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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 1: Loans--Secured.

37TTT-1 California Legal Forms--Transaction Guide 1.syn

§ 1.syn Synopsis to Chapter 1: Loans--Secured.

Form T1-1 Documentation Checklist

Form T1-1 Documentation Checklist

Form T1-2: Loan Agreement

Form T1-2 Loan Agreement

Form T1-3 Security Agreement

Form T1-3 Security Agreement

Form T1-4 General Security Agreement

Form T1-4 General Security Agreement

Form T1-5 Secured Term Loan Agreement

Form T1-5 Secured Term Loan Agreement

Form T1-6 Purchase Money Security Agreement

Form T1-6 Purchase Money Security Agreement

Form T1-7 Pledge Agreement--Shares of Stock

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Form T1-10 General Nonpossessory Security Agreement and Note

Form T1-10 General Nonpossessory Security Agreement and Note

Form T1-11 Nonpossessory Security Interest in Business Equipment

Form T1-11 Nonpossessory Security Interest in Business Equipment

Form T1-12 Cash Collateral Deposit Letter

Form T1-12 Cash Collateral Deposit Letter

Form T1-13 Control Agreement

Form T1-13 Control Agreement

Form T1-14 Trade Style Letter

Form T1-14 Trade Style Letter

Form T1-15 Participation Agreement

Form T1-15 Participation Agreement



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*37TTT-1 California Legal Forms--Transaction Guide Form T1-1***Form T1-1 Documentation Checklist****Description:** This form provides a checklist of documentation needed for various secured financing transactions.**Form T1-1 Documentation Checklist**

_____ ("Lender")

with

_____ ("Borrower")

\$_____ Credit Facility

Financing Transaction Checklist

To be Prepared or Provided by: [LC=Lender's Counsel,
BC= Borrower's Counsel]

I. Financing Documentation**A. Loan Documentation**

LC	1.	[Revolving Credit] [Term Loan] [and Security] Agreement together with Exhibits and Schedules
LC	2.	\$_____ Term Loan Note
LC	3.	\$_____ Re-volving Note
LC	4.	Security Agreement

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LC	5.	Officer's Certificate re: Conditions Precedent
LC/Borrower	6.	Financial Condition Certificate with Pro Forma Balance Sheet and Cash Flow Projections
LC	7.	Accountant's Access Letter
LC	8.	Payment Direction Letter
Lender	9.	Borrowing Base Certificate
B.	10.	<i>Lockbox and Account Documentation</i> Lockbox Agreement
Counsel to Lender's Bank	11.	Control Agreements for Deposit or Securities Accounts
LC; Counsel to Bank or Broker	12.	<i>Intellectual Property Documentation</i> Intellectual Property Searches
LC	13.	Trademark Documentation a. Trademark Collateral Security Agreement b. Assignment c. Power of Attorney
LC	14.	Patent Documentation a. Patent Collateral Security Agreement b. Assignment of Security c. Power of Attorney
LC	15.	Copyright Mortgage
LC	16.	Tradestyle Letter
LC/Borrower	17.	Review of License Agreements [Insert List]
LC/Borrower	18.	Licenser Consent Letters [Insert List]
BC	19.	Releases of Prior Trademark Assignments
BC	20.	Releases of Prior Patent Assignments
BC	21.	Releases of Prior Copyright Mortgages
D.		<i>Ancillary Collateral Documentation</i>
LC/Borrower	22.	Pledge Documentation a. Pledge Agreement b. [Stock Powers] c. [Stock Certificates]
LC	23.	Collateral Assignment of Rights under Acquisition Agreement
E.		<i>Insurance Documentation</i>
BC	24.	Certificates of Insurance and Copies of Insurance Policies

LC/BC	25.	Loss Payable Endorsements (together with evidence of insurance agent's authority to execute same)
LC/Borrower	26.	Key Person Life Insurance a. Collateral Assignment [Insert List] b. Copy of Life Insurance Policy [Insert List]
BC	27.	Releases of Prior Assignments of Key Person Life Insurance [Insert List]
	F.	<i>Opinions of Counsel</i>
BC	28.	Opinion of Borrower's Counsel [Insert Name]
	29.	Opinion of Local Counsel or House Counsel [Insert Name]
	G.	<i>Third Party Documentation</i>
LC/BC	30.	Landlord Waivers [Insert List]
LC/BC	31.	Mortgagee Waivers [Insert List]
LC/BC	32.	Bailee Letters [Insert List]
	H.	<i>Subordination and Intercreditor Documentation</i>
LC	33.	Subordination Agreement
LC	34.	Intercreditor Agreement
	I.	<i>Guaranty Documentation</i>
LC	35.	Guaranty of _____ ("Guarantor")
LC	36.	Guarantor Security Agreement
LC	37.	Guarantor Pledge Agreement
	J.	<i>Miscellaneous</i>
LC	38.	ERISA Review
LC	39.	Environmental Review
Lender	40.	Appraisals
Lender	41.	\$ _____ Un- drawn Availability
	II.	<i>U.C.C., Tax Lien and Judgments [and Motor Vehicles]</i>
LC	42.	U.C.C., Tax Lien and Judgment Searches (See Schedule A)
LC	43.	UCC-1 Financing Statements (See Schedule B)

LC	44.	Tax Affidavits [if applicable]
LC	45.	UCC-1 Fixture Filings (See Schedule C)
BC	46.	UCC-3 Termination Statements (See Schedule D)
Borrower	47.	Motor Vehicle Certificates (See Schedule E)
III. Subordinated Debt Financing		
BC	48.	Subordinated Credit Agreement
BC	49.	Security Agreement
BC	50.	Subordinated Note
BC	51.	Other
IV. Acquisition Documentation		
BC	52.	Acquisition Agreement
BC	53.	Employment Agreements
BC	54.	Management Agreements
BC	55.	[Other]
V. Payoff Documentation		
BC or LC	56.	Payoff Letter with Indemnity
VI. Real Estate Documentation		
LC	57.	Mortgages/Deeds of Trust [Insert List]
LC	58.	Tax Affidavits [if applicable]
LC	59.	Leasehold Mortgages/Deeds of Trust - Review of Lease - Landlord Consent/Estoppel - Non-Disturbance from Fee Mortgagee
LC	60.	Collateral Assignment of Leases and Rents - Borrower's Interest as Tenant - Review of Lease - Landlord Consent/Estoppel - Non-Disturbance from Fee Mortgagee - Borrower's Interest as Landlord - Review of Lease - Subordination and Attornment Agreement from Borrower's Tenant
BC	61.	Title Commitments together with copies of recorded instruments affecting title, judgments, U.C.C. searches and municipal searches [Insert List]

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BC	62.	Current or updated surveys certified to Lender and title company together with a survey report <i>[Insert List]</i>
BC	63.	Flood Insurance (in an amount approved by Lender, naming Lender as loss payee) or evidence of inapplicability <i>[Insert List]</i>
BC	64.	Evidence of Zoning Compliance <i>[Insert List]</i>
BC	65.	Certificates of Occupancy <i>[Insert List]</i>
Borrower/LC	66.	Environmental Review <i>[Insert List]</i>
Lender	67.	Appraisals <i>[Insert List]</i>
BC	68.	Release of Prior Mortgages/Deeds of Trust/Fixture Filings
Borrower/LC	69.	Prior Mortgages/Deeds of Trust Documentation (if Prior Mortgages/Deeds of Trust are to remain on the Real Estate) a. Review of Documentation b. Subordination Agreement

VII. Corporation Authorization

BC	70.	Certified Copies of Certificates of Incorporation and all amendments thereto a. Borrower b. Guarantor
BC	71.	Certified Copy of By-Laws and all amendments thereto a. Borrower b. Guarantor
BC	72.	Good Standing Certificates and Authorizations to Business a. Borrower <i>[Insert List]</i> b. Guarantor <i>[Insert List]</i>
BC	73.	Secretary's Certificate of Borrower re: Resolutions approving the borrowing and authorizing designated officers to execute agreements with Certified Copy of By-Laws and signature specimens
BC	74.	Secretary's Certificate of Guarantor re: Resolutions approving the guarantee and authorizing designated officers to execute the guarantee with Certified Copy of By-Laws and signature specimens

U.C.C, Tax Lien and Judgment Searches

I. Borrower

Jurisdiction

II. Guarantor

Jurisdiction

Schedule B

UCC-1 Financing Statements--Filing Locations

I. Borrower

Jurisdiction

Filing Date

Filing No.

II. Guarantor

Jurisdiction

Filing Date

Filing No.

Schedule C

UCC-1 Fixture Filings--Filing Locations

I. Borrower

Jurisdiction

Filing Date

Filing No.

II. Guarantor

Jurisdiction

Filing Date

Filing No.

Schedule D

Termination Statements

Jurisdiction	Secured Party	Original File No.	Original File Date
—	—	—	—
—	—	—	—
—	—	—	—
—	—	—	—
—	—	—	—
—	—	—	—
—	—	—	—
—	—	—	—
—	—	—	—
—	—	—	—
—	—	—	—

Schedule E

Motor Vehicles

Description

Serial Number



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CHAPTER 1: Loans--Secured.

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Form T1-2: Loan Agreement

Description: This form is a sample loan agreement.

Form T1-2 Loan Agreement

REVOLVING CREDIT
AND
TERM LOAN AGREEMENT

by and between

[BORROWER]

and

[LENDER]

\$ _____

Dated as of _____, 20____

[Click here to view image.](#)

Exhibits

Exhibit A	Form of Note
Exhibit B	Form of Guarantee
Exhibit C	Form of Security Agreement

REVOLVING CREDIT AND TERM LOAN AGREEMENT, dated as of _____, 20____ (this "Agreement"), by and between _____ [BORROWER], a _____ [corporation, etc.] (the "Borrower") and _____ [LENDER] (the "Lender").

1. AMOUNT AND TERMS OF THE LOANS

1.01. Loans

(a) Revolving Credit Loans. Subject to the terms and conditions of this Agreement, the Lender agrees to make revolving credit loans (each a "Revolving Credit Loan" and, collectively, the "Revolving Credit Loans") to the Borrower from time to time during the Commitment Period in an aggregate principal amount at any one time outstanding not to exceed the Commitment Amount. During the Commitment Period, the Borrower may borrow, prepay in whole or in part in accordance with Section 1.05(a) and reborrow under the Revolving Credit Commitment, all in accordance with the terms and conditions hereof.

(b) Term Loan. On the Revolving Credit Termination Date, the aggregate outstanding principal balance of the Revolving Credit Loans shall be converted into a term loan (the "Term Loan" and, collectively with the Revolving Credit Loans, the "Loans"). From such date, the Borrower may (i) repay the Term Loan in accordance with Section 1.05(b), or (ii) prepay the Term Loan in accordance with Section 1.05(a).

(c) Types of Advances. Subject to the provisions of Sections 1.03 and 2.03, the Loans may consist of (i) ABR Advances, as defined in Section 8 below, (ii) LIBOR Advances or (iii) any combination thereof.

1.02. Note

(a) The Loans shall be evidenced by a promissory note of the Borrower, substantially in the form of Exhibit A, with appropriate insertions therein as to date and principal amount (as indorsed or modified from time to time, including all replacements thereof and substitutions therefor, the "Note"), payable to the order of the Lender and representing the obligation of the Borrower to pay (i) prior to the Revolving Credit Termination Date, the lesser of (x) the Commitment Amount or (y) the aggregate unpaid principal balance of all Revolving Credit Loans, and (ii) on and after the Revolving Credit Termination Date, the unpaid principal balance of the Term Loan, in each case with interest thereon as prescribed in Section 2.01.

(b) The Lender is hereby authorized to record (i) the date and amount of each Loan made by the Lender, (ii) its character as an ABR Advance, a LIBOR Advance, or combination thereof, (iii) the Interest Period and interest rate applicable to LIBOR Advances, and (iv) the date and amount of each conversion of, and each payment or prepayment of principal of, any Loans, on the schedule (and any continuations thereof) annexed to and constituting a part of each Note. No failure to so record or any error in so recording shall affect the obligation of the Borrower to repay the Loans, with interest thereon, as herein provided.

1.03. Procedure for Borrowing

(a) The Borrower may borrow Revolving Credit Loans on any Business Day during the Commitment Period, provided that the Borrower shall notify the Lender no later than 11:00 a.m., three Business Days prior to such date, in the case of LIBOR Advances and 11:00 a.m., on the same Business Day, in the case of ABR Advances, specifying (i) the aggregate principal amount of Revolving Credit Loans to be borrowed, (ii) the requested Borrowing Date, (iii) whether such borrowing is to consist of LIBOR Advances, ABR Advances, or a combination thereof, and (iv) if such borrowing is to consist of LIBOR Advances, the length of the initial Interest Period for such LIBOR Advances. Such notice shall be irrevocable and confirmed immediately by delivery to the Lender of a written borrowing request. Each LIBOR Advance shall be in a principal amount equal to \$100,000 or an integral multiple of \$100,000 in excess thereof. Each ABR Advance shall be in a principal amount equal to \$10,000 or an integral multiple thereof, or, if less, the difference between the aggregate outstanding principal amount of all Revolving Credit Loans and the Commitment Amount.

(b) Subject to the satisfaction of the terms and conditions of this Agreement, as determined by the Lender, the Lender shall disburse the proceeds of each Loan as the Borrower directs.

1.04. Termination or Reduction of Revolving Credit Commitment

The Borrower shall have the right, upon at least three Business Days' prior written notice to the Lender, at any time, to terminate the Revolving Credit Commitment or from time to time to permanently reduce the Revolving Credit Commitment, provided, however, that any such reduction shall be in the amount of \$500,000 or an integral multiple of \$100,000 in excess thereof. Simultaneously with each reduction of the Revolving Credit Commitment under this Section, the Borrower shall pay the Commitment Fee accrued on the amount by which the Revolving Credit Commitment has been reduced and prepay the Loans as required by Section 1.05(b).

1.05. Payments of the Loans

(a) Voluntary Prepayments. The Borrower may, at its option, prepay the Loans without premium or penalty (but subject to Section 2.04), in full at any time or in part from time to time by notifying the Lender in writing, (i) on the date of such prepayment if the Loans being prepaid consist only of an ABR Advance, or (ii) at least three Business Days prior to the proposed prepayment date, if the Loans being prepaid consist of a LIBOR Advance, in each case specifying the principal amount of the Loans to be prepaid, the type of Advance being prepaid and the date of prepayment. Each such notice shall be irrevocable and the amount specified in each such notice shall be due and payable on the date specified. Each partial prepayment of the Loans pursuant to this Subsection shall be in an aggregate principal amount of \$100,000 or an integral multiple thereof, or, if less, the outstanding principal balance of the Loans.

(b) Mandatory Prepayments of Revolving Credit Loans. Simultaneously with each reduction of the Revolving Credit Commitment under Section 1.04, the Borrower shall prepay the outstanding Revolving Credit Loans by the amount, if any, by which the aggregate unpaid principal balance of the Revolving Credit Loans exceeds the amount of the Revolving Credit Commitment as so reduced.

(c) Payment of Term Loan. The Term Loan shall be payable in _____ consecutive [monthly/quarterly/annual] installments of principal in the amount of \$ _____ each, commencing on _____ [first payment due date] and continuing on the _____ [periodic payment date], with the final such installment due and payable on the Maturity Date in an amount equal to the unpaid principal balance of the Term Loan on such date.

(d) Application of Term Loan Prepayments. Each prepayment of the Term Loan shall be applied against the remaining installments of principal required to be paid pursuant to Section 1.05(c) in the inverse order of the maturity thereof.

(e) In General. Simultaneously with each prepayment of the Loans, the Borrower shall prepay all accrued interest on the amount prepaid through the date of prepayment. The Borrower shall indemnify the Lender for any LIBOR Advance paid or prepaid prior to the last day of its applicable Interest Period, in accordance with Section 2.04.

1.06. Treatment and Application of Payments

(a) Each payment, including each prepayment, of principal and interest on the Loans, and of all fees to be paid to the Lender in connection with this Agreement (the "Fees") shall be made by the Borrower prior to 1:00 p.m. on the date such payment is due, at the Lender's office set forth in Section 9.02, in lawful money of the United States, in funds immediately available to the Lender and without set-off or counterclaim. The failure of the Borrower to make any such payment by such time shall not constitute a Default, provided that such payment is made on such due date, but any such payment made after 1:00 p.m. on such due date shall be deemed to have been made prior to 1:00 p.m. on the next Business Day for the purpose of calculating interest.

(b) If any payment shall be due and payable on a day which is not a Business Day, the due date thereof (except as otherwise provided in the definition of Interest Period) shall be extended to the next Business Day and interest shall be payable at the applicable rate specified herein during such extension, provided, however, that if such next Business Day is after the Maturity Date, any such payment shall be due on the immediately preceding Business Day.

1.07. Use of Proceeds

The Borrower agrees that the proceeds of (a) the Revolving Credit Loans shall be used solely, directly or indirectly, to (i) [_____], (ii) pay all of the Fees due hereunder, and (iii) pay the out-of-pocket fees and expenses incurred by the Borrower in connection with the Loan Documents, and (b) the Term Loan shall be used to repay the Revolving Credit Loans outstanding on the Revolving Credit Termination Date. Notwithstanding anything to the contrary contained in any Loan Document, the Borrower agrees that no part of the proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock as defined by any regulation of the Board of Governors of the Federal Reserve System or for a purpose which violates any law, rule or regulation of any Governmental Authority.

1.08. Guarantee

All obligations of the Borrower hereunder shall be unconditionally, jointly and severally guaranteed by _____ (the "Guarantor"), pursuant to the terms of a General Guarantee in the form of Exhibit B (as the same may be amended, supplemented or otherwise modified from time to time, the "Guarantee").

1.09. Security Agreement

All obligations of the Borrower hereunder shall be secured pursuant to the terms of a Security Agreement in the form of Exhibit C (as the same may be amended, supplemented or otherwise modified from time to time, the "Security Agreement").

2. INTEREST, FEES, YIELD PROTECTIONS, ETC.

2.01. Interest Rate and Payment Dates

(a) Prior to Maturity. Except as otherwise provided in Section 2.01(b), prior to maturity, the outstanding principal balance of the Loans shall bear interest at the applicable interest rate or rates per annum set forth below:

TYPE OF ADVANCE	RATE

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Each ABR Advance	Alternate Base Rate [plus _____ %]
Each LIBOR Advance	LIBOR Rate for the applicable Interest Period plus [_____] %.

(b) Default Rate. If any payment of principal and/or interest is not paid when due (whether at stated maturity, by acceleration or otherwise) the unpaid principal balance of the Loans shall bear interest at a rate per annum (whether before or after the entry of a judgment thereon) equal to 2% above the rate which would otherwise be applicable under Section 2.01(a) and any overdue interest or other amount payable under the Loan Documents shall bear interest at a rate per annum equal to the Alternate Base Rate plus 2%. For purposes of the preceding sentence, the "rate which would otherwise be applicable under Section 2.01(a)" to any overdue principal, interest or other amount payable under the Loan Documents in the case of a LIBOR Advance shall be the rate for such LIBOR Advance as set forth in Section 2.01(a) until the last day of the applicable Interest Period (or the earlier termination thereof pursuant to this Agreement) and thereafter, the Alternate Base Rate. All such interest shall be payable on demand.

(c) In General. Interest on all amounts due and payable hereunder shall be calculated on the basis of a 360-day year for the actual number of days elapsed. Except as otherwise provided in Section 2.01(b), interest shall be payable [monthly/quarterly] in arrears on the [first/last] Business Day of each [month/_____], and, as provided in Section 1.05(e), upon each prepayment of the Loans. If Borrower maintains an account with Lender, each payment of interest shall be debited on the due date thereof from an account of the Borrower maintained with the Lender as designated from time to time by the Borrower, or, if sufficient funds are unavailable in such account on such day, then any other account of the Borrower maintained with the Lender. Any change in the interest rate on the Loans resulting from a change in the Alternate Base Rate or reserve requirements shall become effective as of the opening of business on the day on which such change shall become effective. The Lender shall, as soon as practicable, notify the Borrower of the effective date and the amount of each such change in the Alternate Base Rate, but any failure to so notify shall not in any manner affect the obligation of the Borrower to pay interest on the Loans in the amounts and on the dates required. Each determination of the Alternate Base Rate or LIBOR by the Lender pursuant to this Agreement shall be conclusive and binding on all parties hereto absent manifest error. The Borrower acknowledges that to the extent interest payable on an ABR Advance is based on the Prime Rate, such rate is only one of the bases for computing interest on loans made by the Lender, and by basing interest payable on an ABR Advance on the Prime Rate, the Lender has not committed to charge, and the Borrower has not in any way bargained for, interest based on a lower rate than that at which, or the lowest rate at which, the Lender may now or in the future make loans to other borrowers.

(d) Highest Lawful Rate. At no time shall the interest rate payable on the Loans, together with the Fees and all other amounts payable under the Loan Documents to the Lender, to the extent the same are construed to constitute interest, exceed the maximum rate of interest that at any time may be contracted for, taken, charged or received by the Lender under the Loan Documents under applicable law. If for any period during the term of this Agreement, any amount paid to the Lender under the Loan Documents, to the extent the same shall (but for the provisions of this Section) constitute or be deemed to constitute interest, would exceed the maximum amount of interest permitted during such period, then such excess amount shall be applied or shall be deemed to have been applied as a prepayment of the Loans in such order as the Lender shall determine.

2.02. Fees

(a) Commitment Fee. The Borrower agrees to pay to the Lender a fee (the "Commitment Fee") in an amount equal to _____ % per annum calculated on the average daily unused portion of the Revolving Credit Commitment from and including the date hereof until the Revolving Credit Termination Date. The Commitment Fee shall be payable quarterly in arrears on the last day of each _____ (commencing on the first such day

following the Effective Date), upon any reduction of the Revolving Credit Commitment and on the Revolving Credit Termination Date. The Commitment Fee shall be calculated on the basis of a 360-day year for the actual number of days elapsed.

(b) **Facility Fee.** The Borrower agrees to pay to the Lender a fee (the "Facility Fee") of \$_____, due and payable on the Effective Date.

2.03. Conversions; Continuations

(a) The Borrower may elect from time to time to convert a LIBOR Advance to an ABR Advance by giving the Lender at least two Business Days' prior irrevocable notice of such election, specifying the amount to be so converted, provided, that any such conversion of a LIBOR Advance shall only be made on the last day of the Interest Period applicable thereto. In addition, the Borrower may elect from time to time to (i) convert an ABR Advance to a LIBOR Advance or (ii) to continue a LIBOR Advance as new LIBOR Advance, in each case by giving the Lender at least three Business Days' prior irrevocable notice of such election, specifying the amount to be so converted or continued and the requested Interest Period relating thereto, provided that any such conversion of an ABR Advance to a LIBOR Advance shall only be made on a Business Day and any such continuation of a LIBOR Advance as a new LIBOR Advance shall only be made on the last day of the Interest Period applicable to the maturing LIBOR Advance. Each such notice shall be in writing and shall be irrevocable upon receipt by the Lender. Each LIBOR Advance shall be in an aggregate principal amount of not less than \$_____.

(b) Notwithstanding anything in this Agreement to the contrary, upon the occurrence and during the continuance of a Default or an Event of Default, the Borrower shall have no right to elect to convert an ABR Advance to a LIBOR Advance or to continue an existing LIBOR Advance as a new LIBOR Advance. In such event, an ABR Advance shall remain an ABR Advance, and each LIBOR Advance shall be automatically converted to an ABR Advance on the last day of the Interest Period applicable to such LIBOR Advance.

(c) If the Borrower shall have failed to elect a LIBOR Advance in connection with any expiration of an Interest Period with respect to an existing LIBOR Advance, the existing LIBOR Advance shall be converted to an ABR Advance upon the expiration of the Interest Period relating thereto.

