasonably satisfactory to the Agent, executed by a Financial Officer of the Borrower setting forth the Acquisition Amount and further to the effect that, to the best of such individual's knowledge, (x) the consummation of such Permitted Acquisition will not result in a violation of any provision of this Section, and after giving effect to such Permitted Acquisition and any Borrowings made in connection therewith, the Borrower will be in compliance with the financial covenants contained in **Sections 7.1** through **7.3**, such compliance determined with regard to calculations made on a pro forma basis in accordance with GAAP as if each Target had been consolidated with the Borrower for those periods applicable to such

covenants (such calculations to be attached to the certificate), (y) the Borrower believes in good faith that it will continue to comply with such financial covenants for a period of one year following the date of the consummation of such Permitted Acquisition, and (z) after giving effect to such Permitted Acquisition and any Borrowings in connection therewith, the Borrower believes in good faith that it will have sufficient availability under the Commitments to meet its ongoing working capital requirements.

(c) The consummation of each Permitted Acquisition shall be deemed to be a representation and warranty by the Borrower that (except as shall have been approved in writing by the Required Lenders) all conditions thereto set forth in this Section and in the description furnished under clause (i) of subsection (b) above have been satisfied, that the same is permitted in accordance with the terms of this Agreement, and that the matters certified to by the Financial Officer of the Borrower in the certificate referred to in clause (ii) of subsection (b) above are, to the best of such individual's knowledge, true and correct in all material respects as of the date such certificate is given, which representation and warranty shall be deemed to be a representation and warranty as of the date thereof for all purposes hereunder, including, without limitation, for purposes of **Sections 4.2** and **9.1**.

6.9 Creation or Acquisition of Subsidiaries.

Subject to the provisions of **Section 8.5**, the Borrower may from time to time create or acquire new Wholly Owned Subsidiaries in connection with Permitted Acquisitions or otherwise, and the Wholly Owned Subsidiaries of the Borrower may create or acquire new Wholly Owned Subsidiaries, provided that concurrently with (and in any event within ten (10) Business Days thereafter) the creation or direct or indirect acquisition by the Borrower thereof, each such new Subsidiary will execute and deliver to the Agent a joinder to the Subsidiary Guaranty, pursuant to which such new Subsidiary shall become a party thereto and shall guarantee the payment in full of the Obligations of the Borrower under this Agreement and the other Credit Documents.

6.10 Further Assurances.

The Borrower will, and will cause each of its Subsidiaries to, make, execute, endorse, acknowledge and deliver any amendments, modifications or supplements hereto and restatements hereof and any other agreements, instruments or documents, and take any and all such other actions, as may from time to time be reasonably requested by the Agent or the Required Lenders to effect, confirm or further assure or protect and preserve the interests, rights and remedies of the Agent and the Lenders under this Agreement and the other Credit Documents.

6.11 Most Favored Lender.

If the Borrower or any Subsidiary shall agree to different or additional covenants, representations or defaults (as compared to the covenants, representations, Defaults and Events of Default set forth in **Articles V** through **IX** of this Agreement and in the Subsidiary Guaranty) in connection with any Funded Debt in a principal amount exceeding \$1,000,000 and incurred after the Closing Date or if the Borrower or any Subsidiary shall agree to different or additional covenants, representations or defaults with respect to Funded Debt in a principal amount

exceeding \$1,000,000 and outstanding on the Closing Date (as compared to the corresponding covenants, representations and defaults set forth in such Funded Debt on the Closing Date), then in any such case the Borrower shall give the Lenders prompt written notice of such different or additional covenants, representations or defaults (enclosing a copy of the agreement or instrument containing such different or additional covenants, representations or defaults), and for a period of thirty (30) days after receiving such written notice the Required Lenders shall have the right (but not the obligation) to have any or all of such different or additional covenants, representations or defaults incorporated by reference into this Agreement or the Subsidiary Guaranty, as applicable (regardless of whether such different or additional covenants, representations or defaults exist with respect to Indebtedness outstanding as of the Closing Date), by written notice to the Borrower specifying the particular covenants, representations and/or defaults to be incorporated by reference into this Agreement or the Subsidiary Guaranty, as applicable.

ARTICLE VII

FINANCIAL COVENANTS

The Borrower covenants and agrees that, until the termination of the Commitments, the termination or expiration of all Letters of Credit and the payment in full of all principal and interest with respect to the Loans and all Reimbursement Obligations together with all other amounts then due and owing hereunder:

7.1 Adjusted Debt to Capital Ratio.

The Borrower will not permit the Adjusted Debt to Capital Ratio as of the last day of any fiscal quarter to be greater than 0.60 to 1.0.

7.2 Fixed Charge Coverage Ratio.

The Borrower will not permit the Fixed Charge Coverage Ratio as of the last day of any fiscal quarter, beginning with the fiscal quarter ending June 30, 2003, to be less than 1.50 to 1.0.

7.3 Consolidated Tangible Net Worth.

The Borrower will not permit Consolidated Tangible Net Worth as of the last day of any fiscal quarter, beginning with the fiscal quarter ending June 30, 2003, to be less than the sum of \$197,913,000, plus 50% of the aggregate of Consolidated Net Income for each fiscal quarter ending on or after June 30, 2003 (provided that Consolidated Net Income for any such fiscal quarter shall be taken into account for purposes of this calculation only if positive).

ARTICLE VIII

NEGATIVE COVENANTS

The Borrower covenants and agrees that, until the termination of the Commitments, the termination or expiration of all Letters of Credit and the payment in full of all principal and interest with respect to the Loans and all Reimbursement Obligations together with all other amounts then due and owing hereunder:

8.1 Merger; Consolidation.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, liquidate, wind up or dissolve, or enter into any consolidation, merger or other combination, or agree to do any of the foregoing; provided, however, that:

(i) the Borrower may merge or consolidate with another Person so long as (x) the Borrower is the surviving entity, (y) unless such other Person is a Wholly Owned Subsidiary immediately prior to giving effect thereto, such merger or consolidation shall constitute a Permitted Acquisition and the applicable conditions and requirements of **Sections 6.8** and **6.9** shall be satisfied, and (z) immediately after giving effect thereto, no Default or Event of Default would exist;

(ii) any Subsidiary may merge or consolidate with another Person so long as (x) the surviving entity is the Borrower or a Subsidiary Guarantor, (y) unless such other Person is a Wholly Owned Subsidiary immediately prior to giving effect thereto, such merger or consolidation shall constitute a Permitted Acquisition and the applicable conditions and requirements of **Sections 6.8** and **6.9** shall be satisfied, and (z) immediately after giving effect thereto, no Default or Event of Default would exist; and

(iii) any Subsidiary may liquidate, wind up or dissolve so long as (x) such Subsidiary transfers all of its assets to the Borrower or a Subsidiary Guarantor prior to such liquidation, winding up or dissolution and (y) immediately after giving effect thereto, no Default or Event of Default would exist.

8.2 Indebtedness.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness other than:

(i) Indebtedness incurred under this Agreement, the Notes and the Subsidiary Guaranty;

(ii) Indebtedness existing on the Closing Date and described in **Schedule 8.2**, and any renewals, refinancings or replacements thereof as long as the principal amount of such renewed, refinanced or replaced Indebtedness shall not exceed the principal amount of such Indebtedness being renewed, refinanced or replaced and such Indebtedness to be

incurred shall not mature prior to the stated maturity of such Indebtedness being renewed, refinanced or replaced;

(iii) accrued expenses (including salaries, accrued vacation and other compensation), current trade or other accounts payable and other current liabilities arising in the ordinary course of business and not incurred through the borrowing of money, provided that the same shall be paid when due except to the extent being contested in good faith and by appropriate proceedings;

(iv) purchase money Indebtedness of the Borrower and its Subsidiaries incurred solely to finance the payment of all or part of the purchase price of any equipment, real property or other fixed assets acquired in the ordinary course of business, including Indebtedness in respect of capital lease obligations, and any renewals, refinancings or replacements thereof (subject to the limitations on the principal amount thereof set forth in this clause (iv)), which Indebtedness shall not exceed \$10,000,000 in aggregate principal amount outstanding at any time;

(v) Indebtedness incurred as a result of a Lender failing to make any Loan pursuant to **Section 2.3(b)** in an amount up to the amount of such Loan not made as long as the conditions to making the Loan in **Section 4.2** are satisfied immediately before and after such Loan should have been made;

(vi) Indebtedness constituting one or more undrawn letters of credit issued on behalf of the Borrower, and in each case, (A) if such letter of credit could not be issued under **Section 3.1** because its expiry date extends beyond the seventh day prior to the Maturity Date and (B) if such letter of credit, together with all other letters of credit permitted by this clause (vi), (i) when added to the aggregate Letter of Credit Exposure of the Lenders at such time, would not exceed \$30,000,000 and (ii) when added to the sum of (x) the aggregate principal amount of Revolving Loans outstanding at such time, (y) the aggregate Letter of Credit Exposure of all Lenders at such time and (z) the aggregate principal amount of Swingline Loans outstanding at such time, would not exceed the aggregate Commitments at such time;

(vii) loans and advances by the Borrower or any Subsidiary Guarantors to any other Subsidiary Guarantor or by any Subsidiary Guarantor to the Borrower, provided that any such loan or advance is subordinated in right and time of payment to the Obligations to the extent a Default or Event of Default exists;

(viii) Indebtedness in respect of performance bonds and surety bonds entered into by the Borrower or any Subsidiary in the ordinary course of business;

(ix) Indebtedness incurred or assumed by the Borrower or any Subsidiary as a result of any Permitted Acquisition (A) that is unsecured and (B) that was not incurred in anticipation of any such Permitted Acquisition; and any renewals, refinancings or replacements thereof as long as the principal amount of such renewed, refinanced or replaced Indebtedness shall not exceed the principal amount of such Indebtedness being

renewed, refinanced or replaced and such Indebtedness to be incurred shall not mature prior to the stated maturity of such Indebtedness being renewed, refinanced or replaced;

(x) other unsecured Indebtedness not exceeding \$10,000,000 in aggregate principal amount outstanding at any time; and

(xi) Indebtedness incurred by any of the Borrower's Subsidiaries in connection with guarantees of the Senior Notes (referred to on **Schedule 8.2**) as permitted by **Section 8.2(ii)**.

8.3 Liens.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, directly or indirectly, make, create, incur, assume or suffer to exist, any Lien upon or with respect to any part of its property or assets, whether now owned or hereafter acquired, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the Uniform Commercial Code of any state or under any similar recording or notice statute, or agree to do any of the foregoing, other than the following (collectively, "Permitted Liens"):

(i) Liens in existence on the Closing Date and set forth on **Schedule 8.3**;

(ii) Liens imposed by law, such as Liens of carriers, warehousemen, mechanics, materialmen and landlords, and other similar Liens incurred in the ordinary course of business for sums not constituting borrowed money that are not overdue for a period of more than thirty (30) days or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP (if so required);

(iii) Liens (other than (i) any Lien imposed by ERISA, the creation or incurrence of which would result in an Event of Default under **Section 9.1(j)** and (ii) any Lien, the creation or incurrence of which would result in an Event of Default under **Section 9.1(m)**) incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure the performance of letters of credit, bids, tenders, statutory obligations, surety and appeal bonds, leases, government contracts and other similar obligations (other than obligations for borrowed money) entered into in the ordinary course of business;

(iv) Liens for taxes, assessments or other governmental charges or statutory obligations that are not delinquent or remain payable without any penalty or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP (if so required);

(v) Liens securing the purchase money Indebtedness permitted under clause (iv) of **Section 8.2**, provided that any such Lien (a) shall attach to such property concurrently with or within ten (10) days after the acquisition thereof (or sixty (60) days after the completion thereof in the case of construction financing) by the Borrower or

such Subsidiary, (b) shall not exceed the lesser of (y) the fair market value of such property or (z) the cost thereof to the Borrower or such Subsidiary and (c) shall not encumber any other property of the Borrower or any of its Subsidiaries;

(vi) any attachment or judgment Lien not constituting an Event of Default under **Section 9.1(h)** and that is being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP (if so required);

(vii) Liens arising from the filing, for notice purposes only, of financing statements in respect of true leases;

(viii) with respect to any real property occupied by the Borrower or any of its Subsidiaries, all easements, rights of way, licenses and similar encumbrances on title that do not materially impair the use of such property for its intended purposes;

(ix) Liens arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by any Lien permitted by any of the foregoing clauses of this Section, provided that such Indebtedness is not increased and is not secured by any additional assets;

(x) Liens arising from the conduct of business or ownership of assets of the Borrower or any of its Subsidiaries that do not secure Indebtedness and do not materially detract from the value of any such assets; and

(xi) Liens not otherwise permitted by the foregoing clauses of this Section securing obligations in an aggregate principal or face amount at any date not to exceed \$10,000,000.

8.4 Disposition of Assets.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) all or any portion of its assets, business or properties (including, without limitation, any Capital Stock of any Subsidiary), or enter into any arrangement with any Person providing for the lease by the Borrower or any Subsidiary as lessee of any asset that has been sold or transferred by the Borrower or such Subsidiary to such Person, or agree to do any of the foregoing, except (i) in each case mentioned above, in the ordinary course of business of the Borrower and its Subsidiaries and (ii) other dispositions in an aggregate amount, as valued at the time each such disposition is made, not exceeding \$5,000,000 for all such dispositions from and after the Closing Date (it being understood that the Lenders will release a Subsidiary Guarantor from its Subsidiary Guaranty if such Subsidiary is sold in a disposition permitted by this **Section 8.4**).

8.5 Investments.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, directly or indirectly, purchase, own, invest in or otherwise acquire any Capital Stock, evidence of indebtedness or other obligation or security or any interest whatsoever in any other Person, or

make or permit to exist any loans, advances or extensions of credit to, or any investment in cash or by delivery of property in, any other Person, or purchase or otherwise acquire (whether in one or a series of related transactions) any portion of the assets, business or properties of another Person (including pursuant to an Acquisition), or create or acquire any Subsidiary, or become a partner or joint venturer in any partnership or joint venture (collectively, "Investments"), or make a commitment or otherwise agree to do any of the foregoing, other than:

(i) Cash Equivalents;

(ii) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or licenses or leases of intellectual property and other assets, in each case in the ordinary course of business;

(iii) Investments consisting of loans and advances to employees for reasonable travel, relocation and business expenses in the ordinary course of business, extensions of trade credit in the ordinary course of business, and prepaid expenses incurred in the ordinary course of business;

(iv) Investments existing on the Closing Date and described in **Schedule 8.5A**;

(v) Investments consisting of the making of loans, advances, capital contributions or the purchase of Capital Stock (a) by the Borrower or any Subsidiary in any other Wholly Owned Subsidiary that is (or immediately after giving effect to such Investment will be) a Subsidiary Guarantor, provided that the Borrower complies with the provisions of **Section 6.9**, and (b) by any Subsidiary in the Borrower;

(vi) Permitted Acquisitions;

(vii) Investments made pursuant to the Borrower's investment policy, as set forth on **Schedule 8.5B**; and

(viii) other Investments in an aggregate amount, as valued at the time each such Investment is made, not exceeding \$5,000,000 for all such Investments from and after the Closing Date.

8.6 Restricted Payments.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, directly or indirectly, declare or make any dividend payment, or make any other distribution of cash, property or assets, in respect of any of its Capital Stock or any warrants, rights or options to acquire its Capital Stock, or purchase, redeem, retire or otherwise acquire for value any shares of its Capital Stock or any warrants, rights or options to acquire its Capital Stock (collectively, "Restricted Payments"), or set aside funds for any of the foregoing, unless immediately after giving effect to such action:

(a) No Default or Event of Default shall then exist;

(b) after giving effect to such Restricted Payment no Default or Event of Default would then exist; and

(c) such Restricted Payment has been duly authorized by all necessary corporate action and is permitted by applicable Requirements of Law.

Notwithstanding the foregoing, each Wholly Owned Subsidiary of the Borrower may declare and make dividend payments or other distributions to the Borrower or another Wholly Owned Subsidiary of the Borrower, to the extent not prohibited under applicable Requirements of Law.

8.7 Transactions with Affiliates.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, enter into any transaction (including, without limitation, any purchase, sale, lease or exchange of property or the rendering of any service) with any officer, director, stockholder or other Affiliate of the Borrower or any Subsidiary, except in the ordinary course of its business pursuant to the reasonable requirements of the Borrower or such Subsidiary and upon fair and reasonable terms that are no less favorable to it than would obtain in a comparable arm's length transaction with a Person other than an Affiliate of the Borrower or such Subsidiary; provided, however, that nothing contained in this Section shall prohibit:

(i) transactions described on **Schedule 8.7** or otherwise expressly permitted under this Agreement; and

(ii) the payment by the Borrower of reasonable and customary fees to members of its board of directors, including without limitation indemnification payments and payments for D&O insurance.

8.8 Lines of Business.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, engage in any business other than the businesses engaged in by it on the date hereof and businesses and activities reasonably related thereto.

8.9 Limitation on Certain Restrictions.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any restriction or encumbrance on (i) the ability of the Borrower and its Subsidiaries to perform and comply with their respective obligations under the Credit Documents or (ii) the ability of any Subsidiary of the Borrower to make any dividend payments or other distributions in respect of its Capital Stock, to repay Indebtedness owed to the Borrower or any other Subsidiary, to make loans or advances to the Borrower or any other Subsidiary, or to transfer any of its assets or properties to the Borrower or any other Subsidiary, in each case other than such restrictions or encumbrances existing under or by reason of the Credit Documents, applicable Requirements of Law or any agreement or instrument creating a Permitting Lien (but only to the extent such restriction or encumbrance applies to the assets subject to such Permitted Lien).