2.04. Indemnification for Loss

Notwithstanding anything contained herein to the contrary, if the Borrower shall fail for any reason to borrow or convert on a Borrowing Date or Conversion Date after it shall have given notice to do so in which it shall have requested a LIBOR Advance pursuant to Sections 1.03 or 2.03, or if a LIBOR Advance shall be terminated for any reason (including, without limitation, as a result of acceleration or illegality) prior to the last day of the Interest Period applicable thereto, or if any repayment or prepayment of the principal amount of a LIBOR Advance is made by the Borrower for any reason on a date which is prior to the last day of the Interest Period applicable thereto, the Borrower agrees to indemnify the Lender against, and to pay on demand directly to the Lender the amount (calculated by the Lender using any method chosen by the Lender which is customarily used by the Lender for such purpose) equal to any loss or out-of-pocket expense suffered by the Lender as a result of such failure to borrow or convert, or such termination, repayment or prepayment, including any loss, cost or expense suffered by the Lender in liquidating or employing deposits acquired to fund or maintain the funding of such LIBOR Advance, or redeploying funds prepaid or repaid, in amounts which correspond to such LIBOR Advance, and any internal processing charge customarily charged by the Lender in connection therewith.

2.05. Substituted Interest Rate

In the event that the Lender shall have determined (which determination shall be conclusive and binding upon the

Borrower) that (i) by reason of circumstances affecting the interbank eurodollar market either adequate and reasonable means do not exist for ascertaining the LIBOR Rate applicable pursuant to Section 2.01 or (ii) the applicable LIBOR Rate will not adequately and fairly reflect the cost to the Lender of maintaining or funding loans bearing interest based on such LIBOR Rate, with respect to any portion of the Loans that the Borrower has requested be made as a LIBOR Advance or a LIBOR Advance that will result from a requested conversion of any portion of the Loans into a LIBOR Advance (each, an "Affected Advance"), the Lender shall promptly notify the Borrower (by telephone or otherwise, to be promptly confirmed in writing) of such determination, on or, to the extent practicable, prior to the Effective Date or requested Conversion Date for such Affected Advance. If the Lender shall give such notice, (a) any Affected Advance shall be made as an ABR Advance, (b) any Advance that was to have been converted to an Affected Advance shall be converted to or continued as an ABR Advance and (c) any outstanding Affected Advance shall be converted, immediately at the option of the Lender, to an ABR Advance. Until any notice has been withdrawn by the Lender (by notice to the Borrower promptly upon the Lender having determined that either (x) such circumstances affecting the interbank eurodollar market no longer exist and that adequate and reasonable means do exist for determining the LIBOR rate applicable pursuant to Section 2.01, or (y) circumstances no longer render the Loans an Affected Advance), no further LIBOR Advances shall be required to be made by the Lender nor shall the Borrower have the right to convert all or any portion of the Loans to a LIBOR Advance.

2.06. Taxes; Net Payments

(a) All payments made by the Borrower under the Loan Documents shall be made free and clear of, and without reduction for or on account of, any Taxes required by law to be withheld from any amounts payable under the Loan Documents. In the event that the Borrower is prohibited by law from making payments under the Loan Documents free of deductions or withholdings, the Borrower shall pay such additional amounts to the Lender as may be necessary in order that the actual amounts received by the Lender in respect of interest and any other amounts payable under the Loan Documents after such deduction or withholding (and after payment of any additional taxes or other charges due as a consequence of the payment of such additional amounts) shall equal the amount which would have been received if such deduction or withholding were not required.

(b) The Borrower agrees to pay any current or future stamp or documentary Taxes and any other excise or property Taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery or registration of, or any amendment of, supplement to or modification of, or any waiver or consent under or in respect of, the Loan Documents or otherwise with respect to, the Loan Documents.

2.07. Illegality of Funding

Notwithstanding any other provisions herein, if any law, regulation, treaty or directive, or any change therein or in the interpretation or application thereof, shall make it unlawful for the Lender to make or maintain its LIBOR Advances as contemplated by this Agreement, (i) the commitment of the Lender hereunder to make a LIBOR Advance or convert an ABR Advance to a LIBOR Advance shall forthwith be suspended and (ii) the amount of the Loans then outstanding as a LIBOR Advance affected hereby, if any, shall be converted automatically to an ABR Advance on the last day of the then current Interest Period applicable thereto or within such earlier period as required by law. If the commitment of the Lender with respect to LIBOR Advances is suspended pursuant to this Section and the Lender shall notify the Borrower that it is once again legal for the Lender to make or maintain LIBOR Advances, the Lender's commitment to make or maintain LIBOR Advances shall be reinstated.

2.08. Reimbursement for Increased Costs

In the event that any law, regulation, treaty or directive hereafter enacted, promulgated, approved or issued or any change in any presently existing law, regulation, treaty or directive therein or in the interpretation or application thereof by any Governmental Authority charged with the administration thereof or compliance by the Lender (or any

corporation directly or indirectly owning or controlling the Lender) with any request or directive from any central Lender or other Governmental Authority, agency or instrumentality:

(i) does or shall subject the Lender to any Taxes of any kind whatsoever with respect to any LIBOR Advance or its obligations under this Agreement to make LIBOR Advances, or change the basis of taxation of payments to the Lender of principal, interest or any other amount payable hereunder in respect of its LIBOR Advances, including any Taxes required to be withheld from any amounts payable under the Loan Documents (except for imposition of, or change in the rate of, tax on the overall net income of the Lender or its applicable lending office for any of such Advances by the jurisdiction in which the Lender is incorporated or has its principal office or such applicable lending office, including, any such tax imposed by the United States); or

(ii) does or shall impose, modify or make applicable any reserve, special deposit, compulsory loan, assessment, increased cost or similar requirement against assets held by, or deposits of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of the Lender in respect of its LIBOR Advances which is not otherwise included in the determination of the LIBOR Rate;

and the result of any of the foregoing is to increase the cost to the Lender of making, renewing, converting or maintaining its LIBOR Advances or its commitment to make such LIBOR Advances, or to reduce any amount receivable hereunder in respect of its LIBOR Advances, then, in any such case, the Borrower shall pay the Lender, upon its demand, any additional amounts necessary to compensate the Lender for such additional cost or reduction in such amount receivable which the Lender deems to be material as determined by the Lender; provided, however, that nothing in this Section shall require the Borrower to indemnify the Lender with respect to withholding Taxes for which the Borrower has no obligation under Section 2.06. No failure by the Lender to demand compensation for any increased cost during any Interest Period shall constitute a waiver of the Lender's right to demand such compensation at any time.

2.09. Capital Adequacy

If (i) the enactment or promulgation of, or any change or phasing in of, any United States or foreign law or regulation or in the interpretation thereof by any Governmental Authority charged with the administration thereof, (ii) compliance with any directive or guideline from any central Lender or United States or foreign Governmental Authority (whether having the force of law) promulgated or made after the date hereof, or (iii) compliance with the Risk-Based Capital Guidelines of the Board of Governors of the Federal Reserve System as set forth in 12 CFR Parts 208 and 225, or of the Comptroller of the Currency, Department of the Treasury, as set forth in 12 CFR Part 3, or similar legislation, rules, guidelines, directives or regulations under any applicable United States or foreign Governmental Authority affects or would affect the amount of capital required to be maintained by the Lender (or any lending office of the Lender) or any corporation directly or indirectly owning or controlling the Lender or imposes any restriction on or otherwise adversely affects the Lender (or any lending office of the Lender) or any corporation directly or indirectly owning or controlling the Lender and the Lender shall have determined that such enactment, promulgation, change or compliance has the effect of reducing the rate of return on the Lender's capital or the asset value to the Lender of any loan made by the Lender as a consequence, directly or indirectly, of its obligations to make and maintain the funding of the Loans at a level below that which the Lender could have achieved but for such enactment, promulgation, change or compliance (after taking into account the Lender's policies regarding capital adequacy) by an amount deemed by the Lender to be material, then, upon demand by the Lender, the Borrower shall promptly pay to the Lender such additional amount or amounts as shall be sufficient to compensate the Lender for such reduction in such rate of return or asset value.

2.10. Option to Fund

The Lender has indicated that, if the Borrower elects to borrow or convert to a LIBOR Advance, the Lender may wish to purchase one or more deposits in order to fund or maintain its funding of the LIBOR Advance during the Interest Period in question; it being understood that the provisions of this Agreement relating to such funding are included only

for the purpose of determining the rate of interest to be paid on such LIBOR Advances. The Lender shall be entitled to fund and maintain its funding of all or any part of each LIBOR Advance made by it in any manner it sees fit, but all determinations hereunder shall be made as if the Lender had actually funded and maintained its funding of such LIBOR Advance during the applicable Interest Period through the purchase of deposits in an amount equal to such LIBOR Advance and having a maturity corresponding to such Interest Period. The Lender may fund a LIBOR Advance from or for the account of any branch or office of the Lender as the Lender may choose from time to time.

2.11. Lender's Records

The Lender's records with respect to the Loans, the character thereof as an ABR Advance, a LIBOR Advance or a combination thereof, the interest rates applicable thereto, each payment and prepayment by the Borrower of principal and interest on the Loans and fees, expenses and any other amounts due and payable in connection with this Agreement shall be presumed correct absent manifest error.

3. REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to enter into this Agreement and to make the Loans, the Borrower makes the following representations and warranties to the Lender:

3.01. Existence and Power; Subsidiaries

The Borrower is a duly formed and validly existing _____, in good standing under the laws of the State of _____, has all requisite power and authority to own its Property and to carry on its business as now conducted, and is in good standing and authorized to do business in each jurisdiction in which the nature of the business conducted therein or the Property owned by it therein makes such qualification necessary, except where such failure to qualify could not reasonably be expected to have a Material Adverse Effect. As of the Effective Date, the Borrower has no Subsidiaries.ⁿ¹

3.02. Tax-Exempt Status ⁿ²

The Borrower (i) is an organization described in section 501(c)(3) of the Code, (ii) has received a letter from the Internal Revenue Service to that effect, which letter has not been modified, limited or revoked, (iii) is in compliance with all terms, conditions and limitations, if any, contained in such letter of notification, and (iv) is exempt from federal income taxes under section 501(a) of the Code.

3.03. Authority and Execution

The Borrower has full legal power and authority to enter into, execute, deliver and perform the terms of the Loan Documents to which it is a party, all of which have been duly authorized by all proper and necessary corporate, partnership or other applicable action and are in full compliance with its Organizational Documents. The Borrower has duly executed and delivered the Loan Documents to which it is a party.

3.04. Binding Agreement

The Loan Documents (other than the Note) constitute, and the Note, when issued and delivered pursuant hereto for value received, will constitute, the valid and legally binding obligations of each Credit Party, in each case, to the extent it is a party thereto, enforceable in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally.

3.05. Absence of Defaults; No Conflicting Agreements

Neither the Borrower, nor any other Credit Party, is in default under any mortgage, indenture, contract or agreement to which it is a party or by which it or any of its Property is bound, the effect of which default could reasonably be expected to have a Material Adverse Effect. The execution, delivery or carrying out of the terms of the Loan Documents will not constitute a default under any such mortgage, indenture, contract or agreement, or result in the creation or imposition of, or obligation to create, any Lien upon any Property of the Borrower or any other Credit Party, except for Liens created pursuant to the Loan Documents, or result in a breach of or require the mandatory repayment of or other acceleration of payment under or pursuant to the terms of any such mortgage, indenture, contract or agreement.

3.06. Consents

No consent, authorization or approval of, filing with, notice to, or exemption by, any Governmental Authority or any other Person is required to authorize, or is required in connection with the execution, delivery and performance of the Loan Documents and the transactions contemplated thereby, or is required as a condition to the validity or enforceability of the Loan Documents.

3.07. Litigation

There are no actions, suits or proceedings at law or in equity or by or before any Governmental Authority pending or, to the knowledge of the Borrower, threatened against any Credit Party, maintained by any Credit Party or which may affect the Property of any Credit Party, which could reasonably be expected to have a Material Adverse Effect.

3.08. Compliance with Applicable Laws

Neither the Borrower, nor any other Credit Party, is in default with respect to any judgment, order, writ, injunction, decree or decision of any Governmental Authority, which default could reasonably be expected to have a Material Adverse Effect. The Borrower, and each other Credit Party, is complying in all material respects with all statutes, regulations, rules and orders applicable to it, including, without limitation, Environmental Laws, a violation of which could reasonably be expected to have a Material Adverse Effect.

3.09. Taxes

The Borrower has filed or caused to be filed all tax returns required to be filed and has paid, or has made adequate provision for the payment of, all taxes shown to be due and payable on said returns or in any assessments made against it, and no tax Liens have been filed and no claims are being asserted with respect to such taxes, except for claims that the Borrower is contesting in good faith and in a timely manner.

3.10. Financial Statements

The Borrower has heretofore delivered to the Lender its [audited/review basis/compilation] balance sheet as of _____ [date] and the related statements of operations, stockholders' equity and cash flows for the fiscal year then ended (the "Financial Statements"), which (a) fairly present the Borrower's financial condition on such date and results of operations for the year ended on such date, and (b) have been prepared in conformity with GAAP. Except as reflected in the Financial Statements or in the notes thereto, the Borrower has no obligation or liability of any kind (whether fixed, accrued, Contingent, unmatured or otherwise) which, in accordance with GAAP, should have been shown on the Financial Statements and was not. Since the date of the Financial Statements, the Borrower has conducted its business only in the ordinary course and there has been no Material Adverse Change.

3.11. Governmental Regulations

Neither the Borrower, nor any Person controlled by, controlling, or under common control with, the Borrower, is subject to regulation under the Public Utility Holding Company Act of 1935, as amended, the Federal Power Act, as amended, or the Investment Company Act of 1940, as amended, or is subject to any statute or regulation which prohibits or restricts the incurrence of Indebtedness, including, without limitation, statutes or regulations relative to common or contract carriers or to the sale of electricity, gas, steam, water, telephone, telegraph or other public utility services.

3.12. Federal Reserve Regulations; Use of Loan Proceeds

The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

3.13. Property

The Borrower and each other Credit Party has (i) good and marketable title to all of its Property, title to which is material to it, and (ii) a valid leasehold interest in all Property, a leasehold interest in which is material to it, in each case subject to no Liens, except Permitted Liens.

3.14. Plans

Neither the Borrower nor any of its ERISA Affiliates is a party to a multiemployer plan. The Borrower and its ERISA Affiliates have fulfilled all obligations under the minimum funding standards of ERISA and the Code with respect to each plan established or maintained by the Borrower and its ERISA Affiliates, is in compliance in all material respects with the presently applicable provisions of ERISA and the Code, and has not incurred any material liability to the PBGC under Title IV of ERISA.

3.15. Environmental Matters

(a) The Borrower is in compliance in all material respects with the requirements of all applicable Environmental Laws, the violation of which could have a Material Adverse Effect.

(b) No hazardous substances have been generated or manufactured on, transported to or from, treated at, stored at or discharged from any real property owned, leased or operated by the Borrower in violation of any Environmental Laws.

(c) The Borrower has not received notice or otherwise learned of any claim, demand, suit, action, proceeding, event, condition, report, directive, Lien, violation, non-compliance or investigation indicating or concerning any potential or actual liability or remedial action arising in connection with: (x) any non-compliance with or violation of the requirements of any applicable Environmental Laws, or (y) the presence of, or release or threatened release of any hazardous substance on or from any real property owned, leased or operated by the Borrower.

3.16. Security Interests n3

Subject to the filing of UCC-1 financing statements in the applicable filing offices, the payment of the fees in respect thereof and the filing of continuation statements when required by applicable law,] / [Subject to the delivery to, and continuing possession by, the Lender of the Collateral,] the security interests granted under the Security Agreement will constitute valid, binding and continuing duly perfected first priority Liens in and to the Collateral, which shall be subject to no other Liens. Subject to the filing of UCC-1 financing statements in the applicable filing offices, the payment of the fees in respect thereof and the filing of continuation statements when required by applicable law,] / [Subject to the delivery to, and continuing possession by, the Lender of the Collateral,] the security interests granted

under the Security Agreement will constitute valid, binding and continuing duly perfected first priority Liens in and to the Collateral, which shall be subject to no other Liens.

3.17. No Misrepresentation

No representation or warranty contained in any Loan Document and no certificate or report from time to time furnished by the Borrower in connection with the transactions contemplated thereby, contains or will contain a misstatement of material fact, or, to the best knowledge of the Borrower, omits or will omit to state a material fact required to be stated in order to make the statements therein contained not misleading in the light of the circumstances under which made, provided that any projections or pro-forma financial information contained therein are good faith estimates based upon assumptions believed by the Borrower to be reasonable at the time such estimates are made.

4. CONDITIONS TO LOANS

4.01. Conditions Precedent to Effectiveness

The effectiveness of this Agreement, and the obligation of the Lender to make a Loan on the first Borrowing Date, is subject to the fulfillment of the following conditions prior to or simultaneously therewith:

(a) Evidence of Action

The Lender shall have received a certificate, dated the Effective Date, of the Secretary or Assistant Secretary or other analogous counterpart of the Borrower [and each of the Guarantors]:

(i) attaching a true and complete copy of the resolutions of its Managing Person and of all documents evidencing all necessary company action (in form and substance satisfactory to the Lender) taken by it to authorize the Loan Documents to which it is a party and the transactions contemplated thereby,

(ii) attaching a true and complete copy of its Organizational Documents,

(iii) attaching a certificate of good standing of the Secretary of State of the State of _____ and of each other jurisdiction in which it is qualified to do business, issued not more than 10 days prior to the Effective Date, and

(iv) setting forth the incumbency of its officer or officers who may sign the Loan Documents to which it is a party, including therein a signature specimen of such officer or officers.

(b) This Agreement

The Lender shall have received counterparts of this Agreement duly executed by [an Authorized Signatory of the Borrower].

(c) Note

The Lender shall have received the Note, duly executed by an Authorized Signatory of the Borrower.

(d) Security Agreement

The Lender shall have received the Security Agreement, duly executed by an Authorized Signatory of the Borrower, together with such other documents as the Lender may require in connection with the perfection of its security interests

therein.

(e) Guarantee

The Lender shall have received the Guarantee, duly executed by [an Authorized Signatory of] the Guarantor.

(f) Officer's Certificate

The Lender shall have received a certificate, in all respects satisfactory to the Lender, of an officer of the Borrower, dated the Effective Date, certifying that:

(i) Absence of Litigation. There is no injunction, writ, preliminary restraining order or other order of any nature issued by any Governmental Authority in any respect affecting the transactions provided for in the Loan Documents and no action or proceeding by or before any Governmental Authority has been commenced or is pending or, to the knowledge of the Borrower, threatened, seeking to prevent or delay the transactions contemplated by the Loan Documents or challenging any other terms and provisions hereof or thereof or seeking any damages in connection therewith.

(ii) Approvals and Consents. All approvals and consents of all Persons required to be obtained in connection with the consummation of the transactions contemplated by the Loan Documents have been obtained and are in full force and effect, and all required notices have been given and all required waiting periods have expired.

(iii) Absence of Material Adverse Change. No Material Adverse Change in the business, assets, liabilities, financial condition or results of operations of the Borrower has occurred since the date of the Financial Statements.

(iv) No Liens other than Permitted Liens. Upon the making of the Loans on the Effective Date, there exist no Liens other than Permitted Liens.

(g) Opinion of Counsel to the Borrower [and the Guarantor]

The Lender shall have received an opinion of [_____], counsel to the Borrower [and the Guarantor], addressed to the Lender and dated the Effective Date, in form and substance satisfactory to the Lender and its counsel. It is understood that such opinion is being delivered to the Lender upon the direction of the Borrower and that the Lender may and will rely on such opinion.

(h) Fees

All Fees owed by the Borrower to the Lender shall have been paid.

(i) Fees and Expenses of Lender's Counsel

The fees and expenses of the Lender's counsel in connection with the preparation, negotiation and closing of the Loan Documents shall have been paid.

(j) Other Documents

The Lender shall have received such other documents, each in form and substance reasonably satisfactory to the Lender, as the Lender shall reasonably require in connection with the making of the Loans.

4.02. Certain Conditions Precedent to Each Loan

The agreement of the Lender to make a Loan (including, without limitation, the Loans on the first Borrowing Date) is subject to the satisfaction of the following conditions precedent:

(a) Compliance

On the Borrowing Date after giving effect to the Loans to be made on such date, (a) the Borrower shall be in compliance with all of the terms, covenants and conditions of the Loan Documents to which it is a party, (b) there shall exist no Default or Event of Default, (c) the representations and warranties contained in the Loan Documents shall be true and correct with the same effect as though such representations and warranties had been made on such Borrowing Date, except to the extent the same relate solely to an earlier date, and (d) no Material Adverse Change shall have occurred.

(b) Loan Closings

All documents required by the provisions of the Loan Documents to be executed or delivered to the Lender on or before the applicable Borrowing Date shall have been executed and shall have been delivered to the Lender on or before such Borrowing Date.

(c) Borrowing Request

The Lender shall have received a borrowing request with the information required by Section 1.03 duly executed by an Authorized Signatory of the Borrower.

Each request for a Loan and the acceptance by the Borrower of the proceeds thereof shall constitute a representation and warranty by the Borrower, as of the date of the Loans comprising such borrowing, that the conditions specified in Subsections 4.02(a) and (b) have been satisfied.

5. AFFIRMATIVE COVENANTS

The Borrower agrees that, so long as this Agreement is in effect, any Loan remains outstanding and unpaid, or any other amount is owing under any Loan Document to the Lender, the Borrower shall:

5.01. Financial and Other Information

Maintain a standard system of accounting in accordance with GAAP, and furnish to the Lender:

(a) As soon as available, but in any event within 120 days after the end of each fiscal year of the Borrower, a balance sheet of the Borrower as at the end of such fiscal year, together with the related statements of operations, stockholder's equity and cash flows for such fiscal year, which statements shall be audited and certified without qualification by the Borrower's independent certified public accountants, which certification shall state that their examination in connection with such financial statements has been made in accordance with generally accepted auditing standards and include their opinion that such financial statements have been prepared in accordance with GAAP in a manner consistent with prior fiscal years, except as otherwise specified in such opinion;

(b) As soon as available, but in any event within 60 days after the end of each of the first three fiscal quarters of the fiscal year of the Borrower, a balance sheet of the Borrower as at the end of such fiscal quarter, together with the related statements of operations, stockholder's equity and cash flows for such fiscal year, certified by the chief financial officer of the Borrower as being complete and correct in all material respects and as presenting fairly the financial condition and the results of operations of the Borrower (subject to normal year-end adjustments);

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(c) Contemporaneously with the delivery of the financial statements referred to in Subsections (a) and (b) immediately above, a compliance certificate of the chief financial officer of the Borrower which states that (i) no Default or Event of Default has occurred and is continuing and (ii) the Borrower is in compliance with each of the covenants set forth in the Credit Documents;

(d) As soon as available, but in any event no later than 60 days prior to the commencement of each fiscal year, a budget and business plan for the Borrower for such fiscal year;

(e) Promptly upon their becoming available, one copy of each report, notice or proxy statement sent by the Borrower to its shareholders or members, and of each regular or periodic report or registration statement, prospectus or written communication (other than transmittal letters) filed by the Borrower with the Securities and Exchange Commission or any securities exchange on which the Borrower's securities are listed;

(f) Prompt written notice if: (i) any Indebtedness of the Borrower is declared or shall become due and payable prior to its stated maturity, or is called and not paid when due, (ii) a default shall have occurred under any note (other than the Note) or (iii) the holder of, or any obligee with respect to, any Indebtedness of the Borrower has the right to declare any such Indebtedness due and payable prior to its stated maturity;

(g) Prompt written notice of: (i) any citation, summons, subpoena, order to show cause or other document naming the Borrower a party to any proceeding before any Governmental Authority that could reasonably be expected to have a Material Adverse Effect or that expressly calls into question the validity or enforceability of any of the Loan Documents, (ii) any lapse or other termination of any material license, permit, franchise or other authorization, or (iii) any refusal by any Person or Governmental Authority to renew or extend any such material license, permit, franchise or other authorization, which lapse, termination, refusal or dispute could reasonably be expected to have a Material Adverse Effect;

(h) Prompt written notice of: (i) any development in its business affairs which could reasonably be expected to have a Material Adverse Effect on the Borrower, disclosing the nature thereof, and (ii) any information (coming to its attention) which indicates that any financial statements which are the subject of any representations contained in this Agreement, or which are furnished to the Lender pursuant to this Agreement, fail, to a material extent, to present fairly the financial condition and results of operations purported to be presented therein, disclosing the nature thereof;

(i) Prompt written notice of the occurrence of an Event of Default or Default hereunder, setting forth details of such Event of Default or Default and the action which is proposed to be taken with respect thereto;

(j) Such other instruments, agreements, certificates, opinions, statements, documents and information relating to the (i) operations or condition (financial or otherwise) of the Borrower [or its Subsidiaries], and (ii) compliance by the Borrower with the terms of this Agreement and the other Loan Documents as the Lender may reasonably request from time to time.