8.10 No Other Negative Pledges.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, directly or indirectly, enter into or suffer to exist any agreement or restriction that prohibits or conditions the creation, incurrence or assumption of any Lien upon or with respect to any part of its property or assets, whether now owned or hereafter acquired, or agree to do any of the foregoing, other than as set forth in (i) this Agreement (ii) any agreement or instrument creating a Permitted Lien (but only to the extent such agreement or restriction applies to the assets subject to such Permitted Lien), and (iii) operating leases of real or personal property entered into by the Borrower or any of its Subsidiaries as lessee in the ordinary course of business.

8.11 Fiscal Year.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, change the ending date of its fiscal year to a date other than December 31.

8.12 Accounting Changes.

The Borrower will not, and will not permit or cause any of its Subsidiaries to, make or permit any material change in its accounting policies or reporting practices, except as may be required by GAAP.

ARTICLE IX

EVENTS OF DEFAULT

9.1 Events of Default.

The occurrence of any one or more of the following events shall constitute an “Event of Default”:

(a) The Borrower shall fail to pay (i) any principal of any Loan or any Reimbursement Obligation when it is due or (ii) any interest on any Loan, any fee or any other Obligation within five (5) days after it is due;

(b) The Borrower shall fail to observe, perform or comply with any condition, covenant or agreement contained in any of **Sections 2.14, 6.1, 6.2, 6.3(i), 6.8, 6.9** or in **Article VII** or **Article VIII**;

(c) The Borrower or any of its Subsidiaries shall fail to observe, perform or comply with any condition, covenant or agreement contained in this Agreement or any of the other Credit Documents other than those enumerated in subsections (a) and (b) above, and such failure (i) is deemed by the terms of the relevant Credit Document to constitute an Event of Default or (ii) shall continue unremedied for any grace period specifically applicable thereto or, if no such grace period is applicable, for a period of thirty (30) days after the earlier of (y) the date on which a Responsible Officer of the Borrower acquires knowledge thereof and (z) the date on which written notice thereof is delivered by the Agent or any Lender to the Borrower;

(d) Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries in this Agreement, any of the other Credit Documents or in any certificate, instrument, report or other document furnished in connection herewith or therewith or in connection with the transactions contemplated hereby or thereby shall prove to have been false or misleading in any material respect as of the time made, deemed made or furnished;

(e) The Borrower or any of its Subsidiaries shall (i) fail to pay when due (whether by scheduled maturity, acceleration or otherwise and after giving effect to any applicable grace period) any principal of or interest on any Indebtedness (other than the Indebtedness incurred pursuant to this Agreement) having an aggregate principal amount of at least \$500,000 or (ii) fail to observe, perform or comply with any condition, covenant or agreement contained in any agreement or instrument evidencing or relating to any such Indebtedness, or any other event shall occur or condition exist in respect thereof so as to permit the holder to accelerate the maturity of such Indebtedness;

(f) The Borrower or any of its Subsidiaries shall (i) file a voluntary petition or commence a voluntary case seeking liquidation, winding-up, reorganization, dissolution, arrangement, readjustment of debts or any other relief under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any petition or case of the type described in subsection (g) below, (iii) apply for or consent to the appointment of or taking possession by a custodian, trustee, receiver or similar official for or of itself or all or a substantial part of its properties or assets, (iv) fail generally, or admit in writing its inability, to pay its debts generally as they become due, (v) make a general assignment for the benefit of creditors or (vi) take any corporate action to authorize or approve any of the foregoing;

(g) Any involuntary petition or case shall be filed or commenced against the Borrower or any of its Subsidiaries seeking liquidation, winding-up, reorganization, dissolution, arrangement, readjustment of debts, the appointment of a custodian, trustee, receiver or similar official for it or all or a substantial part of its properties or any other relief under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, and such petition or case shall continue undismissed and unstayed for a period of sixty (60) days; or an order, judgment or decree approving or ordering any of the foregoing shall be entered in any such proceeding;

(h) Any one or more money judgments, writs or warrants of attachment, executions or similar processes involving an aggregate amount (exclusive of amounts fully bonded or covered by insurance as to which the surety or insurer, as the case may be, has acknowledged its liability in writing) in excess of \$1,000,000 shall be entered or filed against the Borrower or any of its Subsidiaries or any of their respective properties and the same shall not be dismissed, stayed or discharged for a period of thirty (30) days or in any event later than five days prior to the date of any proposed sale thereunder;

(i) Any Subsidiary of the Borrower or any Person acting on behalf of any such Subsidiary shall deny or disaffirm such Subsidiary's obligations under the Subsidiary Guaranty;

(j) Any ERISA Event or any other event or condition shall occur or exist with respect to any Plan or Multiemployer Plan and, as a result thereof, together with all other ERISA Events and other events or conditions then existing, the Borrower and its ERISA Affiliates have incurred or would be reasonably likely to incur liability to any one or more Plans or Multiemployer Plans or to the PBGC (or to any combination thereof);

(k) Any one or more licenses, permits, accreditations or authorizations of the Borrower or any of its Subsidiaries shall be suspended, limited or terminated or shall not be renewed, or any other action shall be taken, by any Governmental Authority in response to any alleged failure by the Borrower or any of its Subsidiaries to be in compliance with applicable Requirements of Law, and such action, individually or in the aggregate, has or would be reasonably likely to have a Material Adverse Effect;

(l) Any one or more Environmental Claims shall have been asserted against the Borrower or any of its Subsidiaries (or a reasonable basis shall exist therefor); the Borrower and its Subsidiaries have incurred or would be reasonably likely to incur liability as a result thereof; and such liability, individually or in the aggregate, has or would be reasonably likely to have a Material Adverse Effect;

(m) Any notice of lien, levy or assessment is filed of record to all or any of the Borrower's or any Subsidiary's assets by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, including, without limitation the PBGC respecting taxes and debts owing and delinquent, or if any taxes or debts owing at any time or times hereafter to any one of them becomes delinquent and a lien or encumbrance upon the Borrower's or any Subsidiary's property and the same is not dismissed, released, bonded or discharged within thirty (30) days after the same becomes a lien or encumbrance or, in the case of ad valorem taxes, prior to the last day when payment may be made without penalty;

(n) The Borrower ceases to be solvent, or the Borrower ceases to conduct its business substantially as now conducted or is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business affairs; or

(o) Any of the following shall occur: (i) any Person or group of Persons acting in concert as a partnership or other group shall, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, have become, after the date hereof, the "beneficial owner" (within the meaning of such term under Rule 13d-3 under the Exchange Act) of securities of the Borrower representing a greater percentage of the combined voting power of the then outstanding securities of the Borrower ordinarily (and apart from rights accruing under special circumstances) having the right to vote in the election of directors than the Control Group beneficially owns at such time; or (ii) the Board of Directors of the Borrower shall cease to consist of a majority of the individuals who constituted the Board of Directors as of the date hereof or who shall have become a member thereof subsequent to the date hereof after having been nominated, or otherwise approved in writing, by at least a majority of individuals who constituted the Board of Directors of the Borrower as of the date hereof (or their replacements approved as herein required).

9.2 Remedies: Termination of Commitments, Acceleration, etc.

Upon and at any time after the occurrence and during the continuance of any Event of Default, the Agent shall at the direction, or may with the consent, of the Required Lenders, take any or all of the following actions at the same or different times:

(a) Declare the Commitments, the Swingline Commitment and the Issuing Lender's obligation to issue Letters of Credit, to be terminated, whereupon the same shall terminate (provided that, upon the occurrence of an Event of Default pursuant to **Section 9.1(f)** or **Section 9.1(g)**, the Commitments, the Swingline Commitment and the Issuing Lender's obligation to issue Letters of Credit shall automatically be terminated);

(b) Declare all or any part of the outstanding principal amount of the Loans to be immediately due and payable, whereupon the principal amount so declared to be immediately due and payable, together with all interest accrued thereon and all other amounts payable under this Agreement, the Notes and the other Credit Documents, shall become immediately due and payable without presentment, demand, protest, notice of intent to accelerate or other notice or legal process of any kind, all of which are hereby knowingly and expressly waived by the Borrower (provided that, upon the occurrence of an Event of Default pursuant to **Section 9.1(f)** or **Section 9.1(g)**, all of the outstanding principal amount of the Loans and all other amounts described in this subsection (b) shall automatically become immediately due and payable without presentment, demand, protest, notice of intent to accelerate or other notice or legal process of any kind, all of which are hereby knowingly and expressly waived by the Borrower);

(c) Direct the Borrower to deposit (and the Borrower hereby agrees, forthwith upon receipt of notice of such direction from the Agent, to deposit) with the Agent from time to time such additional amount of cash as is equal to the aggregate Stated Amount of all Letters of Credit then outstanding (whether or not any beneficiary under any Letter of Credit shall have drawn or be entitled at such time to draw thereunder), such amount to be held by the Agent in the Cash Collateral Account as security for the Letter of Credit Exposure as described in **Section 3.8**; and

(d) Exercise all rights and remedies available to it under this Agreement, the other Credit Documents and applicable law.