5.02. Existence, Maintenance of Properties, Insurance, Licenses

(a) At all times preserve and keep in full force its [corporate/partnership/limited liability company] existence and rights; (b) observe and comply in all respects with all laws, rules and regulations applicable to it, including, without limitation, ERISA and all Environmental Laws, a violation of which could have a Material Adverse Effect; (c) at all times maintain and preserve all Property used or necessary in the conduct of its affairs and keep the same in good repair, working order and condition; (d) keep its insurable Properties adequately insured at all times, by financially sound and reputable insurers, and maintain such insurance, to such extent and against such risks, as is customary (including self-insurance) in the case of comparable businesses or as may be required by law; (e) conduct and operate its affairs in substantially the manner in which they are presently conducted and operated; and (f) maintain, in full force and effect, all material

licenses, franchises, permits, authorizations and other rights as are necessary for the conduct of its business.

5.03. Payment of Taxes, Indebtedness, etc.

Pay and discharge when due (i) all taxes, assessments and governmental charges and levies upon, or with respect to the Borrower and upon its Property prior to the date penalties attach thereto, and (ii) all Indebtedness, obligations and claims for labor, materials and supplies or otherwise which, if unpaid, might (x) have a Material Adverse Effect, or (y) become a Lien upon any Property, in each case, unless being contested by the Borrower in good faith by appropriate proceedings, and the Borrower shall have set aside adequate reserves therefor.

5.04. Maintenance of Records; Inspection

At all times maintain financial records in accordance with GAAP and, at all reasonable times during normal business hours and as often as the Lender may reasonably request upon reasonable notice, permit any Lender representative to visit and inspect any of the properties of the Borrower, and to make extracts from its books and to discuss its affairs, finances and accounts with its officers and its independent certified public accountants or other parties preparing statements for or on behalf of the Borrower.

5.05. Collateral

Maintain at all times cash and/or marketable securities of a type and quality acceptable to the Lender, such as the types and qualities of the marketable securities maintained in the Custody Account as of the Effective Date, in each case in the Custody Account, with an aggregate margin value of not less than \$_____, as determined by the Lender in its sole discretion using the margin guidelines set forth on Schedule 5.05, as such margin guidelines may be revised from time to time by the Lender in its sole discretion.

5.06. Financial Covenants

6. NEGATIVE COVENANTS

The Borrower agrees that, so long as this Agreement is in effect, any Loan remains outstanding and unpaid, or any other amount is owing under any Loan Document to the Lender, the Borrower shall not, directly or indirectly:

6.01. Indebtedness

Create, incur, assume or permit the existence of any liability for Indebtedness, except: (i) Indebtedness due under the Loan Documents, (ii) other Indebtedness to the Lender, [(iii) purchase money Indebtedness (including capitalized leases) not in excess of \$_____ in any fiscal year, and (iv) other Indebtedness not in excess of \$_____].

6.02. Liens

Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except: (i) Liens in favor of the Lender, (ii) Liens for taxes, assessments or similar charges incurred in the ordinary course of business which are not delinquent, (iii) Liens in connection with workers' compensation, unemployment insurance or other social security obligations (but not ERISA), and (iv) Liens arising by operation of law such as mechanics', materialmen's, carriers', and warehousemen's liens incurred in the ordinary course of business which are not delinquent (the foregoing, collectively, "Permitted Liens").

6.03. Merger, Sale of Assets, Nature of Business

Consolidate with, be acquired by, or merge into or with any Person, or sell, lease or otherwise dispose of any of its Property, except in the ordinary course of business, or materially change the nature of its business as conducted on the Effective Date.

6.04. Investments

Make any loan or advance to, or enter into any arrangement for the purpose of providing funds or credit to, or make any other investment, by capital contribution or otherwise, in or with any Person (each of the foregoing, an "Investment"), except:

(a) Investments in direct obligations of the United States of America, or in debt Investments which are guaranteed as to both principal and interest by the full faith and credit of the United States of America, in either case, maturing in twelve months or less from the date of acquisition thereof;

(b) Investments in commercial paper carrying one of the two highest ratings of Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Services, Inc.;

(c) any money market account or money market mutual funds; and

(d) normal business banking accounts and short-term certificates of deposit and time deposits in, or issued by, federally insured institutions.

6.05. Compliance with ERISA

(i) Terminate, or permit any ERISA Affiliate to terminate, any Plan so as to result in any material liability to the Borrower, or (ii) permit, with respect to any Plan any prohibited transaction or prohibited transactions under ERISA or the Code, resulting in any material liability to the Borrower, or (iii) permit to exist any occurrence of any Reportable Event (as defined in ERISA) under ERISA, if upon termination of the Plan or Plans with respect to which one or more such Reportable Events shall have occurred there is or would be any material liability of the Borrower.

6.06. Restricted Payments

Declare or pay any dividends in cash or otherwise, or set apart any sum for the payment of dividends on, or make any other distribution by reduction of capital or otherwise in respect of any shares of its stock of any class or any other equity interest or warrant or right.

7. DEFAULT

7.01. Events of Default

The following shall each constitute an "Event of Default" hereunder:

(a) The failure of the Borrower to make any payment of principal on the Loans on the date when due and payable; or

(b) The failure of the Borrower to make any payment of interest, Fees, expenses or other amounts payable under any Loan Document no later than three Business Days after the date when due and payable; or

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(c) The failure of the Borrower to observe or perform any covenant or agreement contained in Section 1.07 or Article 6; or

(d) The failure of the Borrower to observe or perform any other term, covenant, or agreement contained in any Loan Document to which it is a party and such failure shall have continued unremedied for a period of 30 days after the occurrence thereof; or

(e) Any representation, warranty, certification or statement made by the Borrower (or any of its officers) in any Loan Document to which it is a party or in any certificate, financial statement or other document delivered or to be delivered by it pursuant thereto, shall prove to have been incorrect or misleading in any material respect when made or deemed made; or

(f) (i) Any Indebtedness of the Borrower (other than its obligations hereunder) in an amount in excess of \$100,000, whether as principal, guarantor, surety or other obligor, (x) shall become or shall be declared to be due and payable prior to the expressed maturity thereof, or (y) shall not be paid when due or within any grace period for the payment thereof, or (ii) any holder of any obligation referred to in clause (i) of this Subsection (f) shall have the right to declare such obligation due and payable prior to the expressed maturity thereof; or

(g) The Borrower shall (i) suspend or discontinue its business, (ii) make an assignment for the benefit of creditors, (iii) generally not be paying its debts as such debts become due, (iv) admit in writing its inability to pay its debts as they become due, (v) file a voluntary petition in bankruptcy, (vi) become insolvent (however such insolvency shall be evidenced), (vii) file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment of debt, liquidation or dissolution or similar relief under any present or future statute, law or regulation of any jurisdiction, (viii) petition or apply to any tribunal for any receiver, custodian or any trustee for any substantial part of its Property, (ix) be the subject of any such proceeding filed against it which remains undismissed for a period of 60 days, (x) file any answer admitting or not contesting the material allegations of any such petition filed against it or any order, judgment or decree approving such petition in any such proceeding, (xi) seek, approve, consent to, or acquiesce in, any such proceeding, or in the appointment of any trustee, receiver, sequestrator, custodian, liquidator, or fiscal agent for it, or any substantial part of its Property, or an order is entered appointing any such trustee, receiver, custodian, liquidator or fiscal agent and such order remains in effect for 60 days, or (xii) take any formal action for the purpose of effecting any of the foregoing or looking to the liquidation or dissolution of the Borrower; or

(h) (1) An order for relief is entered under the United States bankruptcy laws, or (2) any other decree or order is entered by a court having jurisdiction (i) adjudging the Borrower bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization, liquidation, arrangement, adjustment or composition of or in respect of the Borrower under the United States bankruptcy laws or any other applicable Federal or state law, (iii) appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Borrower or of any substantial part of the Property thereof, or (iv) ordering the winding up or liquidation of the affairs of the Borrower, and any such decree or order under this clause (2) continues unstayed and in effect for a period of 60 days; or

(i) Judgments or other orders for the payment of money aggregating in excess of \$100,000 shall be rendered against the Borrower and shall remain unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of 30 days; or

(j) Any Loan Document shall cease, for any reason, to be in full force and effect, or the Borrower or any obligor thereunder shall so assert in writing or shall disavow any of its obligations thereunder or hereunder; or

(k) (i) Any Termination Event shall occur; (ii) any accumulated funding deficiency as defined in *Section 302 of ERISA*, whether or not waived, shall exist with respect to any Pension Plan; (iii) any Person shall engage in any prohibited transaction involving any Employee Benefit Plan; (iv) the Borrower shall fail to pay when due an amount which is

payable by it to the PBGC or to a Pension Plan under Title IV of ERISA; (v) the imposition of any tax under Section 4980(B)(a) of the Code; (vi) the assessment of a civil penalty with respect to any Employee Benefit Plan under *Section 502(c) of ERISA*; or (vii) any other event or condition shall occur or exist with respect to an Employee Benefit Plan which would have a Material Adverse Effect; or

(l) A Material Adverse Change shall have occurred; or

(m) A Change of Control shall have occurred.

7.02. Remedies

Upon the occurrence of an Event of Default or at any time thereafter during the continuance thereof, (a) if such event is an Event of Default specified in Section 7.01(g) or 7.01(h), (i) the Loans, all accrued and unpaid interest thereon and all other amounts owing under the Loan Documents shall immediately become due and payable, (ii) the Commitment shall immediately terminate and the Lender shall have no obligation to make any additional Loans hereunder, and (iii) and the Lender may exercise any and all remedies and other rights provided in the Loan Documents, and (b) if such event is any other Event of Default, any or all of the following actions may be taken: (i) the Lender may by notice of default to the Borrower, (x) declare the Loans, all accrued and unpaid interest thereon and all other amounts owing under any Loan Documents to be due and payable, whereupon the same shall immediately become due and payable, and (y) declare the Commitment to be immediately terminated, whereupon the Lender shall have no obligation to make any additional Loans hereunder, and (ii) the Lender may exercise any and all remedies and other rights provided in the Loan Documents, presentment, demand, protest and all other notices of any kind being in each case hereby expressly waived by the Borrower.

8. DEFINITIONS AND PRINCIPLES OF CONSTRUCTION

8.01. Definitions

In addition to terms defined elsewhere in the Loan Documents, the following terms shall have the following meanings:

"ABR Advance": the Loans (or any portion thereof) at such time as they (or such portion) are made and/or are being maintained at a rate of interest based upon the Alternate Base Rate.

["Acquisition": with respect to any Person, the purchase or other acquisition by such Person, by any means whatsoever (including through a merger, dividend or otherwise and whether in a single transaction or in a series of related transactions), of (i) any Capital Stock of, or other equity securities of, any other Person if, immediately thereafter, such other Person would be either a Subsidiary of such Person or otherwise under the control of such Person, or (ii) any property of any other Person, in either case other than in the ordinary course of business, provided, however, that no acquisition of all or substantially all of the assets of such other Person shall be deemed to be in the ordinary course of business.]\n4

"Advance": an ABR Advance or a LIBOR Advance, as the case may be.

"Affected Advance": as defined in Section 2.05.

"Affiliate": as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (i) to vote 5% or more of the securities or other interests having ordinary voting power for the election of directors or other managing Persons thereof or (ii) to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

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"Agreement": this Revolving Credit and Term Loan Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"Alternate Base Rate": on any date, a rate of interest per annum equal to the greater of (i) the Prime Rate in effect on such date or (ii) the Federal Funds Rate in effect on such date plus 0.50%.

"Authorized Signatory": as to (i) any Person which is a corporation, the chairman of the board, the president, any vice president, the chief financial officer or any other officer (acceptable to the Lender) of such Person and (ii) any Person which is not a corporation, the general partner or other Managing Person thereof or a duly authorized representative of such Managing Person (acceptable to the Lender).

"Borrowing Date": any date upon which a Revolving Credit Loan or the Term Loan is made hereunder.

"Business Day": for all purposes other than as set forth in clause (ii) below, (i) any day other than a Saturday, a Sunday or a day on which commercial banks located in New York City are authorized or required by law or other governmental action to close and (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBOR Advances, any day which is a Business Day described in clause (i) above and which is also a day on which dealings in foreign currency and exchange and eurodollar funding between Lenders may be carried on in London, England.

"Capital Expenditures": with respect to any period, the aggregate of all expenditures incurred by the Borrower during that period which, in accordance with GAAP, are or should be included in "additions to property, plant or equipment" or similar items reflected in the statement of cash flows (or the equivalent) of the Borrower for such period.ⁿ⁵

"Capital Stock": as to any Person, all shares, interests, partnership interests, limited liability company interests, participations, rights in or other equivalents (however designated) of such Person's equity (however designated) and any rights, warrants or options exchangeable for or convertible into such shares, interests, participations, rights or other equity.

"Change of Control": any time at which a majority of the Capital Stock of the Borrower is not owned by _____ .

"Code": the Internal Revenue Code of 1986, as the same may be amended from time to time, or any successor thereto, and the rules and regulations issued thereunder, as from time to time in effect.

"Collateral": the Property in which a security interest has been granted to the Lender pursuant to the Security Agreement.

"Commitment": the Lender's obligation to make Loans hereunder, in an aggregate amount not exceeding the Commitment Amount.

"Commitment Amount": \$ _____, as such figure may be reduced from time to time pursuant to Section 1.04.

"Commitment Fee": as defined in Section 2.02(a).

"Commitment Period": the period commencing on the Effective Date and ending on the Business Day immediately preceding the Revolving Credit Termination Date.

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"Conversion Date": the date on which (i) a LIBOR Advance is converted to an ABR Advance, (ii) an ABR Advance is converted to a LIBOR Advance, or (iii) a LIBOR Advance is continued as a new LIBOR Advance, all in accordance with Section 2.03.

"Credit Party": the Borrower and each other party (other than the Lender) to a Loan Document.

"Custody Account": the custody account # _____ in the name of the Borrower, maintained by the Lender, and such other custody account or accounts as may, from time to time, be subject to the Lender's security interest granted under the Security Agreement.

"Default": any event or condition which constitutes an Event of Default or which, with the giving of notice, the lapse of time, or any other condition, would, unless cured or waived, become an Event of Default.

"Effective Date": _____, 20_____.

"Employee Benefit Plan": an employee benefit plan within the meaning of *Section 3(3) of ERISA* maintained, sponsored or contributed to by the Borrower.

"Environmental Laws": any and all federal, state and local laws relating to the environment, the use, storage, transporting, manufacturing, handling, discharge, disposal or recycling of hazardous substances, materials or pollutants or industrial hygiene and including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, *42 USCA § 9601 et seq.*; (ii) the Resource Conservation and Recovery Act of 1976, as amended, *42 USCA § 6901 et seq.*; (iii) the Toxic Substance Control Act, as amended, *15 USCA § 2601 et. seq.*; (iv) the Water Pollution Control Act, as amended, *33 USCA § 1251 et. seq.*; (v) the Clean Air Act, as amended, *42 USCA § 7401 et seq.*; (vi) the Hazardous Materials Transportation Authorization Act of 1994, *49 USCA § 5101 et seq.* and (viii) all rules, regulations judgments decrees injunctions and restrictions thereunder and any analogous state law.

"ERISA": the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations issued thereunder.

"ERISA Affiliate": with respect to a Plan, ERISA, the PBGC or a provision of the Code pertaining to employee benefit plans, any Person that is a member of any group of organizations within the meaning of Section 414 of the Code of which the Borrower or any Subsidiary of the Borrower is a member.

"Event of Default": any of the events specified in Section 7.01, provided that any requirement for the giving of notice, the lapse of time or any other condition has been satisfied.

"Facility Fee": as defined in Section 2.02(b).

"Federal Funds Rate": for any day, a rate per annum (expressed as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (i) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average of the quotations for such day on such transactions received by the Lender.

"Fees": as defined in Section 1.06(a).

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"Financial Statements": as defined in Section 3.10.

"GAAP": generally accepted accounting principles in the United States as in effect from time to time.

"Governmental Authority": any court, or any federal or foreign, state, municipal or other governmental department, commission, board, bureau, agency, authority, instrumentality, or any arbitrator.

"Guarantee" and "Guarantor": as defined in Section 1.08.

"Indebtedness": as to any Person, at a particular time, all items which constitute, without duplication, (i) indebtedness for borrowed money or the deferred purchase price of Property (other than trade payables incurred in the ordinary course of business), (ii) indebtedness evidenced by notes, bonds, debentures or similar instruments, (iii) obligations with respect to any conditional sale or title retention agreement, (iv) indebtedness arising under acceptance and letter of credit facilities and the amount available to be drawn under all letters of credit issued for the account of such Person, (v) all liabilities secured by any Lien on any Property owned by such Person (other than carriers', warehousemen's, mechanics', repairmen's or other like non-consensual statutory Liens arising in the ordinary course of business), (vi) all guarantees or other liabilities with respect to any Indebtedness of any other Person and (vii) all lease obligations which are required to be capitalized under GAAP.

"Interest Period": with respect to a LIBOR Advance, the period commencing on, as the case may be, the Effective Date or a Conversion Date with respect to such LIBOR Advance and ending one, two [or three /, three or six] months thereafter, as selected by the Borrower pursuant to Section 1.03 or Section 2.03, as applicable; provided, however, that:

(i) if any Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iii) no Interest Period shall end after the Maturity Date.

"LIBOR Advance": the Loans (or any portion thereof) at such time as they (or such portion) are made and/or are being maintained at a rate of interest based upon the LIBOR Rate.

"LIBOR Rate": with respect to the Interest Period relating to a LIBOR Advance, the rate per annum (rounded, if necessary, to the next higher 1/16 of 1%) equal to the arithmetic mean of the offered rates for deposits in U.S. Dollars for a period comparable to such Interest Period which appear on the LIBO Page of the Reuters Monitor Money Rates Service (or such other page as may replace such page on such service for the purpose of displaying LIBOR) as of 11:00 a.m. (London time) on the day that is two Business Days prior to the first day of such Interest Period. If fewer than two rates appear on the LIBO Page of the Reuters Monitor Money Rates Service, LIBOR shall mean for the Interest Period relating to a LIBOR Advance, the rate per annum (rounded, if necessary, to the next higher 1/16 of 1%) at which the Lender offers deposits in U.S. Dollars for a period comparable to such Interest Period and in an amount equal to the outstanding principal amount of such LIBOR Advance to leading Lenders in the London interbank eurodollar market as of 11:00 a.m. (London time) on the day that is two Business Days prior to the first day of such Interest Period.

"Lien": any mortgage, pledge, hypothecation, assignment, deposit or preferential arrangement, encumbrance, lien (statutory or other), or other security agreement or security interest of any kind or nature whatsoever, including, without limitation, any conditional sale or other title retention agreement and any capital or financing lease having substantially

the same economic effect as any of the foregoing.

"Loan Documents": collectively, this Agreement, the Note [, the Guarantee, the Security Agreement] and any other document delivered pursuant to this Agreement.

"Loans": as defined in Section 1.01(b).

"Managing Person": with respect to any Person that is (i) a corporation, its board of directors, (ii) a limited liability company, its board of control, managing member or members, (iii) a limited partnership, its general partner, (iv) a general partnership or a limited liability partnership, its managing partner or executive committee or (v) any other Person, the managing body thereof or other Person analogous to the foregoing.

"Margin Stock": any "margin stock", as defined in Regulation U of the Board of Governors of the Federal Reserve System, as the same may be amended or supplemented from time to time.

"Material Adverse Change; Material Adverse Effect": a material adverse change in, or effect on, as the case may be (i) the financial condition, operations, business, prospects or Property of the Borrower, (ii) the ability of the Borrower to perform its obligations under the Loan Documents or (iii) the ability of the Lender to enforce the Loan Documents.

"Maturity Date": [_____, 20____], or such earlier date on which all outstanding Loans shall become due and payable, whether by acceleration or otherwise.

"Note": as defined in Section 1.02.

"Organizational Documents": as to any Person which is (i) a corporation, the certificate or articles of incorporation and by-laws of such Person, (ii) a limited liability company, the limited liability company agreement or similar agreement of such Person, (iii) a partnership, the partnership agreement or similar agreement of such Person, or (iv) any other form of entity or organization, the organizational documents analogous to the foregoing.

"PBGC": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA, or any Governmental Authority succeeding to the functions thereof.

"Pension Plan": at any date of determination, any Employee Benefit Plan (including a multiemployer plan as defined in *Section 4001(a)(3) of ERISA*), the funding requirements of which (under *Section 302 of ERISA* or *Section 412 of the Code*) are, or at any time within the six years immediately preceding such date, were in whole or in part, the responsibility of the Borrower or any ERISA Affiliate.

"Permitted Liens": as defined in Section 6.02.

"Person": an individual, a partnership, a corporation, a limited liability company, a business trust, a joint stock company, a trust, an unincorporated association, a joint venture, a Governmental Authority or any other entity of whatever nature.

"Prime Rate": a rate of interest per annum equal to the rate of interest publicly announced in New York City by the Lender from time to time as its prime commercial lending rate (which rate is not the lowest rate at which the Lender may make extensions of credit), such rate to be adjusted automatically (without notice) on the effective date of any change in such publicly announced rate.

"Property": all types of real, personal, tangible, intangible or mixed property.

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"Revolving Credit Commitment": the Lender's undertaking to make Revolving Credit Loans, subject to the terms and conditions hereof, in an aggregate outstanding amount not to exceed the Commitment Amount.

"Revolving Credit Loan": as defined in Section 1.01(a).

"Revolving Credit Termination Date": the date occurring _____ months after the Effective Date, or such earlier date on which the Revolving Credit Loans shall become due and payable, whether by acceleration or otherwise.

"Security Agreement": as defined in Section 1.09.

"Subsidiary": any corporation or other Person, at least a majority of the outstanding Capital Stock of which is owned (either directly or indirectly) by the Borrower.

"Taxes": any and all present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature and whatever called, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority.

"Termination Event": with respect to any Pension Plan, (i) a reportable event set forth in *Sections 4043(b), 4068(f) or 4063(a) of ERISA* or requiring security to a Pension Plan under Section 401(a)(29) of the Code, (ii) the termination of a Pension Plan, or the filing of a notice of intent to terminate a Pension Plan, or the treatment of a Pension Plan amendment as a termination under *Section 4041(c) of ERISA*, (iii) the institution of proceedings to terminate a Pension Plan under *Section 4042 of ERISA*, or (iv) the appointment of a trustee to administer any Pension Plan under *Section 4042 of ERISA*.

"Term Loan": as defined in Section 1.01(b).

8.02. Principles of Construction

(a) All terms defined in a Loan Document shall have the meanings given such terms therein when used in the other Loan Documents or any certificate, opinion or other document made or delivered pursuant thereto, unless otherwise defined therein.

(b) The words "hereof", "herein", "hereto" and "hereunder" and similar words when used in a Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof, and Section, Subsection, schedule and exhibit references contained therein shall refer to Sections or Subsections thereof or schedules or exhibits thereto unless otherwise expressly provided therein.

(c) The phrase "may not" is prohibitive and not permissive.

(d) Unless the context otherwise requires, words in the singular number include the plural, and words in the plural include the singular.

(e) Unless specifically provided in a Loan Document to the contrary, any reference to a time shall refer to such time in New York.

(f) Unless specifically provided in a Loan Document to the contrary, in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding".