9.3 Remedies: Set-Off.

In addition to all other rights and remedies available under the Credit Documents or applicable law or otherwise, upon and at any time after the occurrence and during the continuance of any Event of Default, each Lender may, and each is hereby authorized by the Borrower, at any such time and from time to time, to the fullest extent permitted by applicable law, without presentment, demand, protest or other notice of any kind, all of which are hereby knowingly and expressly waived by the Borrower, to set off and to apply any and all deposits (general or special, time or demand, provisional or final) and any other property at any time held (including at any branches or agencies, wherever located), and any other indebtedness at any time owing, by such Lender to or for the credit or the account of the Borrower against any or all of the Obligations to such Lender now or hereafter existing, whether or not such Obligations may be contingent or unmatured. Each Lender agrees promptly to notify the Borrower and the Agent

after any such set-off and application; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application.

ARTICLE X

THE AGENT

10.1 Appointment.

Each Lender hereby irrevocably appoints and authorizes Wachovia to act as Agent hereunder and under the other Credit Documents and to take such actions as agent on its behalf hereunder and under the other Credit Documents, and to exercise such powers and to perform such duties, as are specifically delegated to the Agent by the terms hereof or thereof, together with such other powers and duties as are reasonably incidental thereto. Without limiting the foregoing, each Lender authorizes the Agent to release a Subsidiary Guarantor from the Subsidiary Guaranty to the extent such release is required in connection with an event permitted by **Section 8.1 or 8.4**.

10.2 Nature of Duties.

The Agent shall have no duties or responsibilities other than those expressly set forth in this Agreement and the other Credit Documents. The Agent shall not have, by reason of this Agreement or any other Credit Document, a fiduciary relationship in respect of any Lender; and nothing in this Agreement or any other Credit Document, express or implied, is intended to or shall be so construed as to impose upon the Agent any obligations or liabilities in respect of this Agreement or any other Credit Document except as expressly set forth herein or therein. The Agent may execute any of its duties under this Agreement or any other Credit Document by or through agents or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact that it selects with reasonable care. The Agent shall be entitled to consult with legal counsel, independent public accountants and other experts selected by it with respect to all matters pertaining to this Agreement and the other Credit Documents and its duties hereunder and thereunder and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. The Lenders hereby acknowledge that the Agent shall not be under any duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or any other Credit Document unless it shall be requested in writing to do so by the Required Lenders (or, where a higher percentage of the Lenders is expressly required hereunder, such Lenders).

10.3 Exculpatory Provisions.

Neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (i) liable for any action taken or omitted to be taken by it or such Person under or in connection with the Credit Documents, except for its or such Person's own gross negligence or willful misconduct, (ii) responsible in any manner to any Lender for any recitals, statements, information, representations or warranties herein or in any other Credit Document or in any document, instrument, certificate, report or other writing delivered in connection herewith or therewith, for the execution, effectiveness, genuineness, validity, enforceability or sufficiency

of this Agreement or any other Credit Document, or for the financial condition of the Borrower, its Subsidiaries or any other Person, or (iii) required to ascertain or make any inquiry concerning the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Credit Document or the existence or possible existence of any Default or Event of Default, or to inspect the properties, books or records of the Borrower or any of its Subsidiaries.

10.4 Reliance by Agent .

The Agent shall be entitled to rely, and shall be fully protected in relying, upon any notice, statement, consent or other communication (including, without limitation, any thereof by telephone, telecopy, telex, telegram or cable) believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons. The Agent may deem and treat each Lender as the owner of its interest hereunder for all purposes hereof unless and until a written notice of the assignment, negotiation or transfer thereof shall have been given to the Agent in accordance with the provisions of this Agreement. The Agent shall be entitled to refrain from taking or omitting to take any action in connection with this Agreement or any other Credit Document (i) if such action or omission would, in the reasonable opinion of the Agent, violate any applicable law or any provision of this Agreement or any other Credit Document or (ii) unless and until it shall have received such advice or concurrence of the Required Lenders (or, where a higher percentage of the Lenders is expressly required hereunder, such Lenders) as it deems appropriate or it shall first have been indemnified to its satisfaction by the Lenders against any and all liability and expense (other than liability and expense arising from its own gross negligence or willful misconduct) that may be incurred by it by reason of taking, continuing to take or omitting to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Agent as a result of the Agent's acting or refraining from acting hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders (or, where a higher percentage of the Lenders is expressly required hereunder, such Lenders), and such instructions and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (including all subsequent Lenders).

10.5 Non-Reliance on Agent and Other Lenders.

Each Lender expressly acknowledges that neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representation or warranty to it and that no act by the Agent or any such Person hereinafter taken, including any review of the affairs of the Borrower and its Subsidiaries, shall be deemed to constitute any representation or warranty by the Agent to any Lender. Each Lender represents to the Agent that (i) it has, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, properties, financial and other condition and creditworthiness of the Borrower and its Subsidiaries and made its own decision to enter into this Agreement and extend credit to the Borrower hereunder, and (ii) it will, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action hereunder and under the other Credit Documents and to make such investigation as it deems necessary to inform itself as to the business, prospects, operations, properties, financial and other condition and creditworthiness of

the Borrower and its Subsidiaries. Except as expressly provided in this Agreement and the other Credit Documents, the Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information concerning the business, prospects, operations, properties, financial or other condition or creditworthiness of the Borrower, its Subsidiaries or any other Person that may at any time come into the possession of the Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

10.6 Notice of Default.

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Agent shall have received written notice from the Borrower or a Lender referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that the Agent receives such a notice, the Agent will give notice thereof to the Lenders as soon as reasonably practicable; provided, however, that if any such notice has also been furnished to the Lenders, the Agent shall have no obligation to notify the Lenders with respect thereto. The Agent shall (subject to **Sections 10.4** and **11.6**) take such action with respect to such Default or Event of Default as shall reasonably be directed by the Required Lenders; provided that, unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of the Required Lenders or all of the Lenders.

10.7 Indemnification.

To the extent the Agent is not reimbursed by or on behalf of the Borrower, and without limiting the obligation of the Borrower to do so, the Lenders agree (i) to indemnify the Agent and its officers, directors, employees, agents, attorneys-in-fact and Affiliates, ratably in proportion to their respective percentages as used in determining the Required Lenders as of the date of determination, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, attorneys’ fees and expenses) or disbursements of any kind or nature whatsoever that may at any time (including, without limitation, at any time following the repayment in full of the Loans and the termination of the Commitments) be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of this Agreement or any other Credit Document or any documents contemplated by or referred to herein or the transactions contemplated hereby or thereby or any action taken or omitted by the Agent under or in connection with any of the foregoing, and (ii) to reimburse the Agent upon demand, ratably in proportion to their respective percentages as used in determining the Required Lenders as of the date of determination, for any expenses incurred by the Agent in connection with the preparation, negotiation, execution, delivery, administration, amendment, modification, waiver or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any of the other Credit Documents (including, without limitation, reasonable attorneys’ fees and expenses and compensation of agents and employees paid for services rendered on behalf of the Lenders); provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions,

judgments, suits, costs, expenses or disbursements to the extent resulting from the gross negligence or willful misconduct of the party to be indemnified.

10.8 The Agent in its Individual Capacity.

With respect to its Commitment, the Loans made by it, the Letters of Credit issued or participated in by it and the Note or Notes issued to it, the Agent in its individual capacity and not as Agent shall have the same rights and powers under the Credit Documents as any other Lender and may exercise the same as though it were not performing the agency duties specified herein; and the terms “Lenders,” “Required Lenders,” “holders of Notes” and any similar terms shall, unless the context clearly otherwise indicates, include the Agent in its individual capacity. The Agent and its Affiliates may accept deposits from, lend money to, make investments in, and generally engage in any kind of banking, trust, financial advisory or other business with the Borrower, any of its Subsidiaries or any of their respective Affiliates as if the Agent were not performing the agency duties specified herein, and may accept fees and other consideration from any of them for services in connection with this Agreement and otherwise without having to account for the same to the Lenders.

10.9 Successor Agent.

The Agent may resign at any time by giving ten (10) days’ prior written notice to the Borrower and the Lenders. Upon any such notice of resignation, the Required Lenders will, with the prior written consent of the Borrower (which consent shall not be unreasonably withheld), appoint from among the Lenders a successor to the Agent (provided that the Borrower’s consent shall not be required in the event a Default or Event of Default shall have occurred and be continuing). If no successor to the Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within such ten-day period, then the retiring Agent may, on behalf of the Lenders and after consulting with the Lenders and the Borrower, appoint a successor Agent from among the Lenders. Upon the acceptance of any appointment as Agent by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents. After any retiring Agent’s resignation as Agent, the provisions of this Article shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent. If no successor to the Agent has accepted appointment as Agent by the thirtieth (30th) day following a retiring Agent’s notice of resignation, the retiring Agent’s resignation shall nevertheless thereupon become effective, and the Lenders shall thereafter perform all of the duties of the Agent hereunder and under the other Credit Documents until such time, if any, as the Required Lenders appoint a successor Agent as provided for hereinabove.

10.10 Issuing Lender and Swingline Lender.

The provisions of this Article (other than **Section 10.9**) shall apply to the Issuing Lender and the Swingline Lender mutatis mutandis to the same extent as such provisions apply to the Agent.