9. OTHER PROVISIONS**9.01. Amendments and Waivers**

No amendment or waiver of any provision of this Agreement or any Loan Document shall in any event be effective unless the same shall be in writing and signed by all parties, and such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

9.02. Notices

All notices, requests and demands to or upon the respective parties to the Loan Documents to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made (i) when delivered by hand, (ii) five days after having been deposited with the United States Postal Service as certified or registered mail, return receipt requested, with first-class postage and fees prepaid, (iii) on the next Business Day after being consigned, for next business day delivery, to Federal Express or another comparable overnight courier service, or (iv) when sent by facsimile transmission upon electronic confirmation of receipt, addressed as follows:

The Borrower: _____

 Attention: _____
 Telephone: (____)____-____
 Fax: (____)____-____

.....

The Lender: _____

 Attention: _____
 Telephone: (____)____-____
 Fax: (____)____-____

except that any notice by the Borrower to the Lender pursuant to Sections 1.03 and 2.03 shall not be effective until received. Any party to a Loan Document may change its address for notices by giving notice to each of the other parties as provided in this Section, but such notice shall not be effective against any such party until actually received. Any party to a Loan Document may rely on signatures thereon which are transmitted by fax or other electronic means as fully as if manually signed.

9.03. Assignments and Participations

This Agreement, the Note and the other Loan Documents to which the Borrower is a party shall be binding upon and inure to the benefit of the Borrower and the Lender, all future holders of the Note and their respective successors and assigns, provided, however, that the Borrower may neither delegate its liabilities and obligations, nor assign its rights and benefits, under any Loan Document to any Person. The Lender shall have the right at any time, upon written notice to the Borrower, to sell, assign, transfer or negotiate, or grant participations in, all or any part of the Lender's rights with respect to the Loans to one or more Lenders, insurance companies, financial institutions, pension funds or mutual funds. The Lender may at any time assign all or any part of its rights under the Loan Documents to a Federal Reserve Lender,

provided that any such assignment shall not release the Lender from its obligations thereunder.

9.04. No Waiver; Cumulative Remedies

No failure to exercise and no delay in exercising, on the part of the Lender, any right, remedy, power or privilege under any Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges under the Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.05. Survival of Representations and Warranties and Certain Obligations

(a) All representations and warranties made under the Loan Documents and in any document, certificate or statement delivered pursuant thereto or in connection therewith shall survive the execution and delivery of the Loan Documents.

(b) The obligations of the Borrower under Sections 2.04, 2.06, 2.08, 2.09, 9.06 and 9.07 shall survive the payment of the Loans and all other amounts payable under the Loan Documents. The Lender's determination of any amount or amounts owed by the Borrower to it under any such Section shall be presumed correct absent manifest error.

9.06. Expenses

The Borrower agrees, promptly upon presentation of a statement or invoice therefor, and whether or not any Loans are made, (i) to pay or reimburse the Lender for all its out-of-pocket costs and expenses reasonably incurred in connection with the development, preparation and execution of, the Loan Documents and any amendment, supplement or modification thereto (whether or not executed or effective), any documents prepared in connection therewith and the consummation of the transactions contemplated thereby, including, without limitation, the reasonable fees and disbursements of the Lender's counsel, (ii) to pay or reimburse the Lender for all of its costs and expenses, including, without limitation, reasonable fees and disbursements of counsel, incurred in connection with (A) any Default or Event of Default and any enforcement or collection proceedings resulting therefrom or in connection with the negotiation of any restructuring or "work-out" (whether consummated or not) of the obligations of the Borrower under any of the Loan Documents and (B) the enforcement of this Section, and (iii) to pay, indemnify and hold the Lender and each of its officers, directors and employees harmless from and against any and all other liabilities, obligations, claims, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable counsel fees and disbursements) with respect to the enforcement and performance of the Loan Documents, the use of the proceeds of the Loans and the enforcement and performance of the provisions of any subordination agreement involving the Lender, and, if and to the extent that the foregoing indemnity may be unenforceable for any reason, the Borrower agrees to make the maximum payment not prohibited under applicable law; provided, however, that the Borrower shall have no obligation to pay any of the liabilities set forth in this Section to the Lender arising from the finally adjudicated gross negligence or willful misconduct of the Lender or claims between one indemnified party and another indemnified party.

9.07. Indemnity

The Borrower agrees to indemnify and hold harmless the Lender and its Affiliates, directors, officers, employees, attorneys and agents (each an "Indemnified Person") from and against any loss, cost, liability, damage or expense (including the reasonable fees and disbursements of counsel of such Indemnified Person, including all local counsel hired by any such counsel) incurred by such Indemnified Person in investigating, preparing for, defending against, or providing evidence, producing documents or taking any other action in respect of, any commenced or threatened litigation, administrative proceeding or investigation under any federal securities law or any other statute of any jurisdiction, or any regulation, or at common law or otherwise, which is alleged to arise out of or is based upon (i) any

untrue statement or alleged untrue statement of any material fact by the Borrower in any document or schedule executed or filed with any Governmental Authority by or on behalf of the Borrower; (ii) any omission or alleged omission to state any material fact required to be stated in such document or schedule, or necessary to make the statements made therein, in light of the circumstances under which made, not misleading; (iii) any acts, practices or omissions or alleged acts, practices or omissions of the Borrower or its agents relating to the use of the proceeds of the Loans, or in violation of any federal securities law or of any other statute, regulation or other law of any jurisdiction applicable thereto; or (iv) any acquisition or proposed acquisition by the Borrower of all or a portion of the stock, or all or a portion of the assets, of any Person whether such Indemnified Person is a party thereto. The indemnity set forth herein shall be in addition to any other obligations or liabilities of the Borrower to each Indemnified Person under this Agreement or any other Loan Document or at common law or otherwise, and shall survive any termination of this Agreement or any other Loan Document and the payment of all indebtedness of the Borrower under the Loan Documents, provided that the Borrower shall have no obligation under this Section to an Indemnified Person with respect to any of the foregoing to the extent determined in a final judgment of a court having jurisdiction to have resulted primarily out of the gross negligence or willful misconduct of such Indemnified Person.

9.08. Limitation of Liability

No claim may be made by the Borrower or any other Person against the Lender or any directors, officers, employees or agents of the Lender for any special, indirect, consequential or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by any Loan Document, or any act, omission or event occurring in connection therewith, and the Borrower hereby waives, releases and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

9.09. Counterparts

Each Loan Document (other than the Note) may be executed by one or more of the parties thereto on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same document. It shall not be necessary in making proof of any Loan Document to produce or account for more than one counterpart signed by the party to be charged. A counterpart of any Loan Document, and of any an amendment, modification, consent or waiver to or of any Loan Document, transmitted by telecopy shall be deemed to be an originally executed counterpart. A set of the copies of the Loan Documents signed by all the parties thereto shall be deposited with the Borrower and the Lender. Any party to a Loan Document may rely upon the signatures of any other party thereto which are transmitted by telecopy or other electronic means to the same extent as if originally signed.

9.10. Set-off

In addition to any rights and remedies of the Lender provided by law, upon the occurrence of an Event of Default and the acceleration of the obligations owing in connection with the Loan Documents, or at any time upon the occurrence and during the continuance of an Event of Default under Sections 7.01(a) or 7.01(b), the Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent not prohibited by applicable law, to set-off and apply against any indebtedness, whether matured or unmatured, of the Borrower to the Lender, any amount owing from the Lender to the Borrower, at, or at any time after, the happening of any of the above-mentioned events. To the extent not prohibited by applicable law, the aforesaid right of set-off may be exercised by the Lender against the Borrower or against any trustee in bankruptcy, custodian, debtor in possession, assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor of the Borrower or against anyone else claiming through or against the Borrower or such trustee in bankruptcy, custodian, debtor in possession, assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of set-off shall not have been exercised by the Lender prior to the making, filing or issuance, or service upon the Lender of, or of notice of, any such petition, assignment for the benefit of creditors, appointment or application

for the appointment of a receiver, or issuance of execution, subpoena, order or warrant. The Lender agrees promptly to notify the Borrower after any such set-off and application made by the Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application.

9.11. Construction

The Borrower represents that it has been represented by counsel in connection with the Loan Documents and the transactions contemplated thereby and that the principle that agreements are to be construed against the party drafting the same shall be inapplicable.

9.12. Governing Law

The Loan Documents and the rights and obligations of the parties thereunder shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of _____, without regard to principles of conflict of laws.

9.13. Headings Descriptive

Section headings have been inserted in the Loan Documents for convenience only and shall not be construed to be a part thereof.

9.14. Severability

Every provision of the Loan Documents is intended to be severable, and if any term or provision thereof shall be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions thereof shall not be affected or impaired thereby, and any invalidity, illegality or unenforceability in any jurisdiction shall not affect the validity, legality or enforceability of any such term or provision in any other jurisdiction.

9.15. Integration

All exhibits to a Loan Document shall be deemed to be a part thereof. The Loan Documents embody the entire agreement and understanding between the Borrower and the Lender with respect to the subject matter thereof and supersede all prior agreements and understandings between the Borrower and the Lender with respect to the subject matter thereof.

9.16. Consent to Jurisdiction

Each of the Borrower and the Lender hereby irrevocably submits to the jurisdiction of any _____ State or Federal court sitting in the city of _____ and state of _____ over any suit, action or proceeding arising out of or relating to the Loan Documents. Each of the Borrower and the Lender hereby irrevocably waives, to the fullest extent permitted or not prohibited by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. Each of the Borrower and the Lender hereby agrees that a final judgment in any such suit, action or proceeding brought in such a court, after all appropriate appeals, shall be conclusive and binding upon it.

9.17. Service of Process

Each of the Borrower and the Lender hereby irrevocably consents to the service of process in any suit, action or proceeding by sending the same by first class mail, return receipt requested or by overnight courier service, to the

address of such party set forth in Section 9.02. Each of the Borrower and the Lender hereby agrees that any such service (i) shall be deemed in every respect effective service of process upon it in any such suit, action, or proceeding, and (ii) shall to the fullest extent enforceable by law, be taken and held to be valid personal service upon and personal delivery to it.

9.18. No Limitation on Service or Suit

Nothing in the Loan Documents or any modification, waiver, consent or amendment thereto shall affect the right of the Lender to serve process in any manner permitted by law or limit the right of the Lender to bring proceedings against the Borrower in the courts of any jurisdiction or jurisdictions in which the Borrower may be served.

9.19. WAIVER OF TRIAL BY JURY

EACH OF THE BORROWER AND THE LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREIN. FURTHER, THE BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE LENDER, OR COUNSEL TO THE LENDER, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. THE BORROWER ACKNOWLEDGES THAT THE LENDER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, INTER ALIA, THE PROVISIONS OF THIS SECTION.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Revolving Credit and Term Loan Agreement as of the day and year first written above.

[BORROWER]

By: _____

Name: _____

Title: _____

[LENDER]

By: _____

Name: _____

Title: _____

FOOTNOTES:

(n1)Footnote 1. Change as needed.

(n2)Footnote 2. For Not-for-Profits only.

(n3)Footnote 3. Delete if loan is unsecured. Utilize applicable intro based on type of collateral, or change as needed for other types.

(n4)Footnote 4. Definition is not needed in the Agreement as is, but is included here if the term is utilized.

(n5)Footnote 5. Definition is not needed in the Agreement as is, but is included here if the term is utilized.



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 1: Loans--Secured.

37TTT-1 California Legal Forms--Transaction Guide Form T1-3

Form T1-3 Security Agreement

Description: This form provides a sample security agreement outlining a security interest in a secured transaction.

Form T1-3 Security Agreementn1

SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of _____ [date], (this "Agreement"), between THE BANK, a _____ corporation (the "Lender") having an office at _____ [address], and _____ CORPORATION, a _____ corporation having an address at _____ (the "Borrower").

WITNESSETH:

A. The Lender is willing, only if this Agreement is entered into, to make a loan to the Borrower in the aggregate principal amount of \$_____ pursuant to the Secured Promissory Note, dated the date hereof (the "Note"), between the Lender and the Borrower.

B. In order to induce the Lender to loan the money to the Borrower, the Borrower agrees as follows:

Section 1. Grant of Security. For the consideration recited above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower hereby grants to the Lender a first security interest in, and continuing first lien upon, and a right of set off against, all of the Borrower's right, title and interest in and to the following (collectively, the "Collateral"): (i) all of the fixed assets (inventory and equipment) of the Borrower listed on Schedule A attached hereto and any and all inventory and equipment now or hereafter affixed to, or used in connection therewith (the "Equipment"), (ii) any documents of title or other documents or receipts that evidence the right of the person in possession thereof to receive, hold or dispose of any the Equipment, including, without limitation, warehouse receipts, (iii) all insurance policies, warranties and guarantees relating to the Equipment, (iv) all books, records, and other general intangibles relating to the Equipment and (v) all proceeds (including, without limitation, insurance proceeds), distributions (whether in money, securities or other property) and collections from or with respect

to any or all of the foregoing ("Proceeds").

Section 2. Security of Obligations. This Agreement secures the payment and performance of all obligations of the Borrower now or hereafter existing under the Note, whether for principal, interest, fees, expenses or otherwise, and all obligations of the Borrower now or hereafter existing under this Agreement (all such obligations being the "Obligations").

Section 3. Insurance. The Borrower shall, at its own expense, and for so long as the Lender shall be entitled to a security interest in the Collateral, maintain insurance with respect to the Equipment in the name of, and with loss or damage payable to the Lender, as its interest may appear pursuant to a "Lender Loss Payable Clause" endorsed thereon, against loss or damage by fire or other hazards with such insurance companies and in such amounts as required by the Lender at any time (all such policies providing at least ten (10) days' prior written notice of cancellation to the Lender) and the Borrower shall deliver to the Lender original policies or evidence satisfactory to the Lender of compliance with the foregoing insurance provisions. The Borrower shall promptly, upon receipt of actual knowledge thereof, notify the Lender of any loss or damage to the Equipment. If the Borrower shall fail for any reason to furnish the Lender with such insurance, the Lender shall have the right to effect such insurance and to change any costs in connection therewith to the Borrower, and until paid by the Borrower, such costs shall be added to the Obligations secured hereunder.

Section 4. Further Assurances. The Borrower agrees that from time to time, at the expense of the Borrower, it will promptly execute and deliver all further instruments and documents, and take all further action that may be necessary or desirable, or that the Lender may request, in order to perfect and protect the security interest granted hereby or to enable the Lender to exercise and enforce its rights and remedies hereunder with respect to the Collateral. The Borrower hereby authorizes the Lender to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Borrower where permitted by law. The Borrower further authorizes the Lender to have the sole right to make any insurance adjustments or settle any claims made thereunder. The Borrower shall notify the Lender immediately if the chief office of the Borrower is other than as stated above.

Section 5. Lender's Duties. The powers conferred on the Lender hereunder are solely to protect its interest in the Collateral and not to impose any duty upon it to exercise any such powers. The Lender shall not be required to take any action of any kind to collect, preserve, conserve, restore or protect the Collateral or its or the Borrower's rights in the Collateral.

Section 6. Remedies. If any Event of Default (as such term is defined in the Note) shall have occurred and be continuing:

(a) The Lender may at any time or times, exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the state of _____ (the "Code") (whether or not the Code applies to the affected Collateral).

(b) All cash proceeds received by the Lender in respect of any sale of, collection from, or other realization upon all or part of the Collateral may, in the discretion of the Lender, be held by the Lender as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Lender pursuant to Section 7) in whole or in part by the Lender against, all or any part of the Obligations in such order as the Lender shall elect. Any surplus of such cash or cash proceeds held by the Lender and remaining after payment in full of all the Obligations shall be paid over to the Borrower or to whomsoever may be lawfully entitled to receive such surplus.

The rights, remedies and benefits of the Lender herein specified are cumulative and not exclusive of any other rights, remedies or benefits which the Lender may have under this Agreement, the Note or any related agreement, or at law, in equity, by statute or otherwise. The Borrower hereby expressly agrees that the Lender shall not be required to exercise

any particular of its rights, powers, remedies or benefits under this Agreement or to realize or attempt to realize on any security for any or all of the Obligations.

Section 7. Indemnity and Expenses.

(a) The Borrower agrees to indemnify the Lender from and against any and all claims, losses and liabilities arising or resulting from this Agreement (including, without limitation, enforcement of this Agreement).

(b) The Borrower shall, upon demand, pay to the Lender the amount of any and all expenses, including the fees and disbursements of its counsel and of any experts and agents, which the Lender may incur in connection with the (i) the administration of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any rights of the Lender hereunder, or (iii) the failure by the Borrower to perform or observe any of the provisions hereof.

Section 8. Modifications, Amendments. No modification, amendment, or waiver of any provision of this Agreement nor consent to any departure by the Borrower herefrom shall in any event be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9. No Delay, Waiver, Etc. No course of dealing between the Borrower and the Lender, nor any delay on the part of the Lender in exercising any power or right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any power or right hereunder preclude any other or further exercise thereof or the exercise of any other power or right.

Section 10. Address for Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when received, if delivered in person or three (3) business days following the mailing thereof if mailed by certified first class mail, postage prepaid, return receipt requested, to the respective addresses of the parties set forth above.

Section 11. Continuing Security Interest; Transfer of Note. This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until payment in full of the Obligations, (ii) be binding upon the Borrower and its successors and assigns and (iii) inure to the benefit of the Lender and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), the Lender may assign or otherwise transfer the Note held by it to any person or entity, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to the Lender herein and otherwise. Upon the payment in full of the Obligations, the security interest shall revert to the Borrower. Upon any such termination, the Lender will, at the Borrower's expense, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

Section 12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of _____ without giving effect to the conflict of laws provisions thereof.

Section 13. Waiver of Jury Trial and Set-off. The Borrower hereby waives a trial by jury in any litigation in any court with in connection with any of the transactions arising out of this Agreement. The Borrower hereby waives the right to interpose any set off or counterclaim or cross-claim in connection with any such litigation, irrespective of the nature of such set off, counterclaim or cross-claim.

Section 14. Service of Process. The Borrower hereby irrevocably consents to the jurisdiction of the Courts of the State of _____ and of any Federal Court located in such State in connection with any action or proceeding arising out of or relating to this Agreement, the Note or any instrument or document delivered in connection with the

transactions contemplated herein. In any such litigation, the Borrower waives personal service of any summons, complaint or other process and agrees that the service thereof may be made by certified mail, return receipt requested, directed to the Borrower at its address for purposes of notice under Section 10 hereof.

Section 15. Severability. If any part or provision of this Agreement is invalid, illegal or unenforceable in any respect, such part or provision shall be severable without affecting the validity, legality or enforceability of any other part or provision of this Agreement.

Section 16. Counterparts. This Agreement may be executed in counterparts.

THE BORROWER:

_____ CORPORATION

By: _____

Name: _____

Title: _____

THE LENDER:

THE BANK

By: _____

Name: _____

Title: _____

FOOTNOTES:

(n1)Footnote 1. The above form is a stand-alone security agreement wherein the borrower executes a Secured Promissory Note evidencing the obligation to the borrower and the attached security agreement. Depending upon assets intended to be covered, the practitioner should review the types of personal property set forth in Article 9 to ensure that the debtor grants a security interest in all assets intended to be covered, and that they are properly described.



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 1: Loans--Secured.

37TTT-1 California Legal Forms--Transaction Guide Form T1-4

Form T1-4 General Security Agreement

Description: This form provides a sample general security agreement between a secured party and a debtor arranging a secured lending transaction.

Form T1-4 General Security Agreement

SECURITY AGREEMENT

This Security Agreement (this "Agreement") is dated as of _____, 20____
between _____, having an office at _____ ("Secured Party") and
_____, a _____ corporation, having its principal place of business at
_____ ("Debtor").

BACKGROUND

Secured Party and Debtor have entered into that certain [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20____ (as amended, supplemented, restated or modified from time to time, the "Loan Agreement"). Pursuant to the terms of the Loan Agreement, Secured Party has agreed to make certain extensions of credit available to the Debtor. Secured Party is willing to make such extensions of credit available to the Debtor only upon the condition, among others, that the Debtor execute and deliver this Agreement to Secured Party.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings and the terms and conditions contained herein, the parties hereto agree as follows:

1. A. General Definitions. When used in this Agreement, the following terms shall have the following meanings:

"Collateral" shall mean and include

(a) all Receivables;

(b) all Equipment;

(c) all General Intangibles (including payment intangibles);

(d) all Inventory;

(e) all Investment Property;

(f) all of Debtor's right, title and interest in and to (i) its respective goods and other property including, but not limited to, all merchandise returned or rejected by Customers, relating to or securing any of the Receivables; (ii) all of Debtor's rights as a consignor, a consignee, an unpaid vendor, mechanic, artisan, or other lienor, including stoppage in transit, setoff, detinue, replevin, reclamation and repurchase; (iii) all additional amounts due to Debtor from any Customer relating to the Receivables; (iv) other property, including warranty claims, relating to any goods securing this Agreement; (v) all of Debtor's contract rights, rights of payment which have been earned under a contract right, instruments, documents, chattel paper (including electronic chattel paper), warehouse receipts, deposit accounts, letters of credit, letter-of-credit rights, and money; (vi) the following commercial tort claims [_____]; and (vii) if and when obtained by Debtor, all personal property of third parties in which Debtor has been granted a lien or security interest as security for the payment or enforcement of Receivables;

(g) all of Debtor's ledger sheets, ledger cards, files, correspondence, records, books of account, business papers, computers, computer software (owned by Debtor or in which it has an interest), computer programs, tapes, disks and documents relating to (a), (b), (c), (d), (e) and (f) of this Paragraph; and

(h) all proceeds and products of (a), (b), (c), (d), (e), (f) and (g) in whatever form, including, but not limited to: cash, deposit accounts (whether or not comprised solely of proceeds), certificates of deposit, insurance proceeds (including hazard, flood and credit insurance), negotiable instruments and other instruments for the payment of money, chattel paper, security agreements, documents, eminent domain proceeds, condemnation proceeds and tort claim proceeds.

"Debtor" shall have the meaning set forth in the introductory paragraph hereof and shall extend to all permitted successors and assigns.

"Customer" means and includes the account debtor with respect to any Receivable and/or the prospective purchaser of goods, services or both with respect to any contract or contract right, and/or any party who enters into or proposes to enter into any contract or other arrangement with Debtor, pursuant to which Debtor is to deliver any personal property or perform any services.

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

"Environmental Complaint" means any notice of violation, request for information or notification that Debtor is potentially responsible for investigation or cleanup of environmental conditions on its property, demand letter or complaint, order, citation, or other written notice with regard to any Hazardous Discharge or violation of any environmental laws affecting its property or Debtor's interest therein.

"Equipment" shall mean and include all of Debtor's goods (other than Inventory) whether now owned or hereafter acquired and wherever located including, without limitation, all equipment, machinery, apparatus, motor vehicles, fittings, furniture, furnishings, fixtures, parts, accessories and all replacements and substitutions therefor or accessions thereto.

"Event of Default" means the occurrence of any of the events set forth in Section 12.

"GAAP" means generally accepted accounting principles, practices and procedures in effect from time to time.

"General Intangibles" shall mean and include all of Debtor's general intangibles, whether now owned or hereafter acquired including, without limitation, all payment intangibles, all choses in action, causes of action, corporate or other business records, inventions, designs, patents, patent applications, equipment formulations, manufacturing procedures, quality control procedures, trademarks, trademark applications, service marks, trade secrets, goodwill, copyrights, design rights, software, computer information, source codes, codes, records and data, registrations, licenses, franchises, customer lists, tax refunds, tax refund claims, computer programs, all claims under guarantees, security interests or other security held by or granted to Debtor to secure payment of any of the Receivables by a Customer (other than to the extent covered by Receivables) all rights of indemnification and all other intangible property of every kind and nature (other than Receivables).

"Hazardous Discharge" means any release or threat of release of a reportable quantity of any hazardous substances on Debtor's property.

"Inventory" shall mean and include all of Debtor's now owned or hereafter acquired goods, merchandise and other personal property, wherever located, to be furnished under any consignment arrangement, contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in Debtor's business or used in selling or furnishing such goods, merchandise and other personal property, and all documents of title or other documents representing them.

"Investment Property" means shall have the meaning set forth in the U.C.C. as it has been adopted in the State of _____.

"Loans" means all extensions of credit under the Loan Agreement.

"Loan Agreement" shall have the meaning set forth in the Background paragraph hereof.