ARTICLE XI
MISCELLANEOUS

11.1 Fees and Expenses.

The Borrower agrees (i) whether or not the transactions contemplated by this Agreement shall be consummated, to pay upon demand all reasonable out-of-pocket costs and expenses of the Agent (including, without limitation, the reasonable fees and expenses of counsel to the Agent) in connection with (y) the Agent's due diligence investigation in connection with, and the preparation, negotiation, execution and delivery of, this Agreement and the other Credit Documents, and any amendment, modification or waiver hereof or thereof or consent with respect hereto or thereto and (z) the administration, monitoring and review of the Loans (including, without limitation, out-of-pocket expenses for travel, meals, long-distance telephone calls, wire transfers, facsimile transmissions and copying and with respect to the engagement of appraisers, consultants, auditors or similar Persons by the Agent at any time, whether before or after the Closing Date, to render opinions concerning the Borrower's financial condition), (ii) to pay upon demand all reasonable out-of-pocket costs and expenses of the Agent and each Lender (including, without limitation, reasonable attorneys' fees and expenses) in connection with (y) any refinancing or restructuring of the credit arrangement provided under this Agreement, whether in the nature of a "work-out," in any insolvency or bankruptcy proceeding or otherwise and whether or not consummated, and (z) the enforcement, attempted enforcement or preservation of any rights or remedies under this Agreement or any of the other Credit Documents, whether in any action, suit or proceeding (including any bankruptcy or insolvency proceeding) or otherwise, and (iii) to pay and hold the Agent and each Lender harmless from and against all liability for any intangibles, documentary, stamp or other similar taxes, fees and excises, if any, including any interest and penalties (other than any fees, commissions or expenses of finders or brokers engaged by the Agent or any Lender), that may be payable in connection with the transactions contemplated by this Agreement and the other Credit Documents.

11.2 Indemnification.

The Borrower agrees, whether or not the transactions contemplated by this Agreement shall be consummated, to indemnify and hold the Agent and each Lender and each of their respective directors, officers, employees, agents and Affiliates (each, an "Indemnified Person") harmless from and against any and all third-party claims, losses, damages, obligations, liabilities, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) of any kind or nature whatsoever, whether direct, indirect or consequential (collectively, "Indemnified Costs"), that may at any time be imposed on, incurred by or asserted against any such Indemnified Person as a result of, arising from or in any way relating to the preparation, execution, performance or enforcement of this Agreement or any of the other Credit Documents, any of the transactions contemplated herein or therein or any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Loans or Letters of Credit (including, without limitation, in connection with the actual or alleged generation, presence, discharge or release of any Hazardous Substances on, into or from, or the transportation of Hazardous Substances to or from, any real property at any time owned or leased

by the Borrower or any of its Subsidiaries, any other Environmental Claims or any violation of or liability under any Environmental Law), or any action, suit or proceeding (including any inquiry or investigation) by any Person, whether threatened or initiated, related to any of the foregoing, and in any case whether or not such Indemnified Person is a party to any such action, proceeding or suit or a subject of any such inquiry or investigation; provided, however, that no Indemnified Person shall have the right to be indemnified hereunder for any Indemnified Costs to the extent determined by a final and nonappealable judgment of a court of competent jurisdiction or pursuant to arbitration as set forth herein to have resulted from the gross negligence or willful misconduct of, or breach of applicable law by, such Indemnified Person. All of the foregoing Indemnified Costs of any Indemnified Person shall be paid or reimbursed by the Borrower, as and when incurred and upon demand.

11.3 Governing Law; Consent to Jurisdiction.

THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS HAVE BEEN EXECUTED, DELIVERED AND ACCEPTED IN, AND SHALL BE DEEMED TO HAVE BEEN MADE IN, NORTH CAROLINA AND SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA (WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF); PROVIDED THAT EACH LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OR RULES DESIGNATED IN SUCH LETTER OF CREDIT OR, IF NO SUCH LAWS OR RULES ARE DESIGNATED, THE INTERNATIONAL STANDBY PRACTICES OF THE INTERNATIONAL CHAMBER OF COMMERCE AS IN EFFECT FROM TIME TO TIME (THE “ISP”), AND, AS TO MATTERS NOT GOVERNED BY THE ISP, THE LAWS OF THE STATE OF NORTH CAROLINA (WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF). THE BORROWER HEREBY CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF ANY STATE COURT WITHIN MECKLENBURG COUNTY, NORTH CAROLINA OR ANY FEDERAL COURT LOCATED WITHIN THE WESTERN DISTRICT OF THE STATE OF NORTH CAROLINA FOR ANY PROCEEDING INSTITUTED HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS, OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS, OR ANY PROCEEDING TO WHICH THE AGENT OR ANY LENDER OR THE BORROWER IS A PARTY, INCLUDING ANY ACTIONS BASED UPON, ARISING OUT OF, OR IN CONNECTION WITH ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE AGENT OR ANY LENDER OR THE BORROWER. THE BORROWER IRREVOCABLY AGREES TO BE BOUND (SUBJECT TO ANY AVAILABLE RIGHT OF APPEAL) BY ANY JUDGMENT RENDERED OR RELIEF GRANTED THEREBY AND FURTHER WAIVES ANY OBJECTION THAT IT MAY HAVE BASED ON LACK OF JURISDICTION OR IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY SUCH PROCEEDING. THE BORROWER CONSENTS THAT ALL SERVICE OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO IT AT ITS ADDRESS SET FORTH HEREINBELOW, AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT

THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE UNITED STATES MAELS, PROPER POSTAGE PREPAID AND PROPERLY ADDRESSED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF THE AGENT OR ANY LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST THE BORROWER IN THE COURTS OF ANY OTHER JURISDICTION.

11.4 Arbitration; Preservation and Limitation of Remedies.

(a) Upon demand of any party hereto, whether made before or after institution of any judicial proceeding, any dispute, claim or controversy arising out of, connected with or relating to this Agreement or any other Credit Document (“Disputes”) between or among the Borrower, its Subsidiaries, the Agent and the Lenders, or any of them, shall be resolved by binding arbitration as provided herein. Institution of a judicial proceeding by a party does not waive the right of that party to demand arbitration hereunder. Disputes may include, without limitation, tort claims, counterclaims, claims brought as class actions, claims arising from documents executed in the future, disputes as to whether a matter is subject to arbitration, or claims arising out of or connected with the transactions contemplated by this Agreement and the other Credit Documents. Arbitration shall be conducted under and governed by the Commercial Financial Disputes Arbitration Rules (the “Arbitration Rules”) of the American Arbitration Association (the “AAA”), as in effect from time to time, and the Federal Arbitration Act, Title 9 of the U.S. Code, as amended. All arbitration hearings shall be conducted in the city in which the principal office of the Agent is located. A hearing shall begin within ninety (90) days of demand for arbitration and all hearings shall be concluded within 120 days of demand for arbitration. These time limitations may not be extended unless a party shows cause for extension and then for no more than a total of sixty (60) days. The expedited procedures set forth in Rule 51 et seq. of the Arbitration Rules shall be applicable to claims of less than \$1,000,000. All applicable statutes of limitation shall apply to any Dispute. A judgment upon the award may be entered in any court having jurisdiction. The panel from which all arbitrators are selected shall be comprised of licensed attorneys selected from the Commercial Financial Dispute Arbitration Panel of the AAA. The single arbitrator selected for expedited procedure shall be a retired judge from the highest court of general jurisdiction, state or federal, of the state where the hearing will be conducted. The parties do not waive applicable federal or state substantive law except as provided herein.

(b) Notwithstanding the preceding binding arbitration provisions, the parties hereto agree to preserve, without diminution, certain remedies that any party hereto may employ or exercise freely, either alone, in conjunction with or during a Dispute. Any party hereto shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) obtaining provisional or ancillary remedies, including injunctive relief, sequestration, garnishment, attachment, appointment of a receiver and filing an involuntary bankruptcy proceeding; and (ii) when applicable, a judgment by confession of judgment. Any claim or controversy with regard to any party’s entitlement to such remedies is a Dispute. Preservation of these remedies does not limit the power of an arbitrator to grant similar remedies that may be requested by a party in a Dispute. The parties hereto agree that no party shall have a remedy of punitive or exemplary damages against any other party in any Dispute, and each party hereby waives any right or claim to punitive or exemplary damages that

it has now or that may arise in the future in connection with any Dispute, whether such Dispute is resolved by arbitration or judicially. The parties acknowledge that by agreeing to binding arbitration they have irrevocably waived any right they may have to a jury trial with regard to a Dispute. The Borrower agrees to pay the reasonable fees and expenses of counsel to the Agent and the Lenders in connection with any Dispute subject to arbitration as provided herein.

11.5 Notices.

All notices and other communications provided for hereunder shall be in writing (including telegraphic, telex, facsimile transmission or cable communication) and mailed, telegraphed, telexed, telecopied, cabled or delivered to the party to be notified at the following addresses:

- (a) if to the Borrower, to Old Dominion Freight Line, Inc., 500 Old Dominion Way, Thomasville, NC 27360 Attention: J. Wes Frye, Telecopy No. (336) 822-5289, with a copy to, Attention: Joel McCarty, Esq., Telecopy No. (336) 822-5289;
- (b) if to the Agent, to Wachovia Bank, National Association, Charlotte Plaza Building, CP-08, 201 South College Street, Charlotte, North Carolina 28288-0680, Attention: Syndication Agency Services, Telecopy No. (704) 383-0284;
with a copy to Wachovia Securities, 301 South College Street, Charlotte, North Carolina 28288-0760, Attention: Andrew Payne, Telecopy No. (704) 383-7611;
- (c) If to the Issuing Lender, to Wachovia Bank, National Association, Charlotte Plaza Building, CP-8, 201 South College Street, Charlotte, North Carolina, 28288-0735, Attention: Syndication Agency Services, Telecopy _____.
- (d) If to the Swingline Lender, to Wachovia Bank, National Association, 201 South College Street, CP-9, NC1183, Charlotte, North Carolina 28288-1183, Attention: Dianne Taylor, Telecopy No. (704) 383-7999; and
- (e) if to any Lender, to it at the address set forth on its signature page hereto (or if to any Lender not a party hereto as of the date hereof, at the address set forth in its Assignment and Acceptance);

or in each case, to such other address as any party may designate for itself by like notice to all other parties hereto. All such notices and communications shall be deemed to have been given (i) if mailed as provided above by any method other than overnight delivery service, on the third Business Day after deposit in the mails, (ii) if mailed by overnight delivery service, telegraphed, telexed, telecopied or cabled, when delivered for overnight delivery, delivered to the telegraph company, confirmed by telex answerback, transmitted by telecopier or delivered to the cable company, respectively, or (iii) if delivered by hand, upon delivery; provided that notices and communications to the Agent shall not be effective until received by the Agent.

11.6 Amendments, Waivers, etc.

No amendment, modification, waiver or discharge or termination of, or consent to any departure by the Borrower from, any provision of this Agreement or any other Credit Document, shall be effective unless in a writing signed by the Required Lenders (or by the Agent at the direction or with the consent of the Required Lenders), and then the same shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, modification, waiver, discharge, termination or consent shall:

(a) unless agreed to by each Lender directly affected thereby, (i) reduce or forgive the principal amount of any Loan, reduce the rate of or forgive any interest thereon, or reduce or forgive any fees or other Obligations (other than fees payable to the Agent for its own account), or (ii) extend the Maturity Date or any other scheduled date for the payment of any principal of any Loan (including any scheduled date for the mandatory reduction or termination of any Commitments), any interest on any Loan (other than additional interest payable under **Section 2.8(b)**) at the election of the Required Lenders, as provided therein, any fees (other than fees payable to the Agent for its own account) or any other Obligations or extend the expiry date of any Letter of Credit beyond the seventh day prior to the Maturity Date;

(b) unless agreed to by all of the Lenders, (i) increase or extend any Commitment of any Lender (it being understood that a waiver of any Event of Default, if agreed to by the requisite Lenders hereunder, shall not constitute such an increase), (ii) change the percentage of the aggregate Commitments or of the aggregate unpaid principal amount of the Loans, or the number or percentage of Lenders, that shall be required for the Lenders or any of them to take or approve, or direct the Agent to take, any action hereunder (including as set forth in the definition of "Required Lenders"), (iii) except as may be otherwise specifically provided in this Agreement or in any other Credit Document, release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty, or (iv) change any provision of **Section 2.15** or this Section; and

(c) unless agreed to by the Issuing Lender, the Swingline Lender or the Agent in addition to the Lenders required as provided hereinabove to take such action, affect the respective rights or obligations of the Issuing Lender, the Swingline Lender or the Agent, as applicable, hereunder or under any of the other Credit Documents;

and provided further that the Fee Letter may be amended or modified, and any rights thereunder waived, in a writing signed by the parties thereto.

11.7 Assignments, Participations.

(a) Each Lender may assign to one or more other Eligible Assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment, the outstanding Loans made by it, the Note or Notes held by it and its participations in Letters of Credit); provided, however, that (i) any such assignment (other than an assignment to a Lender or an Affiliate of a Lender) shall not be made without the prior written consent of the Agent and, as long as no Default or Event of Default shall have occurred and be continuing, the Borrower (to be evidenced by its counterexecution of the relevant Assignment and Acceptance), which consent shall not be unreasonably withheld (provided that it shall be deemed reasonable if the Borrower withholds its consent because the assignee is reasonably likely to seek reimbursement under **Section 2.16** or

2.17), (ii) each such assignment shall be of a uniform, and not varying, percentage of all of the assigning Lender's rights and obligations under this Agreement, (iii) except in the case of an assignment to a Lender or an Affiliate of a Lender, no such assignment shall be in an aggregate principal amount (determined as of the date of the Assignment and Acceptance with respect to such assignment) less than (x) in the case of its Commitment (other than the Swingline Commitment), \$5,000,000, determined by combining the amount of the assigning Lender's outstanding Loans, Letter of Credit Exposure and Unutilized Commitment being assigned pursuant to such assignment (or, if less, the entire Commitment of the assigning Lender), or (y) in the case of Swingline Loans, the entire Swingline Commitment and the full amount of the outstanding Swingline Loans, and (iv) the lenders party to each such assignment will execute and deliver to the Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, together with any Note or Notes subject to such assignment, and the lenders party to such an assignment will pay a nonrefundable processing fee of \$3,500 to the Agent for its own account. Upon such execution, delivery, acceptance and recording of the Assignment and Acceptance, from and after the effective date specified therein, which effective date shall be at least five Business Days after the execution thereof (unless the Agent shall otherwise agree), (A) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of the assigning Lender hereunder with respect thereto and (B) the assigning Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than rights under the provisions of this Agreement and the other Credit Documents relating to indemnification or payment of fees, costs and expenses, to the extent such rights relate to the time prior to the effective date of such Assignment and Acceptance) and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of such assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto). The terms and provisions of each Assignment and Acceptance shall, upon the effectiveness thereof, be incorporated into and made a part of this Agreement, and the covenants, agreements and obligations of each Lender set forth therein shall be deemed made to and for the benefit of the Agent and the other parties hereto as if set forth at length herein.

(b) The Agent will maintain at its address for notices referred to herein a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitments of, and principal amount of the Loans owing to, each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and each Lender at any reasonable time and from time to time upon reasonable prior notice.

(c) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee and, if required, counterexecuted by the Borrower, together with the Note or Notes subject to such assignment and the processing fee referred to in subsection (a) above, the Agent will (i) accept such Assignment and Acceptance, (ii) on the effective date thereof, record the information contained therein in the Register and (iii) give notice thereof to the Borrower and the Lenders. Within five (5) Business Days after its receipt of

such notice and the applicable new Note or Notes, the Borrower, at its own expense, will execute and deliver to the Agent, in exchange for the surrendered Note or Notes, a new Note or Notes to the order of the Assignee (and, if the assigning Lender has retained any portion of its rights and obligations hereunder, to the order of the assigning Lender), prepared in accordance with the applicable provisions of **Section 2.4** as necessary to reflect, after giving effect to the assignment, the Commitments of the Assignee and (to the extent of any retained interests) the assigning Lender, dated the date of the replaced Note or Notes and otherwise in substantially the form of **Exhibits A-1** and **A-2**, as applicable. The Agent will return canceled Notes to the Borrower.

(d) Each Lender may, without the consent of the Borrower, the Agent or any other Lender, sell to one or more other Persons (each, a "Participant") participations in any portion comprising less than all of its rights and obligations under this Agreement (including, without limitation, a portion of its Commitment, the outstanding Loans made by it, the Note or Notes held by it and its participations in Letters of Credit); provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged and such Lender shall remain solely responsible for the performance of such obligations, (ii) no Lender shall sell any participation that, when taken together with all other participations, if any, sold by such Lender, provides such Lender with a Commitment that is less than \$5,000,000, determined by combining the amount of such Lender's outstanding Loans, Letters of Credit Exposure and Unutilized Commitment, (iii) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and no Lender shall permit any Participant to have any voting rights or any right to control the vote of such Lender with respect to any amendment, modification, waiver, consent or other action hereunder or under any other Credit Document (except as to actions that would (x) reduce or forgive the principal amount of any Loan, reduce the rate of or forgive any interest thereon, or reduce or forgive any fees or other Obligations, (y) extend the Maturity Date or any other date fixed for the payment of any principal of or interest on any Loan, any fees or any other Obligations, or (z) increase or extend any Commitment of any Participant), and (iv) no Participant shall have any rights under this Agreement or any of the other Credit Documents, each Participant's rights against the granting Lender in respect of any participation to be those set forth in the participation agreement, and all amounts payable by the Borrower hereunder shall be determined as if such Lender had not granted such participation. Notwithstanding the foregoing, each Participant shall have the rights of a Lender for purposes of **Sections 2.16(a), 2.16(b), 2.17, 2.18** and **9.3**, and shall be entitled to the benefits thereto, to the extent that the Lender granting such participation would be entitled to such benefits if the participation had not been made, provided that no Participant shall be entitled to receive any greater amount pursuant to any of such Sections than the Lender granting such participation would have been entitled to receive in respect of the amount of the participation made by such Lender to such Participant had such participation not been made.