"Obligations" means and includes [all Loans,] [all obligations of the Debtor to Secured Party,] all advances, debts, liabilities, obligations, covenants and duties owing by Debtor to Secured Party (or any corporation that directly or indirectly controls or is controlled by or is under common control with Secured Party) of every kind and description (whether or not evidenced by any note or other instrument and whether or not for the payment of money or the performance or non-performance of any act), direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, whether existing by operation of law or otherwise now existing or hereafter arising including, without limitation, any debt, liability or obligation owing from Debtor to others which Secured Party may have obtained by assignment or otherwise and further including, without limitation, all payments Debtor is required to make by law or otherwise arising under or as a result of this Agreement, together with all reasonable expenses and reasonable attorneys' fees chargeable to Debtor's account or incurred by Secured Party in connection with Debtor's account whether provided for herein or in any other agreement, instrument or document executed by or on behalf of the Debtor or delivered to Secured Party relating to this Agreement or the transactions contemplated hereby.

"Permitted Liens" means (i) liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business securing sums not overdue; (ii) liens incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits, relating to employees, securing sums (a) not overdue or (b) being diligently contested in good faith provided that adequate reserves with respect thereto are maintained on the books of Debtor in conformity with GAAP, (iii) liens in favor of Secured Party, (iv) liens for taxes (a) not yet due or (b) being diligently contested in good faith, provided that adequate reserves

with respect thereto are maintained on the books of Debtor in conformity with GAAP, provided that the lien shall have no effect on the priority of the liens in favor of Secured Party or the value of the assets in which Secured Party has such a lien and a stay of enforcement of any such lien shall be in effect and (v) liens specified on Schedule 1(A) hereto.

"Person" shall mean any individual, sole proprietorship, partnership, corporation, business trust, joint stock company, trust, unincorporated organization, association, limited liability company, institution, public benefit corporation, joint venture, entity or government (whether Federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

"Receivables" shall mean and include all of Debtor's accounts, contract rights, instruments (including those evidencing indebtedness owed to Debtor by its Affiliates), documents, chattel paper (including electronic chattel paper), general intangibles relating to accounts, drafts and acceptances, credit card receivables and all other forms of obligations owing to Debtor arising out of or in connection with the sale or lease of Inventory or the rendition of services, all supporting obligations, guarantees and other security therefor, whether secured or unsecured, now existing or hereafter created, and whether or not specifically sold or assigned to Secured Party hereunder.

"Secured Party" shall have the meaning set forth in the introductory paragraph hereof and shall include its successors and assigns.

"Subsidiary" of any Person means a corporation or other entity of whose shares of stock or other ownership interests having ordinary voting power (other than stock or other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the directors of such corporation, or other Persons performing similar functions for such entity, are owned, directly or indirectly, by such Person.

"U.C.C." means the Uniform Commercial Code as adopted in the State of _____ as amended or revised from time to time, and any successor statute.

B. Accounting Terms. Any accounting terms used in this Agreement which are not specifically defined shall have the meanings customarily given them in accordance with GAAP.

C. Other Terms. All other terms used in this Agreement and defined in the U.C.C. shall have the meaning given therein unless otherwise defined herein. To the extent the definition of any category or type of collateral is expanded by any amendment, modification or revision to the U.C.C., such expanded definition will apply automatically as of the date of such amendment, modification or revision.

2. Security Interest.

(a) To secure the prompt payment and performance to Secured Party of the Obligations, Debtor hereby assigns, pledges and grants to Secured Party a continuing security interest in and to all of its Collateral, whether now owned or existing or (except in the case of commercial tort claims) hereafter acquired or arising and wheresoever located. Debtor shall mark its books and records as may be necessary or appropriate to evidence, protect and perfect Secured Party's security interest and shall cause its financial statements to reflect such security interest. Debtor shall promptly provide Secured Party with written notice of all hereafter arising commercial tort claims, such notice to contain the case title together with the applicable court and a brief description of the claim(s). Upon delivery of each such notice, Debtor shall be deemed to hereby grant to Secured Party a security interest and lien in and to such commercial tort claims and all proceeds thereof.

(b) Debtor shall take all action that may be necessary or desirable, or that Secured Party may request, so as at all times to maintain the validity, perfection, enforceability and priority of Secured Party's security interest in the Collateral or to enable Secured Party to protect, exercise or enforce its rights hereunder and in the Collateral, including, but not limited

to, (i) immediately discharging all liens other than Permitted Encumbrances, (ii) obtaining landlords' or mortgagees' lien waivers and rights of access, (iii) delivering to Secured Party, endorsed or accompanied by such instruments of assignment as Secured Party may specify, and stamping or marking, in such manner as Secured Party may specify, any and all chattel paper, instruments, letters of credits and advices thereof and documents evidencing or forming a part of the Collateral, (iv) entering into warehousing, lockbox and other custodial arrangements satisfactory to Secured Party, and (v) executing and delivering control agreements, instruments of pledge, mortgages, notices and assignments, in each case in form and substance satisfactory to Secured Party, relating to the creation, validity, perfection, maintenance or continuation of Secured Party's security interest under the Uniform Commercial Code or other applicable law. By its signature hereto, Debtor hereby authorizes Secured Party to file against Debtor one or more financing statements pursuant to the U.C.C. in form and substance satisfactory to Secured Party (which statements may have a description of collateral which is broader than that set forth herein) and hereby ratifies the filing of any such financing statements filed by Secured Party prior to the effective date of this Agreement. All charges, expenses and fees Secured Party may incur in doing any of the foregoing, and any local taxes relating thereto, shall be paid to Secured Party immediately upon demand.

3. Representations Concerning the Collateral. Debtor represents and warrants:

(a) the Collateral (i) is owned solely by Debtor free and clear of all claims, liens, security interests and encumbrances (including without limitation any claims of infringement) except (A) those in Secured Party's favor and (B) Permitted Liens and (ii) is not subject to any agreement prohibiting the granting of a security interest or requiring notice of or consent to the granting of a security interest;

(b) (i) all Receivables (x) represent complete bona fide transactions with Customers in the ordinary course of the Debtor's business which require no further act under any circumstances on Debtor's part to make such Receivables payable by the Customers, (y) [to the best of Debtor's knowledge,] are not subject to any present, future or contingent offsets, disputes or counterclaims, and (z) do not represent bill and hold sales, consignment sales, guaranteed sales, sale or return or other similar understandings or obligations of Debtor, (ii) [to the best of the Debtor's knowledge,] there are no facts, events or occurrences which in any way impair the validity of any Receivable or enforcement thereof or tend to reduce the amount payable under any Receivables and (iii) the Debtor has no knowledge that any Customer is unable generally to pay its debts as they become due.

(c) all Inventory is of good and merchantable quality, free from any defects. No Inventory is subject to any licensing, patent, royalty, trademark, tradename or copyright agreements with any third parties. The completion of manufacture, sale or other disposition of Inventory by Secured Party following an Event of Default shall not require the consent of any Person and shall not constitute a breach or default under any contract or agreement to which the Debtor is a party or to which such property is subject.

4. Covenants Concerning the Collateral. Debtor covenants that from and after the date of this Agreement and until the Obligations are paid in full in cash it shall:

(a) not dispose of any of the Collateral whether by sale, lease or otherwise except for (i) the sale of Inventory in the ordinary course of business and (ii) the disposition or transfer of obsolete and worn-out Equipment in the ordinary course of business during any fiscal year having an aggregate fair market value of not more than \$_____ and only to the extent that (x) the proceeds of any such disposition are used to acquire replacement Equipment which is subject to Secured Party's first priority security interest or (y) the proceeds of which are remitted to Secured Party in reduction of the Obligations;

(b) not encumber, mortgage, pledge, assign or grant any security interest in any Collateral or any of Debtor's other assets to anyone other than Secured Party, except for Permitted Liens;

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(c) place notations upon Debtor's books of account and any financial statement prepared by Debtor to disclose Secured Party's security interest in the Collateral;

(d) defend the Collateral against the claims and demands of all parties.

(e) keep and maintain the Equipment in good operating condition, except for ordinary wear and tear, and shall make all necessary repairs and replacements thereof so that the value and operating efficiency shall at all times be maintained and preserved. Debtor shall not permit any such items to become a fixture to real estate or accessions to other personal property;

(f) not extend the payment terms of any Receivable without prompt notice thereof to Secured Party; and

(g) perform all other steps requested by Secured Party to create and maintain in Secured Party's favor a valid perfected first priority security interest in all Collateral.

5. Collection and Maintenance of Collateral and Records. Debtor shall keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral including, without limitation, a record of any and all payments received and any and all credits granted with respect to the Collateral and all other dealings with the Collateral. Secured Party may at any time verify Debtor's Receivables utilizing an audit control company or any other agent of Secured Party. Secured Party or Secured Party's designee may notify Customers at any time, at Secured Party's sole discretion, of Secured Party's security interest in Receivables (contracts, instruments, or chattel paper as the case may be), collect them directly from the Customers or parties to contracts, instruments and chattel paper and charge the collection costs and expenses to Debtor's account, but, unless and until Secured Party does so or gives Debtor other instructions, Debtor shall collect all Receivables for Secured Party, receive all payments thereon for Secured Party's benefit in trust as Secured Party's trustee and immediately deliver them to Secured Party in their original form with all necessary endorsements or, as directed by Secured Party, deposit such payments as directed by Secured Party. Debtor shall provide Secured Party, as requested by Secured Party, such schedules, documents and/or information regarding the Collateral as Secured Party may require.

6. Inspections. At all times during normal business hours, Secured Party shall have the right to (a) visit and inspect Debtor's properties and the Collateral, (b) inspect, audit and make extracts from Debtor's relevant books and records, including, but not limited to, management letters prepared by independent accountants and (c) discuss with Debtor's principal officers and independent accountants, Debtor's business, assets, liabilities, financial condition, results of operations and business prospects, and Debtor shall furnish all such assistance and information as Secured Party may require in connection therewith. Debtor will deliver to Secured Party any instrument necessary for Secured Party to obtain records from any service bureau maintaining records for Debtor.

7. Additional Representations, Warranties and Covenants. Debtor represents, warrants, and covenants that:

(a) Debtor is a corporation duly organized and validly existing under the laws of the State of _____ and duly qualified and in good standing in every other state or jurisdiction in which the nature of Debtor's business or the ownership of its assets requires such qualification.

(b) the execution, delivery and performance of this Agreement (i) has been duly authorized, (ii) is not in contravention of Debtor's certificate of incorporation, by-laws or of any indenture, agreement or undertaking to which Debtor is a party or by which Debtor is bound and (iii) is within Debtor's corporate powers.

(c) this Agreement is Debtor's legal, valid and binding obligation, enforceable in accordance with its terms.

(d) it keeps and will continue to keep all of its books and records concerning the Collateral at Debtor's chief executive

offices located at the address set forth in the introductory paragraph of this Agreement and will not move such books and records without giving Secured Party at least thirty (30) days prior written notice. The tangible Collateral is not stored or located at any locations other than as set forth on Schedule 7(d). It will give Secured party at least thirty (30) days prior notice of its intent to relocate tangible collateral.

(e) (i) the operation of Debtor's business is and will continue to be in compliance in all material respects with all applicable federal, state and local laws, including but not limited to all applicable environmental laws and regulations;

(ii) Debtor will establish and maintain a system to assure and monitor continued compliance with all applicable environmental laws, which system shall include periodic reviews of such compliance;

(iii) Debtor shall respond promptly to any Hazardous Discharge or Environmental Complaint and take all necessary action in order to safeguard the health of any Person and to avoid subjecting the Collateral to any lien, charge, claim or encumbrance;

(iv) Debtor shall defend and indemnify the Secured Party and hold the Secured Party harmless from and against all loss, liability, damage and expense, claims, costs, fines and penalties, including attorney's fees, suffered or incurred by the Secured Party under or on account of any environmental laws.

(f) there is no pending or threatened litigation, actions or proceeding which involve the possibility of materially and adversely affecting the Debtor's business, assets, operations, condition or prospects, financial or otherwise, or the Collateral or the ability of Debtor to perform this Agreement.

(g) it will pay or discharge when due all taxes, assessments and governmental charges or levies imposed upon it unless same are not delinquent or same constitute Permitted Liens.

(h) it will promptly inform Secured Party in writing of: (i) the commencement of all proceedings and investigations by or before and/or the receipt of any notices from, any governmental or nongovernmental body and all actions and proceedings in any court or before any arbitrator against or in any way concerning any of Debtor's properties, assets or business, which might singly or in the aggregate, have a materially adverse effect on Debtor; (ii) any amendment of Debtor's certificate of incorporation or by-laws; (iii) any change in Debtor's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects which has had or might have a materially adverse effect on Debtor; (iv) any Event of Default or Default; (v) any default or any event which with the passage of time or giving of notice or both would constitute a default under any agreement for the payment of money to which Debtor is a party or by which Debtor or any of Debtor's properties may be bound which would have a material adverse effect on Debtor's business, operations, property or condition (financial or otherwise) or the Collateral; (vi) any change in the location of Debtor's executive offices; (vii) any change in the location of Debtor's Inventory or Equipment from the locations listed on Schedule 7(d) attached hereto, (viii) any additional licenses, patents, copyrights, trademarks, tradenames or corporate names; (ix) any material delay in Debtor's performance of any of its obligations to any Customer and of any assertion of any material claims, offsets or counterclaims by any Customer and of any allowances, credits and/or other monies granted by it to any Customer; (x) any material adverse information obtained by Debtor relating to the financial condition of any Customer; and (xi) any material return of goods.

(i) it will bear the full risk of loss from any loss of any nature whatsoever with respect to the Collateral. At its own cost and expense in amounts and with carriers acceptable to Secured Party, it shall (i) keep all its insurable properties and properties in which it has an interest insured against the hazards of fire, flood, sprinkler leakage, those hazards covered by extended coverage insurance and such other hazards, and for such amounts, as is customary in the case of companies engaged in businesses similar to Debtor's including, without limitation, public and product liability insurance, worker's compensation, insurance against larceny, embezzlement or other criminal misappropriation of insured's officers and employees and business interruption insurance; and (ii) furnish Secured Party with (x) copies of all policies and

evidence of the maintenance of such policies at least thirty (30) days before any expiration date, and (y) appropriate loss payable endorsements in form and substance satisfactory to Secured Party, naming Secured Party as loss payee and providing that as to Secured Party the insurance coverage shall not be impaired or invalidated by any act or neglect of Debtor and the insurer will provide Secured Party with at least thirty (30) days notice prior to cancellation. Debtor shall instruct the insurance carriers that in the event of any loss thereunder, the carriers shall make payment for such loss to Secured Party and not to Debtor and Secured Party jointly. If any insurance losses are paid by check, draft or other instrument payable to Debtor and Secured Party jointly, Secured Party may endorse Debtor's name thereon and do such other things as Secured Party may deem advisable to reduce the same to cash. Secured Party is hereby authorized to adjust and compromise claims. All loss recoveries received by Secured Party upon any such insurance may be applied to the Obligations, in such order as Secured Party in its sole discretion shall determine. Any surplus shall be paid by Secured Party to Debtor or applied as may be otherwise required by law. Any deficiency thereon shall be paid by Debtor to Secured Party, on demand.

(j) any time and from time to time, upon the written request of Secured Party and at the sole expense of Debtor, Debtor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further actions as Secured Party may reasonably deem desirable to obtain the full benefits of this Agreement and of the rights and powers herein granted.

(k) it will not (i) create, incur, assume or suffer to exist any indebtedness (exclusive of trade debt) whether secured or unsecured other than Debtor's indebtedness to Secured Party and as set forth on Schedule 7(k) attached hereto and made a part hereof, or any liens, except for Permitted Liens; (ii) declare, pay or make any dividend or distribution on any shares of the common stock or preferred stock of Debtor or apply any of its funds, property or assets to the purchase, redemption or other retirement of any common or preferred stock of Debtor; (iii) directly or indirectly, prepay any indebtedness (other than to Secured Party), or repurchase, redeem, retire or otherwise acquire any indebtedness of Debtor; (iv) make advances, loans or extensions of credit to any Person; (v) become either directly or contingently liable upon the obligations of any Person by assumption, endorsement or guaranty thereof or otherwise; (vi) enter into any merger, consolidation or other reorganization with or into any other Person or acquire all or a portion of the assets or stock of any Person or permit any other Person to consolidate with or merge with it; (vii) form any Subsidiary or enter into any partnership, joint venture or similar arrangement; (viii) materially change the nature of the business in which it is presently engaged; (ix) enter into any transaction with any Affiliate, except in ordinary course on arms-length terms; or (xi) bill Receivables under any name except the present name of the Debtor.

8. Power of Attorney. Debtor hereby irrevocably appoints Secured Party or any other Person whom Secured Party may designate as Debtor's attorney-in-fact, with full power and authority in place and stead of Debtor and in the name of Debtor or in its own name to: (i) endorse Debtor's name on any checks, notes, acceptances, money orders, drafts or other forms of payment or security that may come into Secured Party's possession; (ii) sign Debtor's name on any invoice or bill of lading relating to any Receivables, drafts against customers, schedules and assignments of Receivables, notices of assignment, financing statements and other public records, verifications of account and notices to or from Customers; (iii) verify the validity, amount or any other matter relating to any Receivable by mail, telephone, telegraph or otherwise with Customers; (iv) execute customs declarations and such other documents as may be required to clear Inventory through United States Customs; (v) do all things necessary to carry out this Agreement and all related documents; (vi) continue any insurance existing pursuant to the terms of this Agreement and pay all or any part of the premium therefor and the cost thereof; and (vii) on or after the occurrence of an Event of Default, notify the post office authorities to change the address for delivery of Debtor's mail to an address designated by Secured Party, and to receive, open and dispose of all mail addressed to Debtor. Debtor hereby ratifies and approves all acts of the attorney. The powers conferred on the Secured Party hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Neither Secured Party nor the attorney will be liable for any acts or omissions or for any error of judgment or mistake of fact or law. This power, being coupled with an interest, is irrevocable so long as any Receivable which is assigned to Secured Party or in which Secured Party has a security interest remains unpaid and until the Obligations are paid in full in cash.

9. Expenses. Debtor shall pay all of Secured Party's out-of-pocket costs and expenses, including without limitation fees and disbursements of counsel and appraisers, in connection with the preparation, execution and delivery of this Agreement and in connection with the prosecution or defense of any action, contest, dispute, suit or proceeding concerning any matter in any way arising out of, related to or connected with this Agreement. Debtor shall also pay all of Secured Party's out-of-pocket costs and expenses, including without limitation fees and disbursements of counsel, in connection with (a) the preparation, execution and delivery of any waiver, any amendment thereto or consent proposed or executed in connection with the transactions contemplated by this Agreement, (b) Secured Party's obtaining performance of the Debtor's obligations under this Agreement, including, but not limited to, the enforcement or defense of Secured Party's security interests, assignments of rights and liens hereunder as valid perfected security interests, (c) any attempt to inspect, verify, protect, collect, sell, liquidate or otherwise dispose of any Collateral and (d) any consultations in connection with any of the foregoing. All such costs and expenses together with all filing, recording and search fees, taxes and interest payable by Debtor to Secured Party shall be payable on demand and shall be secured by the Collateral.

10. Assignment By Secured Party. Secured Party may assign any or all of the Obligations together with any or all of the security therefor and any transferee shall succeed to all of Secured Party's rights with respect thereto. Upon such transfer, Secured Party shall be released from all responsibility for the Collateral to the extent same is assigned to any transferee.

11. Waivers. The Debtor waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description

12. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) the occurrence of a Default or Event of Default under the Loan Agreement,

(b) failure by the Debtor to make payment of any of its Obligations when required hereunder,

(c) failure to perform under and/or committing any breach of this Agreement or any other agreement between Debtor and Secured Party,

(d) a default by Debtor in the payment, when due, of any principal of or interest on any indebtedness for money borrowed,

(e) occurrence of a default under any agreement to which Debtor is a party with third parties that has a material adverse affect upon Debtor's business or operations, property or condition (financial or otherwise) including all leases for any premises where Inventory or Equipment is located,

(f) any representation, warranty or statement made by Debtor hereunder or in any certificate, statement or document delivered pursuant to the terms hereof, or in connection with the transactions contemplated by this Agreement should at any time be false or misleading in any material respect,

(g) an attachment or levy is made upon any of Debtor's assets having an aggregate value in excess of \$_____, or a judgment is rendered against Debtor or any of Debtor's property involving a liability of more than \$_____, which shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof,

(h) as the result of an act of Debtor not permitted by this Agreement, any lien created hereunder for any reason ceases to

be or is not a valid and perfected lien having a first priority interest,

(i) if Debtor shall (i) apply for, consent to or suffer to exist the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of creditors, (iii) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (iv) be adjudicated a bankrupt or insolvent, (v) file a petition seeking to take advantage of any other law providing for the relief of debtors, (vi) acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (vii) take any action for the purpose of effecting any of the foregoing,

(j) Debtor shall admit in writing its inability, or be generally unable to pay its debts as they become due or cease operations of its present business, or

(k) Secured Party shall, in the exercise of its reasonable judgment and in good faith, deem itself insecure or unsafe or shall fear diminution in value, removal or waste of the Collateral.

13. Remedies. Upon the occurrence and during the continuation of any Event of Default, Secured Party shall have the right to demand repayment in full of all Obligations, whether or not otherwise due and to terminate its obligation to make any further extensions of credit. Until all Obligations have been fully satisfied in cash, Secured Party shall retain its security interest in all Collateral. Secured Party shall have, in addition to all other rights provided herein, the rights and remedies of a secured party under the U.C.C. and under other applicable law, and all other legal and equitable rights to which Secured Party may be entitled, including without limitation, the right to take immediate possession of the Collateral and to require Debtor to assemble the Collateral, at Debtor's expense, and to make it available to Secured Party at a place designated by Secured Party which is reasonably convenient to both parties and to enter any of the premises of Debtor or wherever the Collateral shall be located, with or without force or process of law, and to keep and store the same on said premises until sold (and if said premises be the property of Debtor, Debtor agrees not to charge Secured Party for storage thereof). Further, Secured Party may, at any time or times after a Default, sell and deliver all Collateral held by or for Secured Party in one or more parcels at public or private sale for cash, upon credit or otherwise, at such prices and upon such terms as Secured Party, in Secured Party's sole discretion, deems advisable or Secured Party may collect or otherwise recover upon the Collateral in any commercially reasonable manner as permitted by the U.C.C. Except as to that part of the Collateral which is perishable or threatens to decline speedily in nature or is of a type customarily sold on a recognized market, the requirement of reasonable notice shall be met if such notice is mailed postage prepaid to Debtor at Debtor's address as shown in Secured Party's records, at least five (5) days before the time of the event of which notice is being given. Secured Party may be the purchaser at any sale, if it is public. Until Secured Party is able to effect a sale, lease, or other disposition of Collateral, Secured Party shall have the right to use or operate Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by Secured Party. Secured Party shall have no obligation to Debtor to maintain or preserve the rights of Debtor as against third parties with respect to Collateral while Collateral is in the possession of Secured Party. Secured Party may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of Secured Party's remedies with respect to such appointment without prior notice or hearing. In connection with the exercise of the foregoing remedies, Secured Party is granted permission to use all of Debtor's (a) trademarks, tradenames, tradestyles, patents, patent applications, licenses, franchises and other proprietary rights which are used in connection with Inventory for the purpose of disposing of such Inventory and (b) Equipment for the purpose of completing the manufacture of unfinished goods. The proceeds realized from the sale of any Collateral shall be applied as follows: first, to the costs, expenses and attorneys' fees and expenses incurred by Secured Party for collection and for acquisition, completion, protection, removal, storage, sale and deliver of the Collateral; second, in the manner authorized by *U.C.C. § 9-615.n** If any deficiency shall arise, Debtor shall remain liable to Secured Party therefor.

14. Waiver; Cumulative Remedies. Failure by Secured Party to exercise any right, remedy or option under this

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Agreement or any supplement hereto or any other agreement between Debtor and Secured Party or delay by Secured Party in exercising the same, will not operate as a waiver; no waiver by Secured Party will be effective unless it is in writing and then only to the extent specifically stated. Secured Party's rights and remedies under this Agreement will be cumulative and not exclusive of any other right or remedy which Secured Party may have.