(e) Nothing in this Agreement shall be construed to prohibit any Lender from pledging or assigning all or any portion of its rights and interest hereunder or under any Note to any Federal Reserve Bank as security for borrowings therefrom; provided, however, that no such pledge or assignment shall release a Lender from any of its obligations hereunder.

(f) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section, disclose to the

Assignee or Participant or proposed Assignee or Participant any information relating to the Borrower and its Subsidiaries furnished to it by or on behalf of any other party hereto, provided that such Assignee or Participant or proposed Assignee or Participant agrees in writing to keep such information confidential to the same extent required of the Lenders under **Section 11.13**.

11.8 No Waiver.

The rights and remedies of the Agent and the Lenders expressly set forth in this Agreement and the other Credit Documents are cumulative and in addition to, and not exclusive of, all other rights and remedies available at law, in equity or otherwise. No failure or delay on the part of the Agent or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude other or further exercise thereof or the exercise of any other right, power or privilege or be construed to be a waiver of any Default or Event of Default. No course of dealing between any of the Borrower and the Agent or the Lenders or their agents or employees shall be effective to amend, modify or discharge any provision of this Agreement or any other Credit Document or to constitute a waiver of any Default or Event of Default. No notice to or demand upon the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Agent or any Lender to exercise any right or remedy or take any other or further action in any circumstances without notice or demand.

11.9 Successors and Assigns.

This Agreement shall be binding upon, inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto, and all references herein to any party shall be deemed to include its successors and assigns; provided, however, that (i) the Borrower shall not sell, assign or transfer any of its rights, interests, duties or obligations under this Agreement without the prior written consent of all of the Lenders and (ii) any Assignees and Participants shall have such rights and obligations with respect to this Agreement and the other Credit Documents as are provided for under and pursuant to the provisions of **Section 11.7**.

11.10 Survival.

All representations, warranties and agreements made by or on behalf of the Borrower or any of its Subsidiaries in this Agreement and in the other Credit Documents shall survive the execution and delivery hereof or thereof, the making and repayment of the Loans and the issuance and repayment of the Letters of Credit. In addition, notwithstanding anything herein or under applicable law to the contrary, the provisions of this Agreement and the other Credit Documents relating to indemnification or payment of fees, costs and expenses, including, without limitation, the provisions of **Sections 2.16(a), 2.16(b), 2.17, 2.18, 10.7, 11.1 and 11.2**, shall survive the payment in full of all Loans and Letters of Credit, the termination of the Commitments and all Letters of Credit, and any termination of this Agreement or any of the other Credit Documents; provided that such survival shall remain subject to any notice requirements that may be provided in such sections.

11.11 Severability.

To the extent any provision of this Agreement is prohibited by or invalid under the applicable law of any jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity and only in such jurisdiction, without prohibiting or invalidating such provision in any other jurisdiction or the remaining provisions of this Agreement in any jurisdiction.

11.12 Construction.

The headings of the various articles, sections and subsections of this Agreement have been inserted for convenience only and shall not in any way affect the meaning or construction of any of the provisions hereof. Except as otherwise expressly provided herein and in the other Credit Documents, in the event of any inconsistency or conflict between any provision of this Agreement and any provision of any of the other Credit Documents, the provision of this Agreement shall control.

11.13 Confidentiality.

Each Lender agrees to keep confidential, pursuant to its customary procedures for handling confidential information of a similar nature and in accordance with safe and sound banking practices, all nonpublic information provided to it by or on behalf of the Borrower or any of its Subsidiaries in connection with this Agreement or any other Credit Document; provided, however, that any Lender may disclose such information (i) to its directors, employees and agents and to its auditors, counsel and other professional advisors, (ii) at the demand or request of any bank regulatory authority, court or other Governmental Authority having or asserting jurisdiction over such Lender, as may be required pursuant to subpoena or other legal process, or otherwise in order to comply with any applicable Requirement of Law, (iii) in connection with any proceeding to enforce its rights hereunder, under any other Credit Document or in any other litigation or proceeding in connection with the Credit Documents, (iv) to the Agent or any other Lender, (v) to the extent the same has become publicly available other than as a result of a breach of this Agreement and (vi) pursuant to and in accordance with the provisions of **Section 11.7(f)**. Notwithstanding anything herein to the contrary, “confidential information” and “nonpublic information” shall not include, and the Agent and each Lender may disclose to any and all persons, without limitation of any kind, any information with respect to the U.S. federal income tax treatment and U.S. federal income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Agent or such Lender relating to such tax treatment and tax structure.

11.14 Counterparts.

This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

11.15 Disclosure of Information.

The Borrower agrees and consents to the Agent’s disclosure of information relating to this transaction to Gold Sheets and other similar bank trade publications. Such information will consist of deal terms and other information customarily found in such publications.

11.16 Entire Agreement.

THIS AGREEMENT AND THE OTHER DOCUMENTS AND INSTRUMENTS EXECUTED AND DELIVERED IN CONNECTION HERewith (A) EMBODY THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PARTIES HERETO AND THERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF, (B) SUPERSEDE ANY AND ALL PRIOR AGREEMENTS AND UNDERSTANDINGS OF SUCH PERSONS, ORAL OR WRITTEN, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF, INCLUDING, WITHOUT LIMITATION, THE COMMITMENT LETTER FROM WACHOVIA TO THE BORROWER DATED MAY [22], 2003, BUT SPECIFICALLY EXCLUDING THE FEE LETTER, AND (C) MAY NOT BE AMENDED, SUPPLEMENTED, CONTRADICTED OR OTHERWISE MODIFIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

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

OLD DOMINION FREIGHT LINE, INC., as
Borrower

By: /s/ J. Wes Frye

Title: Senior Vice President, Finance, Chief Financial
Officer, Treasurer, and Assistant Secretary

(signatures continued)

S-1

**WACHOVIA BANK, NATIONAL
ASSOCIATION**, as Agent, Swingline Lender and
as a Lender

By: /s/ Andrew Payne

Title: Director

Instructions for wire transfers to the Agent:

Wachovia Bank, National Association
ABA Routing No. 053000219
Charlotte, North Carolina
Account Number: 5000000040955
Account Name: Old Dominion Freight Line, Inc.
Attention: Syndication Agency Services

Address for notices as a Lender:

Wachovia Bank, National Association
One Wachovia Center, 5th Floor
301 South College Street
Charlotte, North Carolina 28288-0760
Attention: Andrew Payne
Telephone: (704) 383-1106
Telecopy: (704) 383-7611

Lending Office:

Wachovia Bank, National Association
Charlotte Plaza Building, CP-08
201 South College Street
Charlotte, North Carolina 28288-0680
Attention: Syndication Agency Services
Telephone: (704) 383-3721
Telecopy: (704) 383-0288

Commitment:
\$30,000,000

Swingline Commitment:
\$10,000,000

Address for notices as Swingline Lender:

Wachovia Bank, National Association
201 South College Street, CP-9
NC1183
Charlotte, North Carolina 28288-1183
Attention: Dianne Taylor
Telephone: (704) 715-1876
Telecopy: (704) 383-7999

(signatures continued)

S-3

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

By: /s/ Victoria Eves Baber

Title: Senior Vice President

Address for notices:

Bank of America, NA
380 Knollwood Street, Suite 201
Winston Salem, North Carolina 27103
Attn: Victoria L. Eves-Baber
Telephone: (336) 721-4056
Telecopy: (336) 721-4099

Lending Office:

Bank of America, NA
380 Knollwood Street, Suite 201
Winston Salem, North Carolina 27103
Attn: Victoria L. Eves-Baber
Telephone: (336) 721-4056
Telecopy: (336) 721-4099

(signatures continued)

Commitment:
\$25,000,000

**BRANCH BANKING AND TRUST
COMPANY, as a Lender**

By: /s/ Preston W. Bergen

Title: Senior Vice President

Address for notices:

Branch Banking & Trust
201 West Market Street
Greensboro, North Carolina 27401
Attention: Preston Bergen
Telephone: (336) 433-4075
Telecopy: (336) 433-4099

Lending office:

Branch Banking & Trust
620 North Main Street
High Point, North Carolina 27262
Attention: Lorraine Everhart
Telephone: (336) 889-1136
Telecopy: (336) 889-1271

Commitment:
\$25,000,000

Schedule 8.5B
Borrower's Investment Policy

OLD DOMINION FREIGHT LINE, INC.
INVESTMENT POLICY

July 20, 1992

Purpose

The purpose of this Investment policy is to provide guidelines to the treasury function for investing excess cash generated by the Company. These guidelines combine attributes of liquidity, risk, and return. Priorities for the use of cash are:

- Purchase of operating assets.
- Pay down current debt where debt cost is higher than current yields on temporary investments including any prepayment penalty.
- Invest in short term, low risk financial instruments.