15. Notices. Any notice or request hereunder may be given to Debtor or Secured Party at the respective addresses set forth below or as may hereafter be specified in a written notice designated as a change of address under this Section 15. Any notice or request hereunder shall be given by (a) hand delivery, (b) overnight courier, (c) registered or certified mail, return receipt requested, or (d) fax to the number set out below (or such other number as may hereafter be specified in a notice designated as a notice of change of address) with electronic confirmation of its receipt. Any notice or other communication required or permitted pursuant to this Agreement shall be deemed given (a) when personally delivered to any officer of the party to whom it is addressed, (b) on the earlier of actual receipt thereof or three (3) days following posting thereof by certified or registered mail, postage prepaid, or (c) upon actual receipt thereof when sent by a recognized overnight delivery service or (d) upon actual receipt thereof when sent by fax to the number set forth below with electronic confirmation of its receipt, in each case addressed to each party at its address set forth below or at such other address as has been furnished in writing by a party to the other by like notice:

If to Secured Party:

Attention:

Telephone:

Fax:

.....

with a copy to:

Attention:

Telephone:

Fax:

.....

If to Debtor:

Attention:

Telephone:

Fax:

.....
with a copy to:

Attention:

Telephone:

Fax:

16. Governing Law and Waiver of Jury Trial. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF _____. SECURED PARTY SHALL HAVE THE RIGHTS AND REMEDIES OF A SECURED PARTY UNDER APPLICABLE LAW INCLUDING, BUT NOT LIMITED TO, THE U.C.C. COMPANY AGREES THAT ALL ACTIONS AND PROCEEDINGS RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR ANY OTHER OBLIGATIONS SHALL BE LITIGATED IN THE FEDERAL DISTRICT COURT OF THE _____ DISTRICT OF THE STATE OF _____ OR, AT SECURED PARTY'S OPTION, IN ANY OTHER COURTS LOCATED IN THE STATE OF _____ OR ELSEWHERE AS SECURED PARTY MAY SELECT AND THAT SUCH COURTS ARE CONVENIENT FORUMS AND COMPANY SUBMITS TO THE PERSONAL JURISDICTION OF SUCH COURTS. COMPANY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS THAT SERVICE OF PROCESS UPON COMPANY MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO COMPANY AT COMPANY'S ADDRESS APPEARING ON SECURED PARTY'S RECORDS, AND SERVICE SO MADE SHALL BE DEEMED COMPLETED TWO (2) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED. EACH PARTY HERETO WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN COMPANY AND SECURED PARTY.

17. Entire Understanding. This Agreement contains the entire understanding between Debtor and Secured Party and any promises, representations, warranties or guarantees not herein contained shall have no force and effect unless in writing, signed by the Debtor and Secured Party. Neither this Agreement, nor any portion or provisions thereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged.

18. Severability. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions thereof.

19. Captions. All captions are and shall be without substantive meaning or content of any kind whatsoever.

20. Marshaling. Secured Party shall not be required to marshal any present or future collateral security (including but not limited to this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition

to all other rights, however existing or arising

21. Counterparts; Telecopied Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Any signature delivered by a party by fax shall be deemed to be an original signature hereto.

23. Construction. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits thereto.

IN WITNESS WHEREOF, this Security Agreement has been duly executed as of the day and year first above written.

[DEBTOR]

.....

By: _____

Name:

Title:

[SECURED PARTY]

By: _____

Name:

Title:

SCHEDULES

Schedule 1(A)--Permitted Liens

Schedule 7(d)--Inventory Locations

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FOOTNOTES:

(n1)Footnote *. Review your state's statutory version of U.C.C. Section 9-615, as it may include variances from the model U.C.C. version.



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 1: Loans--Secured.

37TTT-1 California Legal Forms--Transaction Guide Form T1-5

Form T1-5 Secured Term Loan Agreement

Description: This form is a loan agreement among a borrower corporation, a parent corporation of borrower, and a lender.

Form T1-5 Secured Term Loan Agreement

LOAN AGREEMENT

among

BORROWER CORPORATION,

PARENT CORPORATION,

and

THE BANK

Dated as of January _____, _____ [year]

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LOAN AGREEMENT

LOAN AGREEMENT, dated as of January ____, _____ [year], among Corporation, a corporation (herein called "Borrower"), Parent Corporation, a corporation (herein called the "Guarantor") and Banks (herein referred to as the "Bank");

WITNESSETH:

WHEREAS, Guarantor owns of record and beneficially all of the issued and outstanding capital stock of Borrower; and

WHEREAS, Borrower has requested the Bank to make a loan to Borrower in the principal amount of _____ Dollars (\$_____,000,000), to be guaranteed by the Guarantor, for the purpose of _____ and for general corporate purposes; and it is of benefit to and in the best interest of Guarantor that the Bank make such a loan to Borrower; and

WHEREAS, to induce the Bank to make such a loan Guarantor is willing to guarantee the obligations of Borrower with respect to such loan; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the Bank is willing to make such a loan to Borrower;

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

Section 1. THE LOAN

1.1 *Loan.* (a) The Bank agrees, subject to the terms and conditions hereinafter set forth, to make loans to Borrower, during the period from the date hereof until February ____, _____ [year] (herein called the "Commitment Termination Date") in the aggregate principal amount of up to _____ Dollars (\$_____,000,000). The borrowing hereunder shall be made at the Closing (as defined in Section 1.2) and shall be in the aggregate principal amount of up to _____ Dollars (\$_____,000,000). The aggregate principal amount borrowed by Borrower from the Bank outstanding at any particular time is herein called a "Loan."

1.2 *Closing.* The Loan shall be borrowed and security for the Loan shall be given and other documents shall be delivered at the closings specified in this section 1.2. The closing for the Loan (herein called the "Closing") shall take place on such earlier date or dates as may be mutually agreed upon by the Borrower and the Bank. The Closing shall take place at the principal office of the Bank in _____ [city], _____ [state], or at such other place as shall be mutually agreed upon between the Bank and Borrower. The Borrower and Guarantor jointly shall deliver to the Bank a notice of the date of the Closing, such notice to be executed by a duly authorized officer or attorney-in-fact of the Borrower and a duly authorized officer of Guarantor, which notice shall be received by the Bank not later than five (5) business days prior to the Closing.

1.3 *Notes.* The loan shall be made against and evidenced by a promissory note of the Borrower dated the date of the Closing (herein called the "Note") substantially in the form annexed hereto as Exhibit 1 (*annex copy of Promissory Note hereto as Exhibit 1*), which shall be delivered by the Borrower to the Bank at the Closing.

1.4 *Interest.* (a) Interest shall be payable monthly on the _____ day of each month, and shall be

calculated on the actual number of days elapsed on the basis of a 360-day year.

"Governing rate" shall mean a rate equal to three percent (3%) above the prime rate publicly quoted by _____ Bank and, if at any time such a rate has not been publicly announced, than such prime rate as is announced by such other major _____ [state] banking institution as may be selected by the holder. The initial governing rate shall be three percent (3%) above the prime rate in effect on the date hereof and thereafter the governing rate shall be three percent (3%) above the prime rate in effect on each payment date for the monthly period commencing on such payment date. Notwithstanding the foregoing, at no time shall the governing rate be less than _____ %.

(b) If the Borrower shall default in the due and punctual payment of any principal of, or interest on, the Loan or the Note, or on any other amount due from the Borrower under this Agreement or any of the Security Documents (as defined in Section 2.2), the Borrower shall pay interest thereon and on all such amounts as may be necessary to compensate the Bank for any loss as a consequence of such default as provided in Section 6.2, to the extent permitted by law, on a daily basis for the period from and including the date of such default up to the date of actual payment (after as well as before judgment) at (i) a rate per annum equal to four percent (4%) above the prime rate as determined by the Bank prevailing in respect of that day or any substitute rate of interest then in effect, provided, however, that the default interest rate provided by this subsection (d) shall not be less than twelve percent (12%) per annum.

1.5 *Principal.* (a) The principal amount of the Loan and of the Note shall be repaid in accordance with the following schedule: _____

(b) The Borrower may prepay the Loan and the Note in whole or in part, without premium, provided, however, that (i) the Borrower shall give the Bank not less than ten (10) business days' prior written notice of the date of prepayment; (ii) each prepayment, if less than the total amount outstanding on the Loan shall be in integral multiples of _____ Thousand Dollars (\$_____,000), and shall be applied to the payment of the remaining installments of principal on the Loan and the Note in inverse order of maturity; and (iii) each prepayment shall be accompanied by the payment of accrued interest on the amount so prepaid.

1.6 *Payments.* (a) All payments made by the Borrower of principal of, and interest on, the Loan and the Note shall be made in immediately available funds not later than 10:00 a.m. New York time on the date such payment is due, to the Bank at _____.

(b) All sums payable by the Borrower on the Loan or the Note or otherwise under this Agreement or the Collateral Loan Documents (as defined in Section 2.4), whether of principal or interest or otherwise, shall be paid in full without set-off or counterclaim and without any deduction or withholding for or on account of any taxes, duties, levies, imposts, withholdings, restrictions, conditions or charges of any nature, including any interest, fines or penalties with respect thereto, imposed by law upon the Borrower by any political or taxing authority thereof.

1.7 *Optional Reduction of Loan Commitment.* The Borrower may, without penalty or premium, at any time and from time to time prior to the Commitment Termination Date, upon not less than ten (10) business days' notice to the Bank, reduce and terminate in whole or in part the Bank's commitment to make the Loan, provided, however, that any partial reduction shall be in the amount of at least _____ Dollars (\$_____). Any such reduction shall reduce on a pro rata basis the payments of principal respecting the Loans and the Notes required by Section 1.5(a).

1.8 *Loan Commitment Fee.* The Borrower shall pay to the Bank a commitment fee (herein called the "Loan Commitment Fee") at the rate of _____ percent (_____%) per annum (computed on the basis of the actual number of days elapsed on the basis of a 360-day year) on the aggregate amount of the Bank's commitment to make the Loan which may from time to time remain unborrowed during the period commencing on

January _____, _____ [year], and continuing up to and including the Commitment Termination Date. All accrued Loan Commitment Fees shall be paid at the earlier of the Closing or the Commitment Termination Date.

1.9 *Use of Proceeds*. The Borrower and Guarantor agree that the proceeds of the Loan shall be used fully and exclusively for the purposes set forth in the second introductory paragraph of this Agreement and for general corporate purposes consistent with Section 3.9 hereof and that the Bank shall have no responsibility for the use of the proceeds of the Loan.

1.10 *Loan Participations*. The Bank shall have the right in its sole discretion to sell or otherwise transfer or grant participations in its participation in the Loan or any part thereof to any bank or financial institution.

Section 2. SECURITY

As security for the payment of the Loan and the Note and interest thereon and all other obligations of the Borrower under this Agreement:

2.1(a) *Mortgage on Real Estate*. At the Closing, Borrower shall execute, deliver and grant to the Bank a First Mortgage on Real Estate (such mortgage, as the same may be amended, modified or supplemented from time to time, herein called the "Mortgage") covering and securing the indebtedness representing the principal of, and interest on, the Loan and the Note, together with the other obligations of the Borrower under this Agreement, which shall be substantially in the form annexed hereto as Exhibit 2 (*annex copy of Mortgage hereto as Exhibit 2; drafter may substitute other collateral, e.g., Pledge Agreement, for Mortgage*).

2.2 *Guaranty Agreement*. At the Closing, the Guarantor shall execute and deliver to the Bank a Guaranty Agreement (herein called the "Guaranty Agreement") which shall be substantially in the form annexed hereto as Exhibit 3 (*annex copy of Guaranty Agreement hereto as Exhibit 3*) (the Mortgage, the Pledge Agreement and the Guaranty Agreements herein collectively referred to as the "Security Documents.").

2.3 *Collateral Account and Insurances*. (a) From and after the Closing, the Borrower shall maintain a collateral account (herein called the "Collateral Account") at the Bank's _____ [city], _____ [state] office, or any other office designated by the Bank, for the purpose of providing funds for the due and punctual payment of principal of, and interest on, the Loan and the Note whenever such principal and interest becomes due and as security for the obligations of the Borrower under this Agreement and the Security Documents.

(b) Payments (herein called "Collateral Payments") shall be deposited, subject to treatment and application under subsections (c) and (d), promptly upon receipt thereof in the Collateral Account. In the event that an Event of Default (as defined in Section 6.1 hereof) or an event which with the passage of time or giving of notice, or both, would constitute such an Event of Default shall have occurred and be continuing, or the Collateral Account is attached or levied upon by a third party through any legal proceeding or by order of any court or other authority having jurisdiction, all Collateral Payments shall be paid directly to the Bank and not to the Collateral Account.

(c) Subject to the provisions of subsection (d), at any time and from time to time, the Collateral Payments held in the Collateral Account shall be treated and applied in the manner set forth below:

(i) the Bank may each month deduct from all Collateral Payments held in the Collateral Account, (A) the total amount of the installments of principal of the Loan and the Note then due and payable and/or next becoming due and payable, (B) the total amount of installments of interest on the Loan and the Note due and payable and/or next becoming due and payable, and (C) any and all other amounts then due or payable by the Borrower to the Bank respecting the Loan and the Note under this Agreement or under the Collateral Loan Documents;

(ii) the Bank shall apply amounts deducted under clause (i) above to (A) the punctual payment when due of installments of principal of, and interest on, the Loan and the Note and (B) the payment of all other amounts then due and payable by the Borrower to the Bank respecting the Loan and the Note under this Agreement or under the Security Documents; and

(iii) to the extent that monies have not been deducted from the Collateral Account under clause (i) or notice of deduction or intention to make deductions of monies in the Collateral Account as provided below has not been given, such monies shall be available promptly to the Borrower.

The Bank shall give telephone notice, later confirmed in writing, to the Borrower in the event that it has deducted or intends to make deductions of Collateral Payments from the Collateral Account under clause (i).

(d) In the event that an Event of Default (as defined in Section 6.1 hereof), or an event which with the passage of time or giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, Collateral Payments shall not be available to the Borrower and the Bank may apply all Collateral Payments received by it and all monies held in the Collateral Account as follows:

(i) To the payment of the expenses incurred by the Bank for the protection of its rights and the pursuit of its remedies with respect to the obligations of the Borrower for the Loan and the Note under this Agreement, or any of the Security Documents, and to provide adequate indemnity to the Bank against liens claiming priority over or equality with the liens created by the Security Documents;

(ii) To the payment of interest on, and then principal of, the Loan and the Note whether due or not;

(iii) To the payment of all other sums payable by the Borrower to the Bank with respect to the Loan and the Note pursuant to this Agreement or any of the Security Documents, whether due or not, and of all damages, liquidated or otherwise, hereunder with respect to said obligations hereunder including, without limitation, the amounts specified in Section 6.2 of this Agreement, together with interest thereon; and

(iv) To the payment of any surplus thereafter remaining to the Borrower or to whomsoever may be entitled thereto.

(e) Subject to the provisions of the Mortgage, the Bank shall apply all insurance proceeds in the manner set forth in Section 2.3(d) above.

(f) The Borrower hereby grants to the Bank a security interest in and possessory lien on all its respective Collateral Payments, insurance proceeds and other monies held by the Bank in the Collateral Account and in the proceeds of all of the foregoing, as security for the due and punctual payment of the principal of, and interest on, the Loan and the Note and any and all other amounts due from the Borrower to the Bank under this Agreement and any instrument, agreement or document referred to herein which shall be in addition to and shall not affect any security interest or statutory or other rights of set-off available to the Bank with respect thereto.

2.4 Maintenance of Security Value. (a) The Borrower and Guarantor each represent and warrant to, and covenant with, the Bank, that from and after the date of the Closing the sum of (i) the value of the Real Estate and (ii) the value of any collateral pledged to or delivered to the Bank pursuant to the provisions of [the Pledge Agreement or] subsection (b) below, will not be less than One Hundred Thirty Percent (130%) of the aggregate principal amount of the Loan then outstanding.

(b) In order to assure compliance with the maintenance of security provisions of subsection (a), the Borrower or the Guarantor shall grant to the Bank as security for the payment of the principal of and interest on the Loan and the Note and all other amounts due or to become due to the Bank under this Loan Agreement and any Security Documents, a security interest in and lien upon property and assets satisfactory to the Bank. The aforesaid security interest and lien

shall be granted pursuant to instruments accompanied by such related documents, opinions and other evidence as shall be reasonably requested by the Bank, all such instruments and other documents, opinions and evidence to be satisfactory in form and substance to the Bank.

(c) From time to time the Bank may obtain, at the sole cost and expense of the Borrower and the Guarantor, a written valuation of the Real Estate and any other property and assets granted as security for the Loan pursuant to subsection (b).

Section 3. REPRESENTATIONS AND WARRANTIES BY THE BORROWER AND THE GUARANTOR

The Borrower and the Guarantor hereby jointly and severally represent and warrant that:

3.1 Corporate Existence, Power and Authority of the Borrowers. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation and is duly licensed or qualified in each jurisdiction where the character of the property owned by it or the nature of the business transacted by it requires such licensing or qualification. No proceeding looking towards the dissolution, merger or amendment of charter has been commenced with respect to the Borrower. The Borrower has all requisite power, authority and legal right: to own the Real Estate; to assign monies respecting the Real Estate; to mortgage the Real Estate pursuant to the Mortgage; *[or, if other collateral has been substituted for the mortgage, to pledge collateral pursuant to the Pledge Agreement]* to conduct its business as it is now being conducted; and to enter into, consummate and perform all the provisions of this Agreement, and any instrument, agreement or document referred to herein or therein to which it is or shall be a party, and the transactions contemplated hereby and thereby. All transactions contemplated by this Agreement, and any applicable instrument, agreement or document referred to herein to which the Borrower is or shall be a party, have been duly authorized by all corporate and other required actions, and this Agreement constitutes, and any instrument, agreement or document referred to herein to which the Borrower is or shall be a party when duly executed and delivered will constitute, binding obligations of the Borrower, enforceable in accordance with their terms, creating, in the case of the Mortgage *[or, if other collateral has been substituted for the mortgage, the Pledge Agreement]* and Section 2.6 of this Agreement, a valid first perfected lien on and security interest in the property, assets and revenues covered thereby.

3.2 Corporate Existence, Power and Authority of the Guarantor. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation and is duly licensed or qualified in each jurisdiction where the character of the property owned by it or the nature of the business transacted by it requires such licensing or qualification. The Guarantor has all requisite power, authority and legal right to own its shares of the capital stock of the Borrower and to guarantee the obligations of the Borrower hereunder and in connection herewith pursuant to the Guaranty Agreement. The Guarantor has all requisite power, authority and legal right to conduct its business as it is now being conducted and to enter into, consummate and perform all of the provisions of this Agreement and any instrument, agreement or document referred to herein to which it is or shall be a party, and the transactions contemplated hereby and thereby. All transactions contemplated by this Agreement and any applicable instrument, agreement or document referred to herein or therein to which the Guarantor is or shall be a party, including but not limited to the [Pledge Agreement and the] Guaranty Agreement, have been duly authorized by all corporate and other required actions, and this Agreement constitutes, and any instrument, agreement or document referred to herein to which the Guarantor is or shall be a party when duly executed and delivered will constitute, binding obligations of the Guarantor, enforceable in accordance with their respective terms.

3.3 Stock Ownership. The capital stock of the Borrower consists of _____ authorized shares, par value of \$_____ per share, all of which are issued and outstanding. All of the outstanding shares of the Borrower have been duly authorized and validly issued and are fully paid and non-assessable and such shares are owned of record and beneficially by the Guarantor. There are no outstanding warrants, options, agreements, convertible securities or other agreements pursuant to which the Borrower is or may become obligated to issue shares of capital

stock or other securities.

3.4 No Conflict. The execution, delivery and performance by the Borrower and the Guarantor of this Agreement, the Note, the Mortgage, the Pledge Agreement, the Guaranty Agreement, or any other instrument, agreement or document referred to herein to which any thereof is or shall be a party, does not and will not result in any violation of, or be in conflict with, any term or provision of the Articles of Incorporation or By-Laws of the Borrower or the Guarantor, or of any statute, governmental regulation or order, judgment, decree, agreement, indenture or any instrument applicable to any thereof, or result in the creation of any lien pursuant to any such term or provision (other than as contemplated by this Agreement) upon any of the properties, assets or revenues of any thereof, and no such existing term or provision adversely affects, or in the future, to the present knowledge or belief of the Borrower or the Guarantor, will materially adversely affect the assets, properties, liabilities, business or financial condition of any thereof or the ability of any thereof to carry out any of the provisions of this Agreement and any instrument, agreement or document referred to herein to which any thereof is or shall be a party or the transactions contemplated hereby and thereby.

3.5 Authorizations. All governmental approvals, licenses, authorizations, consents, filings and registrations (other than filings and registrations relating to the Mortgage and other security), if any, required for (a) the ownership by the Guarantor of its shares of the capital stock of the Borrower, and (b) the execution, delivery and performance, by the Borrower and the Guarantor, of this Agreement and any applicable instrument, agreement or document referred to herein to which any thereof is or shall be a party including, without being limited to, the Note, the Mortgage, [the Pledge Agreement] and the Guaranty Agreement, and the transactions contemplated hereby or thereby, have been obtained or made, and are in full force and effect, and are final and are not subject to review or appeal or, to the knowledge or belief of the Borrower or the Guarantor, the subject of any pending or threatened attack or appeal by direct proceedings or otherwise, and all fees payable in connection therewith, if any, have been paid, and there has been no default in the performance of the terms and conditions of any thereof.

3.6 Litigation. There is no action, suit, proceeding, investigation or claim pending or threatened in law, admiralty, equity or otherwise which either (a) questions the validity of this Agreement or any instrument, agreement or document referred to herein or any action taken or to be taken pursuant hereto or thereto, or (b) if adversely determined might directly or indirectly result in a materially adverse change in the assets, properties, liabilities, business or financial condition, on an individual or a consolidated basis, of the Borrower or the Guarantor. There are no adverse orders, writs, injunctions, decrees or demands of any court or administrative body, or of any other governmental agency or instrumentality outstanding against either the Borrower or the Guarantor.

3.7 Taxes. The Borrower and the Guarantor have each filed all tax returns which [to its knowledge] were required to be filed on or before the date of this Agreement and paid all taxes that were due on or before the date of this Agreement, including interest thereon and penalties with respect thereto except those which are being contested in good faith and in respect of which adequate reserves are being maintained in accordance with generally accepted accounting principles in the United States, and except for taxes which in the opinion of the Borrower or the Guarantor are not properly chargeable against it or are not customarily paid without express demand by the appropriate authority, but as to which no material penalties have been incurred or are likely to be incurred by reason of non-payment, provided that the Borrower or the Guarantor, as the case may be, will each pay any such taxes and/or penalties for which any thereof are actually held liable by such taxing authority as soon as they accrue or attach. Neither the Borrower nor the Guarantor have any material contingent obligations or material liabilities for taxes other than those incurred in the ordinary course of business and in respect of which adequate reserves are being maintained by the Borrower or the Guarantor, as the case may be.

3.8 Financial Condition. The consolidated and consolidating balance sheet of the Borrower and the Guarantor and its consolidated subsidiaries as of December ____, ____ [year], and the related consolidated and consolidating statements of income, retained earnings, capital surplus and changes in financial condition for the twelve-month period then ended, certified by ____, independent certified public accountants, copies

of which have been delivered to the Bank, were prepared in accordance with generally accepted accounting principles in the United States consistently applied, and fairly present the financial condition of the Borrower and the Guarantor and its consolidated subsidiaries as of such date and the results of their respective operations for the period then ended, and such corporations had no material contingent obligations or material liabilities for taxes or otherwise as of the date of said balance sheet and statements of income, retained earnings, corporate surplus and changes in financial condition which were not fully disclosed by or reserved against therein, and since December ____, _____ [year], there has been no material adverse change in the condition, financial or otherwise, of the Borrower, the Guarantor or any of its subsidiaries.