Liquidity

Old Dominion is in the business of transporting goods of general commodities within its service area. In providing this service, the Company feels it can achieve the highest return on its cash by investing in the replacement of or addition to operating assets. As such, excess cash investments should generally have staggered maturity dates not to exceed one year.

Excess cash can be invested for periods longer than one year if it can be clearly demonstrated by the treasury function that the invested cash will not be needed for operating cash requirements before the extended maturity horizon and the rate of return is materially greater than the short term rates without increased risk.

Investing opportunities that are not within the scope of this policy must have written approval of the Executive Committee.

Risk

Since the Company is in the business of transporting goods and not finance, the investing of excess cash, whether temporary or over one year, should be accomplished with minimum risk. Risk is defined as the probability of loss of principal. As such, by general definition, this excludes individual investments in stock and equity securities.

This definition also generally excludes investments in bonds — not because of risk of principal fluctuation (principal does not fluctuate in held until maturity) but because in order to hold the bond to maturity, the liquidity restrictions will likely be violated.

In order to provide stated liquidity, investments will be limited to money instruments and money funds that reflect:

- Bond funds containing at least 80% triple A rating by Moody's
- Money market instruments of financially stable banking and financial institutions.
- Diversity - Unless it can be demonstrated that a specific investment provides a superior yield without undue risk, investment should be allocated to different fund on a "thirds" basis with no more than \$3 million in one specific investment.

Return

Limits on liquidity and risk also limits the return that can be expected on the investment. However, it should be expected that the return should at least be equal to or higher than six month certificate of deposit yields as published daily in the Wall Street Journal.

**FORM OF
REVOLVING NOTE**

\$ _____

_____, 2003
Charlotte, North Carolina

FOR VALUE RECEIVED, OLD DOMINION FREIGHT LINE, INC., a Virginia corporation (the "Borrower"), hereby promises to pay to the order of

_____ (the "Lender"), at the offices of Wachovia Bank, National Association (the "Agent") located at One Wachovia Center, 301 South College Street, Charlotte, North Carolina (or at such other place or places as the Agent may designate), at the times and in the manner provided in the Credit Agreement, dated as of June 30, 2003 (as amended, modified or supplemented from time to time, the "Credit Agreement"), among the Borrower, the Lenders from time to time parties thereto, and Wachovia Bank, National Association, as Agent, the principal sum of

_____ **DOLLARS** (\$ _____), or such lesser amount as may constitute the unpaid principal amount of the Revolving Loans made by the Lender, under the terms and conditions of this promissory note (this "Revolving Note") and the Credit Agreement. The defined terms in the Credit Agreement are used herein with the same meaning. The Borrower also promises to pay interest on the aggregate unpaid principal amount of this Revolving Note at the rates applicable thereto from time to time as provided in the Credit Agreement.

This Revolving Note is one of a series of Revolving Notes referred to in the Credit Agreement and is issued to evidence the Revolving Loans made by the Lender pursuant to the Credit Agreement. All of the terms, conditions and covenants of the Credit Agreement are expressly made a part of this Revolving Note by reference in the same manner and with the same effect as if set forth herein at length, and any holder of this Revolving Note is entitled to the benefits of and remedies provided in the Credit Agreement and the other Credit Documents. Reference is made to the Credit Agreement for provisions relating to the interest rate, maturity, payment, prepayment and acceleration of this Revolving Note.

In the event of an acceleration of the maturity of this Revolving Note, this Revolving Note shall become immediately due and payable, without presentation, demand, protest or notice of any kind, all of which are hereby waived by the Borrower.

In the event this Revolving Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to the principal and interest, all costs of collection, including reasonable attorneys' fees.

This Revolving Note has been guaranteed by certain Subsidiaries of the Borrower pursuant to a Subsidiary Guaranty dated as of June 30, 2003.

This Revolving Note shall be governed by and construed in accordance with the internal laws and judicial decisions of the State of North Carolina. The Borrower hereby submits to the nonexclusive jurisdiction and venue of the federal and state courts located in Mecklenburg County, North Carolina, although neither the Borrower nor the Lender shall be limited to bringing an action in such courts.

IN WITNESS WHEREOF, the Borrower has caused this Revolving Note to be executed under seal by its duly authorized corporate officer as of the day and year first above written.

OLD DOMINION FREIGHT LINE, INC.

By: _____

Title: _____

EXHIBIT A-2

Borrower's Taxpayer Identification No. _____

**FORM OF
SWINGLINE NOTE**

\$10,000,000

_____, 2003
Charlotte, North Carolina

FOR VALUE RECEIVED, OLD DOMINION FREIGHT LINE, INC., a Virginia corporation (the "Borrower"), hereby promises to pay to the order of

WACHOVIA BANK, NATIONAL ASSOCIATION (the "Swingline Lender"), at the offices of Wachovia Bank, National Association (the "Agent") located at One Wachovia Center, 301 South College Street, Charlotte, North Carolina (or at such other place or places as the Agent may designate), at the times and in the manner provided in the Credit Agreement, dated as of June 30, 2003 (as amended, modified or supplemented from time to time, the "Credit Agreement"), among the Borrower, the Lenders from time to time parties thereto, and Wachovia Bank, National Association, as Agent, the principal sum of

TEN MILLION DOLLARS (\$10,000,000), or such lesser amount as may constitute the unpaid principal amount of the Swingline Loans made by the Swingline Lender, under the terms and conditions of this promissory note (this "Swingline Note") and the Credit Agreement. The defined terms in the Credit Agreement are used herein with the same meaning. The Borrower also promises to pay interest on the aggregate unpaid principal amount of this Swingline Note at the rates applicable thereto from time to time as provided in the Credit Agreement.

This Swingline Note is issued to evidence the Swingline Loans made by the Swingline Lender pursuant to the Credit Agreement. All of the terms, conditions and covenants of the Credit Agreement and the Sweep Agreement are expressly made a part of this Swingline Note by reference in the same manner and with the same effect as if set forth herein at length, and any holder of this Swingline Note is entitled to the benefits of and remedies provided in the Credit Agreement and the other Credit Documents. Reference is made to the Credit Agreement for provisions relating to the interest rate, maturity, payment, prepayment and acceleration of this Swingline Note.

In the event of an acceleration of the maturity of this Swingline Note, this Swingline Note shall become immediately due and payable, without presentation, demand, protest or notice of any kind, all of which are hereby waived by the Borrower.

In the event this Swingline Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to the principal and interest, all costs of collection, including reasonable attorneys' fees.

This Swingline Note has been guaranteed by certain Subsidiaries of the Borrower pursuant to a Subsidiary Guaranty dated as of June 30, 2003.

This Swingline Note shall be governed by and construed in accordance with the internal laws and judicial decisions of the State of North Carolina. The Borrower hereby submits to the nonexclusive jurisdiction and venue of the federal and state courts located in Mecklenburg County, North Carolina, although neither the Borrower nor the Swingline Lender shall be limited to bringing an action in such courts.

IN WITNESS WHEREOF, the Borrower has caused this Swingline Note to be executed under seal by its duly authorized corporate officer as of the day and year first above written.

OLD DOMINION FREIGHT LINE, INC.

By: _____

Title: _____

CERTIFICATION

I, Earl E. Congdon, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Old Dominion Freight Line Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 11, 2003

/s/ Earl E. Congdon

Chairman & Chief Executive Officer

CERTIFICATION

I, J. Wes Frye, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Old Dominion Freight Line Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 11, 2003

/s/ J. Wes Frye

Senior VP—Finance and Chief Financial
Officer

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

I, Earl E. Congdon, state and attest that:

- (1) I am the Chairman and Chief Executive Officer of Old Dominion Freight Line, Inc.
- (2) Accompanying this certification is the Quarterly Report on Form 10-Q for Old Dominion Freight Line, Inc., for the quarter ended June 30, 2003, a periodic report filed by the issuer with the Securities Exchange Commission pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), which contains financial statements.
- (3) I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:
 - The periodic report containing the financial statements fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act, and
 - The information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer for the periods presented.

/s/ Earl. E. Congdon

Name: Earl E. Congdon

Date: August 11, 2003

A signed copy of this written statement required by Section 906 has been provided to Old Dominion Freight Line, Inc. and will be retained by Old Dominion Freight Line, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

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

I, J. Wes Frye, state and attest that:

- (1) I am the Senior Vice-President—Finance and Chief Financial Officer of Old Dominion Freight Line, Inc.
- (2) Accompanying this certification is the Quarterly Report on Form 10-Q for Old Dominion Freight Line, Inc., for the quarter ended June 30, 2003, a periodic report filed by the issuer with the Securities Exchange Commission pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”), which contains financial statements.
- (3) I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:
 - The periodic report containing the financial statements fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act, and
 - The information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer for the periods presented.

/s/ J. Wes Frye

Name: J. Wes Frye

Date: August 11, 2003

A signed copy of this written statement required by Section 906 has been provided to Old Dominion Freight Line, Inc. and will be retained by Old Dominion Freight Line, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.