3.9 Use of Proceeds. Neither the Borrower nor the Guarantor 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 or margin securities (within the meaning of the Regulations of the Board of Governors of the Federal Reserve System) and the Loan is not for the purpose of and no part of the proceeds of the Loan will be used for the purpose of purchasing or carrying any such margin stock or margin securities or of extending credit to others for the purpose of purchasing or carrying the same, or of reducing or retiring indebtedness originally incurred for such purpose.

Section 4. CONDITIONS TO CLOSING

The Bank's obligation to make the Loan is subject to the fulfillment to the Bank's satisfaction of the conditions set forth in this Section 4 which shall be satisfied at the Closing unless waived by the Bank in writing.

4.1 Representations True and Agreements Complied With. The representations and warranties made by or with respect to the Borrower and the Guarantor, pursuant to the provisions hereof, or in any document referred to herein, shall be correct and shall have been complied with when made, and shall be repeated, shall be correct and shall have been complied with as of and at each Closing (except as the same may have been affected by transactions or events expressly provided for or permitted by this Agreement, and, except as provided in Section _____), notwithstanding knowledge or lack of knowledge on the part of the Borrower or the Guarantor. The Borrower and the Guarantor shall have performed and complied with all agreements and conditions herein to be performed or complied with by them, prior to or at the Closing, and as of and at the Closing no Event of Default and no event which with the passage of time or the giving of notice, or both, would constitute such an Event of Default shall have occurred and be continuing and there shall have been no material adverse change in the assets, properties, liabilities, business or financial condition of the Borrower or the Guarantor which in the judgment of the Bank would impair the ability of the Borrower or the Guarantor to perform and comply with all agreements and conditions to be performed or complied with by any of such parties hereunder or under any document referred to herein.

4.2 Authorizations Obtained. All governmental approvals, licenses, authorizations, consents, filings and registrations in connection with (a) the ownership by the Guarantor of the capital stock of the Borrower and (b) the execution, delivery and performance in accordance with their respective terms, of this Agreement, the Note, the Mortgage, the Pledge Agreement, the Guaranty Agreement, and any other instrument, agreement or document referred to herein, and the transactions contemplated hereby and thereby, which shall be necessary or which in the reasonable opinion of the Bank or special counsel to the Bank are desirable, shall have been obtained in form and substance satisfactory to the Bank, shall have been delivered to the Bank and shall be in full force and effect at the Closing.

4.3 Corporate and Other Proceedings Effected. All corporate and other proceedings in connection with the transactions contemplated by this Agreement, including, without being limited to, corporate action by the Borrower and the Guarantor, as the case may be, authorizing the execution, delivery and performance of this Agreement, and any applicable instrument, agreement or document referred to herein to which any thereof is or shall be a party and the transactions contemplated hereby and thereby, shall have been effected and be in full force and effect at the Closing in form and substance satisfactory to the Bank and the Bank shall have received all such counterparts, originals or certified or other copies of all such authorizations, documents, certificates of public officials or corporate officers, consents or

approvals as the Bank may request.

4.4 *Due Execution and Delivery of Loan Documents.*

(a) At the Closing, the Bank shall have received:

(i) the Notes, which shall have been duly executed and delivered by, and shall be the legal, valid and binding obligation of, the Borrower, enforceable in accordance with their terms;

(ii) the Mortgage, which shall have been duly executed and delivered by, and shall be the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, and the Borrower shall have effected the due recording and endorsement of the Mortgage in the manner prescribed by the laws of _____ so that the Mortgage shall constitute a valid and enforceable first Mortgage on the Real Estate as provided in such laws, having the effect and with the priority as therein provided;

(iii) the Guaranty Agreement, which shall have been executed and delivered by, and shall be the legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms.

[(iv) Any other relevant documents, *e.g.*, a Pledge Agreement.]

4.5 *Acceptance by Agent.* At the Closing, the Bank shall have received from the Agent (as defined in Section 7.2) an irrevocable acceptance of its appointment as agent for the service of process and such acceptance shall be the legal, valid and binding obligation of the Agent enforceable in accordance with its terms.

4.6 *Certificates of the Borrower.* At the Closing, the Bank shall have received a certificate dated the date of the Closing, executed by a duly authorized officer or attorney-in-fact of the Borrower, certifying in form satisfactory to the Bank that the conditions specified in Sections 4.1 through 4.4 have been met, and that the representations and warranties specified in Section 3 are true and correct as of and at the Closing (except as the same may have been affected by this Agreement) and with respect to other matters, such other certificates and documents as the Bank may reasonably require.

4.7 *Certificates of the Guarantor.* At the Closing, the Bank shall have received a certificate dated the date of the Closing, executed by a duly authorized officer or attorney-in-fact of the Guarantor, certifying in form satisfactory to the Bank that the conditions specified in Sections 4.1 through 4.4 have been met and that the representations and warranties specified in Section 3 hereof are true and correct as of and at the Closing (except as the same may have been affected by transactions or events expressly provided for or permitted by this Agreement or the Guaranty Agreement) and with respect to other matters, such other certificates and documents as the Bank may reasonably require.

4.8 *Opinions of Counsel.* At each Closing, the Bank shall have received an opinion from [Counsel to the Borrower], concerning such matters as the Bank or special counsel to the Bank may request.

4.9 *Payment of Loan Commitment Fee.* At the Closing, the Loan Commitment Fee accrued up to and including the date of the Closing shall have been fully paid.

Section 5. COVENANTS OF THE BORROWER AND THE GUARANTOR

5.1 *Payment of Note.* The Borrower agrees to pay, or cause to be paid, the principal of, and interest on, the Loan and the Note as and when the same shall become due, whether at maturity, by acceleration or otherwise.

5.2 *The Mortgage.* The Borrower shall maintain the Mortgage as a valid first priority mortgage as provided in Section 4.4(a)(ii).

5.3 *Financial and Other Covenants*. The Borrower agrees that for so long as the Notes or any other sums due from the Borrower to the Bank under this Agreement or any of the Security Documents, or interest thereon, remain unpaid, the Borrower:

(a) shall remain a corporation, duly incorporated and in good standing under the laws of its respective jurisdiction of incorporation; shall not change its chief place of business or its office for the keeping of its records relating to this Agreement and any security referred to herein; and shall maintain a fiscal year ending December 31;

(b) shall pay, or cause to be paid, the principal of, and the interest on, all indebtedness permitted under Section 5.3(c), heretofore or hereafter incurred or assumed by it, or in respect of which it shall otherwise be or become liable when and as the same shall become due and payable and will faithfully observe, perform and discharge all of the covenants, conditions and obligations which are imposed on it by any and all indentures and other agreements or documents evidencing or securing such indebtedness or pursuant to which such indebtedness is issued, and will not permit to occur any act or omission which is or may be declared to be a default under any such indenture, agreement or document;

(c) shall not, without the prior written consent of the Bank:

(i) declare or pay any dividend in cash or otherwise make any other distribution on or with respect to shares of its capital stock, or set apart or cause or permit to be set apart any sums or property for such purpose, or redeem, purchase or otherwise acquire directly or indirectly any shares of its capital stock;

(ii) make any loan or advance to any other person, firm, corporation or enterprise or assume, guarantee, endorse, agree to purchase or repurchase or provide funds in respect of, or otherwise become or be or remain, directly or contingently liable upon any indebtedness, obligation or dividend of, any other person, firm, corporation or enterprise, except for endorsement of negotiable instruments for deposit or collection in the ordinary course of business;

(iii) purchase or otherwise acquire or invest in any obligation, stock or other security of (other than marketable direct obligations of the United States and the agencies thereof, or certificates of deposit, time deposits or bankers' acceptances of prime banks denominated in dollars), or make any capital contribution to, any other person, firm, corporation or enterprise;

(iv) create, assume, incur or in any manner become or remain liable in respect of (A) any indebtedness for borrowed money, (B) any rental or lease payments under leases of property for periods in excess of twelve (12) months or (C) any obligation for the deferred purchase price of property or any commitment or obligation of a capital nature except for repairs and replacement parts for, or additions to, any real property owned by the Borrower and except (X) indebtedness to the Bank incurred pursuant to the terms of this Agreement or (Y) indebtedness to the Guarantor provided such indebtedness to the Guarantor is by its terms subordinated, upon the happening of an Event of Default (as defined in Section 6.1 below), to the prior payment in full of the Loan and the Note, and any other indebtedness of the Borrower to the Bank pursuant to the terms of this Agreement and no payment on account of such indebtedness to the Guarantor shall be made by the Borrower so long as an Event of Default or an event which with the passage of time or the giving of notice or both would constitute an Event of Default, shall have occurred and be continuing.

(v) create, assume, incur or permit to exist any mortgage, security interest, lien, charge or encumbrance on, or enter into any pledge or sale or conditional sale or title retention agreement with respect to the real estate or any of the Borrowers' other properties, assets or revenues (except as permitted or contemplated by this Agreement and the Mortgage [and the Pledge Agreement]);

(vi) consolidate with or merge into any other person, firm or corporation or permit any other person, firm or corporation to consolidate with or merge into it, or sell, lease, assign, transfer or otherwise dispose of (other than by a transaction

permitted under clause (ii)), whether in one transaction or a series of transactions, any of its assets if the aggregate value thereof represents a material part of the aggregate value of all of its assets; or

(vii) issue or sell any of its authorized but unissued capital stock to any person, other than the Guarantor;

(d) shall:

(i) keep proper books of record and accounts in which full and correct entries shall be made of all dealings or transactions in relation to this Agreement, and any applicable instrument, agreement or document referred to herein to which it is or it shall be a party, and its properties, business and affairs in accordance with generally accepted accounting principles consistently applied;

(ii) permit the Bank, or its authorized representatives, promptly upon request, to make such reasonable, material and pertinent inspection, examination and audit of its properties, books, records and accounts, and to take such information therefrom and to make such transcripts and copies thereof, as such Bank, or its authorized representatives, may reasonably deem necessary or appropriate in connection with the performance of its duties and functions under this Agreement, and any applicable instrument, agreement or document referred to herein to which it is or it shall be a party;

(iii) permit the Bank, or its authorized representatives, promptly upon request, to discuss the Borrower's affairs with its officers and representatives;

(e) shall deliver to the Bank, in as many copies as the Bank shall reasonably request, the following:

(i) within one hundred twenty (120) days after the end of each fiscal year, its balance sheet as of the end of such fiscal year, and the related statements of income, retained earnings, capital surplus and changes in financial position for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles consistently applied, fairly presenting its financial condition as of each such date and the results of operations for the period then ended, accompanied by a report of _____ or other independent certified public accountants acceptable to the Bank certifying that they have examined such balance sheet and statements and giving their opinion thereof; such report shall also be accompanied by a statement of such independent certified public accountants that in making the examination necessary in connection with such report, they have obtained no knowledge of any default in the fulfillment of the terms, covenants and conditions of this Agreement, or any applicable instrument, agreement or document referred to herein to which it is or shall be a party, or if such independent certified public accountants shall have obtained from such examination knowledge of any such default, they shall disclose in such statement the default or defaults and the nature thereof;

(ii) within ninety (90) days after each quarter of each fiscal year, its balance sheet as of the end of such quarter, and the related statements of income, retained earnings and capital surplus for the period then ending, all in reasonable detail prepared in accordance with generally accepted accounting principles in the United States consistently applied, fairly presenting its financial condition as of each such date and the results of operations for the period then ended, unaudited but certified as correct by the principal accounting officer of the Borrower [or of the Guarantor] to the best of his knowledge and belief;

(iii) such other information relating to its financial condition and operations, and to any other matters pertaining to this Agreement, or any applicable instrument, agreement or document referred to herein to which it is or shall be a party, or to the real estate, as the Bank shall, in its sole judgment, from time to time reasonably request;

(iv) within sixty (60) days after each quarter of each fiscal year, a certificate, executed by a duly authorized officer of the Borrower, in form and substance satisfactory to the Bank, to the effect that the Borrower is in full compliance with this Section 5 and that no Event of Default and no event which with the passage of time or giving of notice, or both,

would constitute such an Event of Default shall have occurred and be continuing;

(f) shall take any and all action as may be required to maintain as true and correct at all times the representations and warranties made in Sections 3.5 and 3.7; and

(g) shall promptly give notice in writing to the Bank of all litigation and of all proceedings before any governmental or regulatory agency which, if adversely determined, would materially affect its condition, financial or otherwise.

5.4 Costs and Expenses. The Borrower and the Guarantor shall jointly and severally pay all costs, fees and expenses incurred by the Bank in connection with (including, without being limited to, the exercise of its rights under) this Agreement, or any instrument, agreement or document referred to herein and the transactions contemplated hereby and thereby, whether or not this Agreement or such instruments, agreements, documents, or transactions are consummated as contemplated and whether or not such costs and expenses are incurred as a result of the Borrower's default in payment of principal of, or interest on, the Loan and the Note. Such costs, fees and expenses shall include, without being limited to, any sums arising out of or in connection with any and all fees and disbursements of special counsel for the Bank, costs of preparing and reproducing this Agreement or any instrument, agreement or document referred to herein, recording fees and taxes which may be incurred in connection with the execution, delivery and recording of this Agreement and of any of the instruments, agreements or documents referred to herein. The Borrower and the Guarantor will each indemnify and hold the Bank harmless against any and all liability with respect to brokerage and finders' fees which may be payable in connection with this Agreement or any transactions contemplated hereby and which arise out of any action on the part of either the Borrower or the Guarantor. Any and all amounts payable by the Borrower pursuant to this Section 5.4 shall be secured by each of the security arrangements described in Sections 2.1 through 2.3 of this Agreement.

5.5 Offices and Records. (a) Neither the Borrower nor the Guarantor shall establish or maintain an executive office or a place of business within the United States of America, its territories or possessions (including the Commonwealth of Puerto Rico) other than at _____ in the City of _____ and the State of _____.

(b) The Borrower and the Guarantor shall maintain all records relating to, and executed copies of, this Agreement, or the subject matter of any thereof, at _____ in the City of _____ and State of _____.

Section 6. EVENTS OF DEFAULT; REMEDIES

6.1 Events of Default. In case any one or more of the following events (herein called individually an "Event of Default" and collectively "Events of Default") shall occur, that is to say, in case:

(a) default shall be made in the payment of any expenses to be reimbursed by the Borrower to the Bank hereunder and such payment shall not have been made within five (5) days after receipt by the Borrower of notice from the Bank; or

(b) default shall be made in the payment of interest on the Loan and the Note, when and as the same shall be due and payable, and such default shall continue for a period of five (5) days; or

(c) default shall be made in the payment of principal of the Loan and the Note, when and as the same shall be due and payable, whether at maturity, upon acceleration, or otherwise;

(d) an event specified in Section _____ of the Mortgage shall have occurred and be continuing; or

(e) any representation or warranty made by the Borrower or the Guarantor hereunder, or made in writing in connection

herewith, shall have been incorrect in any material respect on the date on which made, in the case of a representation, or shall be breached materially, in the case of a warranty; or

(f) any representation or warranty made by the Borrower or the Guarantor under the Mortgage, the Pledge Agreement or the Guaranty Agreement or made in writing in connection therewith shall have been incorrect in any material respect on the date on which made, in the case of a representation, or shall be breached materially, in the case of a warranty; or

(g) default shall be made by the Borrower or the Guarantor in the due, punctual and faithful performance or observance of any other term, provision, covenant, agreement or condition in this Agreement, the Pledge Agreement or the Guaranty Agreement or any other instrument, agreement or document contemplated hereby or thereby, and such default shall continue for a period of fifteen (15) days; except that, if the matter that is the subject of the notice is of such a nature that it cannot reasonably be cured within _____ days, then no default shall be deemed to have occurred if the Borrower promptly upon the receipt of the notice of default commences to take steps to cure the default and diligently pursues the same to completion; or

(h) default shall occur with respect to the payment when due of (i) any (A) indebtedness for borrowed money, (B) rental or lease payments under leases of property for periods in excess of twelve (12) months or (C) obligation for deferred purchase price of property or any commitment or obligation of a capital nature of the Borrower or the Guarantor or any Subsidiary of the Guarantor, or any indebtedness with respect to which the Borrower or the Guarantor or any such Subsidiary shall become directly or indirectly liable as a guarantor or as to which it has joint and several liability, or in the performance of any other agreement or obligation incurred in connection with any such indebtedness, if the effect of such default is to permit the holders thereof to accelerate the maturity of such indebtedness, which acceleration or action by such holder is not being contested by appropriate proceedings; or (ii) any other obligations to pay money within thirty (30) days after it shall have become due of the Borrower or the Guarantor or any such Subsidiary, which such other obligations under this clause (ii) are not being contested in good faith by appropriate proceedings; or

(i) a final judgment against the Borrower or the Guarantor or any Subsidiary of the Guarantor shall be rendered and, within thirty (30) days after entry thereof, such judgment shall not have been discharged or execution stayed or, within thirty (30) days after the expiration of any such stay, such judgment shall not have been discharged; or

(j) either the Borrower or the Guarantor shall cease to be a corporation duly organized and in good standing under the laws of its respective jurisdiction of incorporation; or

(k) either the Borrower or the Guarantor shall be dissolved or shall lose its corporate or legal status by forfeiture or by any judicial, extra-judicial or administrative proceeding; or

(l) any change in the management or management policies or practices of the Borrower or the Guarantor shall have occurred which change, in the judgment of the Bank, is or would be materially adverse; or

(m) the Borrower or the Guarantor or any Subsidiary of the Guarantor, shall (i) apply for or consent to the appointment of or the taking possession by a receiver, trustee, liquidator, assignee, custodian, sequestrator or the like thereof of itself or of all or a substantial amount of its property, (ii) fail generally to pay its debts as they mature, (iii) become insolvent, (iv) make a general assignment for the benefit of creditors, (v) commence a voluntary case under the bankruptcy laws of any jurisdiction, as they are now or may hereafter be constituted, or (vi) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law or an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or (vii) take corporate or other action for the purpose of effecting any of the foregoing; or

(n) an order for relief shall be entered with respect to the Borrower, the Guarantor or any Subsidiary of the Guarantor in any voluntary case under the bankruptcy laws of any jurisdiction, as they are now or may hereafter be constituted, or an

order, judgment, or decree shall be entered, without the application, approval or consent of the Borrower or the Guarantor or any Subsidiary of the Guarantor, respectively, by any court or governmental agency of competent jurisdiction, approving a petition seeking reorganization thereof, or appointing a receiver, trustee, liquidator, assignee, custodian, sequestrator or the like thereof, of or over the Borrower, the Guarantor or such Subsidiary, or over all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days; or

(o) the Bank shall for any reason not have (i) a valid first perfected security interest in and lien as contemplated by this Agreement upon any property, assets and revenues of the Borrower covered by the Mortgage or the Collateral Account, subject to no equal or prior security interest, lien, encumbrance or right (except as permitted by the Mortgage); or

(p) default shall be made in the performance of any agreement, covenant, warranty, condition or other undertaking of the Borrower or the Guarantor in any waiver granted by the Bank under this Agreement or any document or instrument referred to herein; or

(q) any material adverse change in the assets, property, liabilities, business or financial condition of the Borrower or the Guarantor or any Subsidiary of the Guarantor or material adverse development which threatens the validity, enforceability or performance of this Agreement or any instrument, agreement or document referred to herein or any action taken or to be taken pursuant hereto or thereto, which, in the judgment of the Bank would materially impair the ability of the Borrower or the Guarantor to pay the indebtedness incurred or guaranteed by it hereunder; then, in any such case and at any time thereafter during the continuance thereof any of the remedies of Section 6.2 shall be exercisable as therein provided. The Borrower shall promptly notify the Bank in writing if an Event of Default or an event which with the passage of time or giving of notice, or both, would constitute such an Event of Default has occurred.

6.2 Remedies. Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof:

(a) The Bank may declare by written notice to the Borrower the outstanding principal amount of the Loan and the Note and all amounts otherwise due or owing by the Borrower to the Bank under this Agreement or the Security Documents, to be immediately due and payable, whereupon the same, together with interest thereon and all additional amounts as may be necessary to compensate the Bank for any loss and any expense (including the expenses of any sale, the expenses of any taking, attorneys' fees, court costs and any other expenses or advances made or incurred by the Bank in the protection of its rights or the pursuit of its remedies under this Agreement, the Note, the Mortgage, the Pledge Agreement and the Guaranty Agreement), accrued to the date of declaration, shall become and be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby waived by the Borrower, and the Borrower agrees that upon such declaration with respect to the Loan it will immediately pay its obligations hereunder to the Bank, and thereafter such total amount (including such accrued interest and additional amounts) and such further amounts as may be necessary to compensate the Bank for any such loss or expense incurred after the date of such declaration or by reason of any Event of Default occurring after the date of such declaration shall bear interest, to the extent permitted by law, at the rate provided for in Section 1.4(d) until paid.

(b) the Bank may apply all Collateral Payments held in the Collateral Account as provided in Section 2.6(d);

(c) the Bank may exercise any and all rights and remedies provided for in or pursuant to the Mortgage, the Pledge Agreement or the Guaranty Agreement;

(d) the Bank may exercise any right of counterclaim, set-off, banker's lien or otherwise which it may have with respect to monies of the Borrower held by it; and

(e) the Bank may, to the extent permitted by applicable law, bring suit at law, in equity, in admiralty and/or other

appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement, or any instrument, agreement or document referred to herein, for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby, or by law, to recover judgment for any and all amounts due on the Loan and the Note, or under this Agreement or the Security Documents.

6.3 Remedies Cumulative. Each and every right, power and remedy given to the Bank in this Agreement, or any instrument, agreement or document referred to herein, shall be cumulative and shall be in addition to every other right, power and remedy herein or therein specifically given or now or hereafter existing at law, in equity, in admiralty or by statute, and each and every right, power and remedy whether specifically herein or therein given or otherwise existing may be exercised from time to time and as often and in such order as may be determined by the Bank, and the exercise or the beginning of the exercise of any right, power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Bank in the exercise of any right, power or remedy shall impair any such right, power or remedy or be construed to be a waiver of any default or to be an acquiescence therein; nor shall the acceptance by the Bank of any security or of any payment of or on account of any loans, advances, obligations, expenses, interest or fees maturing after a default on or of any payment on account of any past default be construed to be a waiver of any right to take advantage of any future default or of any past default not completely cured thereby.

Section 7. JURISDICTION

7.1 _____ [state] *Jurisdiction.* The Borrower and the Guarantor each hereby irrevocably submits to the jurisdiction of the United States District Court for the _____ District of _____ and any court of the State of _____ located in the City of _____ in any action, suit, or proceeding brought against the Borrower or the Guarantor and related to or in connection with this Agreement, the Mortgage, the Pledge Agreement, the Guaranty Agreement, or any other instrument, agreement or document referred to herein or any transaction contemplated hereby or thereby, and to the extent permitted by applicable law, the Borrower and the Guarantor each hereby waives trial by jury and agrees not to assert by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such courts, that the suit, action, or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Agreement, the Mortgage, the Pledge Agreement, the Guaranty Agreement or any instrument, agreement or document referred to herein or the subject matter hereof or thereof may not be litigated in or by such courts, and the Borrower and the Guarantor each hereby agrees not to seek and hereby waives any review by any court of any other jurisdiction which may be called upon to grant an enforcement of the judgment of any such court after all appeals have been taken or the time for the taking of said appeals has expired. Nothing herein shall be deemed to preclude or in any way limit the right of the Bank to sue or take any action against the Borrower or the Guarantor in any tribunal wherever located having jurisdiction over the Borrower or the Guarantor or any of their respective assets. In lieu of service upon the Agent for service as set forth in Section 7.2, the Borrower and the Guarantor each agrees that service of process may be made upon it by certified or registered mail, return receipt requested, or any method authorized by the laws of the State of _____.

7.2 Agent for Service. The Borrower and the Guarantor, for itself and its respective successors and assigns, each hereby irrevocably designates and appoints _____ [name], _____ [address], and its successors and assigns, and at any time upon the written request of the Bank, the Borrower and the Guarantor will each irrevocably designate and appoint another person, firm or corporation and such other person's, firm's or corporation's successors and assigns, as its or their respective lawful agent and attorney-in-fact (herein called the "Agent") upon whom all process against either the Borrower or the Guarantor in any action, suit or proceeding in respect of any matter as to which it has submitted to jurisdiction under Section 7.1 may be served, with the same effect as if the Borrower or the Guarantor were a corporation organized under the laws of the State of _____ and had lawfully been served with such process in such State. At or prior to the Closing, the Borrower and the Guarantor shall each cause the Agent irrevocably to accept such designation and appointment and to furnish to the Bank evidence satisfactory to

the Bank of such acceptance.

Section 8. MISCELLANEOUS

8.1 Notices. All notices, statements, reports and other communications hereunder shall be in writing (unless otherwise specifically provided) and shall be deemed given when mailed by first class registered or certified mail (postage prepaid) or transmitted by tested telex or cable (charges prepaid) confirmed by letter as aforesaid: (a) if to the Bank at _____ [address], Attn. _____, or at such other address as may have been furnished to the Borrower and the Guarantor by the Bank in writing; (b) if to the Borrower or the Guarantor c/o _____, or at such other address as may have been furnished to the Bank by the Borrower or the Guarantor in writing.

8.2 Severability. If any word, phrase, sentence, paragraph, provision or section of this Agreement, or any instrument, agreement or document provided for herein or executed in connection herewith, shall be held, declared, pronounced or rendered void, voidable, invalid, unenforceable or inoperative for any reason by any court of competent jurisdiction, governmental authority or otherwise, such holding, declaration, pronouncement or rendering shall not adversely affect any other word, phrase, sentence, paragraph, provision or section of this Agreement, or any such instrument, agreement or document, which shall otherwise remain in full force and effect and be enforced in accordance with its terms, and the effect of such holding, declaration, pronouncement or rendering shall be limited to the jurisdiction in which made.

8.3 Survival. All agreements, representations, warranties and conditions contained in this Agreement or made pursuant to the provisions hereof shall survive the execution and delivery of this Agreement and until (a) the Loan and the Note and interest thereon shall have been paid in full in accordance with the terms of the Loan, the Note and this Agreement, (b) any and all other monies, payments, obligations and liabilities which the Borrower or the Guarantor shall have made, incurred or become liable for pursuant to the terms of this Agreement and any instrument, agreement or document referred to herein shall have been paid in full, and (c) all other agreements, representations, warranties, terms and conditions in this Agreement, and any instrument, agreement, or document referred to herein, expressed or implied, shall have been performed, observed and complied with. All statements contained in any certificate or other instrument delivered pursuant to the provisions hereof by the Borrower or the Guarantor shall constitute representations and warranties by such Borrower and the Guarantor, as the case may be, hereunder.

8.4 Lawful Interest. No provision herein or in any instrument, agreement or document referred to herein shall require or permit the collection of interest in excess of the maximum lawful rate which a Borrower may stipulate and agree to pay as determined by a court of competent jurisdiction over the holder of the Note. If it is so determined that any excess interest is provided for, then this Section 8.4 shall govern and such excess shall be applied first to any other amounts not constituting interest due or which may become due from such Borrower under this Agreement or any instrument, agreement or document referred to herein, and the balance, if any, shall be held by, and the Borrower hereby pledges such balance to, the Bank as security for the full and faithful performance by the Borrower of its obligations under this Agreement and the Security Documents; provided, however, that in no event shall such Borrower be obligated to pay, and the Bank hereby waives payment of, the amount of interest to the extent it is in excess of the amount permitted by applicable law.

8.5 General. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that neither the Borrower nor the Guarantor may assign any of their rights or obligations hereunder. This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally but only by an instrument in writing. The captions and headings in this Agreement are for purposes of reference only, and shall not restrict or affect any of the terms or provisions hereof. 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 and the same instrument. This

Agreement and the rights and obligations of the parties hereunder and under the Note shall be governed by and construed in accordance with the laws of the State of _____.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date first above written.

BORROWER CORPORATION

By _____

PARENT CORPORATION

By _____

BANK

By _____



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.
CHAPTER 1: Loans--Secured.

37TTT-1 California Legal Forms--Transaction Guide Form T1-6

Form T1-6 Purchase Money Security Agreement

Description: This form provides a sample purchase money security agreement between a distributor and another company.

Form T1-6 Purchase Money Security Agreement

Date:

—

SECURITY AGREEMENT between _____ [Name of Distributor] _____
[address] (hereinafter called "Distributor") and _____ (hereinafter called "_____"),

Whereas, the Distributor has ordered from _____ certain goods and may in the future order additional goods from _____

Now, therefore, to induce _____ to accept orders from the Distributor, it is agreed as follows:

1. To secure the payment of the purchase price of goods presently ordered by Distributor from _____ as well as to secure the payment in full of all other Obligations referred to herein, to the extent permitted by *Uniform Commercial Code § 9-103,n** _____ retains and Distributor grants to _____ a continuing purchase money security interest in all goods heretofore or hereafter sold by _____ to Distributor and in and to all proceeds from Distributor's sale thereof, including cash, accounts and notes, whether now owned or hereafter acquired, (all such goods and proceeds sometimes herein referred to collectively as the "collateral").
2. The term "Obligations" as used herein shall mean and include all indebtedness owing by Distributor to _____ for the purchase price of goods from time to time shipped by _____ to the Distributor and also any other extensions of credit, loans, guaranties or other financial accommodations heretofore or hereafter made and any and all interest, charges and expenses chargeable by _____ to Distributor hereunder or otherwise.

3. The goods shall not be removed from the Distributor's premises without the written consent of _____, except that the Distributor shall have the right to sell the goods in the ordinary course of business, and not otherwise. Upon _____ request, Distributor shall render periodic inventories of the collateral and _____ shall have the right during regular business hours to enter upon the Distributor's premises without notice and examine the collateral and make such records as it deems appropriate.

4. Distributor agrees to keep all goods purchased hereunder or hereafter properly insured, at its own expense at fair market value, for the benefit of _____ to pay all taxes and charges on the collateral when due; to submit such reports regarding the collateral as _____ may from time to time request; and to execute such further documents as _____ may request to perfect or continue its security interest _____ may procure the aforementioned insurance and pay the aforementioned taxes and charges and charge same to the account of Distributor if Distributor fails to comply with the provisions of this paragraph.

5. The security interest in the collateral herein granted to _____ shall continue until all Obligations shall be paid by the Distributor to _____ in cash. Any notes shall not be considered as payment but merely as evidences of indebtedness. Upon taking possession of any notes and accounts derived by the Distributor from the sale of the goods, _____ shall have the right to collect the notes and accounts either in its own name or in the name of the Distributor, by suit or otherwise; and in case of disputed notes or accounts or in case of account debtors of doubtful solvency, _____ may comprise and settle any such notes or accounts, or extend the time of payment thereof, upon such terms as it deems advantageous, and any new notes taken thereafter whether in the name of _____ or the Distributor, shall be held and considered in all respects as additional security.

6. The loss or destruction of, or damage to, all or any part of the collateral shall not cancel the indebtedness hereunder or hereafter, but the Distributor shall remain liable to _____ for any part of the Obligations remaining unpaid.

7. If the Distributor defaults in paying invoices when due, or in the due performance of any other provisions hereof, or in any of its other Obligations, _____ may exercise all rights and remedies of a secured party under the Uniform Commercial Code or other statute or granted herein, and without limiting the foregoing, _____ in its discretion may, but need not, enter the premises where the collateral may be and repossess the same, require the Distributor to assemble it and make it available at a reasonably convenient place designated by _____. Distributor shall remain liable to _____ for all expenses of retaking and loss or damage sustained by reason of such default.

8. _____ is authorized to file Financing Statements without Distributor's signature.

9. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION RELATING TO OBLIGATIONS OR COLLATERAL.

10. Any notice or request to Distributor shall be effective when mailed to Distributor's address stated above or when actually received if otherwise given. If any notice is given or required hereunder, the parties agree that five (5) days shall constitute reasonable notice. This agreement cannot be terminated or changed orally and shall be binding upon Distributor (jointly and severally if more than one), its representatives, successors and assigns. The Distributor shall have the right to cancel this agreement at any time upon paying in cash the balance of the Obligations. Nothing herein contained shall be deemed an agreement by _____ to accept any orders from Distributor or grant extended terms of payment. Each sale by _____ to Distributor shall be an independent transaction, but all transactions shall be governed by the terms hereof.

In Witness Whereof, the parties have duly executed this agreement the day and year first above written.

[Distributor's Name]

[Title]

By _____

[Title]

By _____

FOOTNOTES:

(n1)Footnote *. Review your state's statutory version of U.C.C. Section 9-103, as it may include variances from the model U.C.C. version.



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 1: Loans--Secured.

37TTT-1 California Legal Forms--Transaction Guide Form T1-7

Form T1-7 Pledge Agreement--Shares of Stock

Description: This form provides an agreement by which a pledgor grants or pledges certain collateral as a security interest to the pledgee lender.

Form T1-7 Pledge Agreement for Certificated Securities

PLEDGE AGREEMENT

This Pledge Agreement (this "Agreement") dated as of _____, 20____
between _____, having an office at _____ ("Pledgee") and _____, [a
_____ corporation, having an office at] [an individual residing at] _____ ("Pledgor").

BACKGROUND TO THE AGREEMENT:

[NOTE--THE BACKGROUND PROVISIONS NEED TO BE
REVISED ON A CASE-BY-CASE BASIS DEPENDING UPON
THE CIRCUMSTANCES SURROUNDING THE PLEDGE.]

[If Pledgor is a Borrower:]

[Pledgor and Pledgee have entered or are entering into a [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, _____, 20____ (as amended, modified, restated or supplemented from time to time, the "Loan Agreement") pursuant to which Pledgee has agreed, subject to the terms and conditions contained therein, to provide certain financial accommodations to Pledgor.

In order to induce Pledgee to provide or continue to provide the financial accommodations described in the Loan Agreement, Pledgor has agreed to pledge and grant a security interest to Pledgee in the Collateral (as hereinafter defined).]

[If Pledgor is a Guarantor:]

[Pledgor has executed and delivered to Pledgee a Guaranty dated _____, 20____ (as amended, modified, restated or supplemented from time to time, the "Guaranty") pursuant to which Pledgor guaranteed to Pledgee the payment and performance of all of the obligations and indebtedness of _____, a _____ corporation ("Borrower") to Pledgee under a [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20____ between Pledgee and Borrower (as amended, modified, restated or supplemented from time to time, the "Loan Agreement").]

In order to induce Pledgee to provide or continue to provide the financial accommodations to Borrower described in the Loan Agreement, and to secure Pledgor's obligations to Pledgee under the Guaranty, Pledgor has agreed to pledge and grant a security interest to Pledgee in the Collateral (as hereinafter defined).]

[If Pledgor is a Hypothecator:]

[Pledgee and _____, a _____ corporation ("Borrower") have entered or are entering into a [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20____ (as amended, modified, restated or supplemented from time to time, the "Loan Agreement") pursuant to which Pledgee has agreed, subject to the terms and conditions contained therein, to provide certain financial accommodations to Borrower.

In order to induce Pledgee to provide or continue to provide the financial accommodations described in the Loan Agreement, Pledgor has agreed to pledge and grant a security interest to Pledgee in the Collateral (as hereinafter defined).]

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

All capitalized terms used herein which are not defined shall have the meanings given to them in the Loan Agreement.

2. Pledge and Grant of Security Interest.

To secure the full and punctual payment and performance of the (a) Obligations [and the obligations and liabilities of Pledgor to Pledgee under the Guaranty] and (b) all other indebtedness, obligations and liabilities of [Borrower and] Pledgor to Pledgee whether now existing or hereafter arising, direct or indirect, liquidated or unliquidated, absolute or contingent, due or not due and whether under, pursuant to or evidenced by a note, agreement, guaranty, instrument or otherwise ((a) and (b) collectively, the "Indebtedness"), Pledgor hereby pledges, assigns, hypothecates, transfers and grants a security interest to Pledgee in all of the following (the "Collateral"):

(a) the shares of stock set forth on Schedule A annexed hereto and expressly made a part hereof (the "Pledged Stock"), the certificates representing the Pledged Stock, and all proceeds thereof, including any and all dividends, cash, instruments, and any other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Stock;

(b) all additional shares of stock of any issuer of the Pledged Stock (the "Issuer") from time to time acquired by the Pledgor in any manner, including, without limitation, stock dividends or a distribution in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares, stock split, spin-off or split-off (which shares shall be deemed to be part of the Collateral), and the certificates representing such additional shares, and all dividends, cash, instruments and other property or proceeds from time to time received, receivable or

otherwise distributed in respect of or in exchange for any or all of such shares; and

(c) all options and rights, whether as an addition to, in substitution of or in exchange for any shares of the Pledged Stock.

3. Delivery of Collateral.

All certificates representing or evidencing the Pledged Stock shall be delivered to and held by or on behalf of Pledgee pursuant hereto and shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Pledgee. Pledgor hereby authorizes the Issuer upon demand by Pledgee to deliver any certificates, instruments or other distributions issued in connection with the Collateral directly to Pledgee, in each case to be held by Pledgee, subject to the terms hereof. Pledgee shall have the right, at any time in its discretion and without notice to the Pledgor, to transfer to or to register in the name of Pledgee or any of its nominees any or all of the Pledged Stock. In addition, Pledgee shall have the right at any time to exchange certificates or instruments representing or evidencing Pledged Stock for certificates or instruments of smaller or larger denominations.

4. Representations and Warranties of Pledgor.

Pledgor represents and warrants to Pledgee (which representations and warranties shall be deemed to continue to be made until all of the Indebtedness has been paid in full and the Loan Agreement _____ [Guaranty] has been irrevocably terminated) that:

(a) Pledgor has the requisite power and authority to enter into this Agreement, to pledge the Collateral for the purposes described herein and to carry out the transactions contemplated by this Agreement.

(b) The execution, delivery and performance by Pledgor of this Agreement and the pledge of the Collateral hereunder have been duly and properly authorized and do not and will not result in any violation of any agreement, indenture, instrument, license, judgment, decree, order, law, statute, ordinance or other governmental rule or regulation applicable to Pledgor.

(c) This Agreement constitutes the legal, valid and binding obligation of Pledgor enforceable against Pledgor in accordance with its terms.

(d) Pledgor is the direct and beneficial owner of each share of the Pledged Stock.

(e) All of the shares of the Pledged Stock have been duly authorized, validly issued and are fully paid and nonassessable.

(f) Upon delivery of the Pledged Stock to Pledgee or an agent for Pledgee, this Agreement creates and grants a valid first lien on and perfected security interest in the Collateral and the proceeds thereof, subject to no prior security interest, mortgage, pledge, claim, lien, charge, hypothecation, assignment, offset or encumbrance whatsoever (collectively, "Liens") or to any agreement purporting to grant to any third party a Lien upon the property or assets of Pledgor which would include the Collateral.

(g) There are no restrictions on transfer of the Pledged Stock contained in the Certificate of Incorporation or by-laws of the Issuer or otherwise which have not otherwise been enforceably and legally waived by the necessary parties.

(h) None of the Pledged Stock has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject.

(i) There are no pending or, to the best of Pledgor's knowledge, threatened actions or proceedings before any court, judicial body, administrative agency or arbitrator which may materially adversely affect the Collateral.

(j) No consent, approval, authorization or other order of any [person, firm, corporation or other entity ("Person")] [Person] and no consent, authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required by the Pledgor either (i) for the pledge of the Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement or (ii) for the exercise by the Pledgee of the voting or other rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement, except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally.

(k) No notification of the pledge evidenced hereby to any Person is required.

(l) The Pledged Stock constitutes [one hundred percent (100%)] [the indicated percentage] of the issued and outstanding shares of capital stock of the Issuers thereof set forth on Schedule A annexed hereto.

(m) As of the date hereof, there are no existing options, warrants, calls or commitments of any such character whatsoever relating to any Pledged Stock and no indebtedness or other security convertible into any Pledged Stock.

The representations and warranties set forth in this Section 4 [(other than those contained in subsection (m))] shall survive the execution and delivery of this Agreement.

5. Covenants.

Until such time as all of the Indebtedness has been paid in full and the Loan Agreement [Guaranty] has been irrevocably terminated, Pledgor shall:

(a) Not sell, assign, transfer, convey, or otherwise dispose of its rights in or to the Collateral or any interest therein; nor create, incur or permit to exist any Lien whatsoever with respect to any of the Collateral or the proceeds thereof other than that created hereby.

(b) At Pledgor's expense, defend Pledgee's right, title and security interest in and to the Collateral against the claims of any Person and keep the Collateral free from all Liens, except for the Liens granted to Pledgee under this Agreement.

(c) At any time, and from time to time, upon the written request of Pledgee, execute and deliver such further documents and do such further acts and things as Pledgee may reasonably request in order to effect the purposes of this Agreement including, but without limitation, delivering to Pledgee upon the occurrence of an Event of Default irrevocable proxies in respect of the Collateral in form satisfactory to Pledgee. Until receipt thereof, this Agreement shall constitute Pledgor's proxy to Pledgee or its nominee to vote all shares of Collateral then registered in Pledgor's name.

(d) Within two (2) [B]usiness [D]ays of receipt thereof by Pledgor, deliver to Pledgee all notices and statements relating to the Collateral received by Pledgor.

[(e) Not consent to or approve the issuance of (i) any additional shares of any class of capital stock of the Issuer; (ii) any securities convertible either voluntarily by the holder thereof or automatically upon the occurrence or nonoccurrence of any event or condition into, or any securities exchangeable for, any such shares; or (iii) any warrants, options, contracts or other commitments entitling any person to purchase or otherwise acquire any such shares.]

[(f) Not create, incur, assume or suffer to exist any Lien or other encumbrance of any kind (including the charge on property purchased under conditional sales or other title retention agreements) upon any property or assets, whether now

owned or hereafter acquired, except for liens incidental to the conduct of Pledgor's business or the ownership of its assets or properties not incurred in connection with the borrowing of money or the acquisition of any asset, and which in the aggregate do not materially detract from Pledgor's operations, property or financial condition.]

[(g) Not convey, sell, lease, transfer or otherwise dispose of in one or a series of related transactions, all or any substantial part of its property, business or assets.]

6. Voting Rights and Dividends.

In addition to Pledgee's rights and remedies set forth in Section 8 hereof, in case an Event of Default shall have occurred and has been declared by Pledgee, Pledgee shall (i) vote the Collateral, (ii) be entitled to give consents, waivers and ratifications in respect of the Collateral (Pledgor hereby irrevocably constituting and appointing Pledgee, with full power of substitution, the proxy and attorney-in-fact of Pledgor for such purposes) and (iii) be entitled to collect and receive for its own use cash dividends paid on the Collateral. Pledgor shall not be permitted to exercise or refrain from exercising any voting rights or other powers if, in the reasonable judgment of Pledgee, such action would have a material adverse effect on the value of the Collateral or any part thereof; and, provided, further, that Pledgor shall give at least five (5) days' written notice of the manner in which Pledgor intends to exercise, or the reasons for refraining from exercising, any voting rights or other powers other than with respect to any election of directors and voting with respect to any incidental matters. All dividends and all other distributions in respect of any of the Collateral, whenever paid or made, shall be delivered to Pledgee to hold as Collateral and shall, if received by the Pledgor, be received in trust for the benefit of Pledgee, be segregated from the other property or funds of the Pledgor, and be forthwith delivered to Pledgee as Collateral in the same form as so received (with any necessary endorsement).

7. Events of Default.

The term "Event of Default" wherever used herein shall mean the occurrence of any one of the following events:

(a) An Event of Default shall occur under the Loan Agreement or Pledgor [or the Issuer] shall default in the payment of any Obligation [or any default shall have occurred under the Guaranty];

(b) Pledgor shall default in the performance of any of its undertakings or obligations under any agreement between Pledgor and Pledgee, including, without limitation, this Agreement;

(c) Any representation, warranty, statement or covenant made or furnished to Pledgee by or on behalf of Pledgor proves to have been false in any material respect when made or furnished or is breached, violated or not complied with; or

(d) The Collateral is subjected to levy of execution, attachment, distraint or other judicial process; or the Collateral is the subject of a claim (other than by Pledgee) of a Lien or other right or interest in or to the Collateral.

(e) Pledgor [or Borrower] shall (i) apply for, consent to, or suffer to exist the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or other fiduciary of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of creditors, (iii) commence a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (iv) be adjudicated a bankrupt or insolvent, (v) file a petition seeking to take advantage of any other law providing for the relief of debtors, (vi) acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (vii) take any action for the purpose of effecting any of the foregoing.

8. Remedies.

Upon the occurrence of an Event of Default, Pledgee may:

(a) Demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Collateral (or any part thereof), as Pledgee may determine in its sole discretion;

(b) Transfer any or all of the Collateral into its name, or into the name of its nominee or nominees;

(c) Exercise all rights with respect to the Collateral including, without limitation, all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any shares of the Collateral as if it were the absolute owner thereof, including, but without limitation, the right to exchange, at its discretion, any or all of the Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of the Issuer thereof, or upon the exercise by the Issuer of any right, privilege or option pertaining to any of the Collateral, and, in connection therewith, to deposit and deliver any and all of the Collateral with any committee, depository, transfer agent, registrar or other designated agent upon such terms and conditions as it may determine, all without liability except to account for property actually received by it;

(d) Subject to the requirements of applicable law, dispose of the whole or, from time to time, any part of the Collateral at the time held by Pledgee, at any private or public sale or auction, with or without demand, after notice of the time or place of sale, such notice, if received by the Pledgor at least 5 (five) days prior to such sale, to be commercially reasonable, for cash or credit or for other property for immediate or future delivery, and for such price or prices and on such terms as Pledgee in its sole discretion may determine.

At any public sale, unless prohibited by applicable law, Pledgee may bid for and purchase the whole or any part of the Collateral so sold free from any such right or equity of redemption. All moneys received by Pledgee hereunder whether upon sale of the Collateral or any part thereof or otherwise shall be held by Pledgee and applied by it as provided in Section 11 hereof. No failure or delay on the part of Pledgee in exercising any rights hereunder shall operate as a waiver of any such rights nor shall any single or partial exercise of any such rights preclude any other or future exercise thereof or the exercise of any other rights hereunder. Pledgee shall have no duty as to the collection or protection of the Collateral or any income thereon nor any duty as to preservation of any rights pertaining thereto, except to apply the funds in accordance with the requirements of Section 11 hereof. Pledgee may exercise its rights with respect to property held hereunder without resort to other security for or sources of reimbursement for the Indebtedness. In addition to the foregoing, Pledgee shall have all of the rights, remedies and privileges of a secured party under applicable law and the Uniform Commercial Code of _____ [state] regardless of the jurisdiction in which enforcement hereof is sought.

9. Registration.

If Pledgee shall exercise its right to sell all or any part of the Collateral, and if, in the opinion of counsel for Pledgee, it is necessary to have the Collateral being sold registered under the provisions of the Securities Act of 1933, as amended (the "Securities Act"), Pledgor will use its best efforts to cause the Issuer to execute and deliver, and to cause the directors and officers of the Issuer to execute and deliver, all at Pledgor's expense, all such instruments and documents and to do or cause to be done all such other acts and things as may be necessary to register the Collateral being sold under the provisions of the Securities Act.

10. Private Sale.

Notwithstanding anything contained in Section 9, Pledgor recognizes that Pledgee may be unable to effect (or to do so only after delay which would adversely affect the value that might be realized from the Collateral) a public sale of all or part of the Collateral by reason of certain prohibitions contained in the Securities Act, and may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral for their own account, for investment and not with a view to the distribution or resale thereof.

Pledgor agrees that Pledgee has no obligation to delay sale of any Collateral for the period of time necessary to permit the Issuer to register the Collateral for public sale under the Securities Act.

11. Proceeds of Sale.

The proceeds of any collection, recovery, receipt, appropriation, realization, disposition or sale of the Collateral shall be applied by Pledgee as follows:

(a) First, to the payment of all costs, expenses and charges of Pledgee and to the reimbursement of Pledgee for the prior payment of such costs, expenses and charges incurred in connection with the care and safekeeping of any of the Collateral (including, without limitation, the expenses of any sale or other proceeding, the expenses of any taking, attorneys' fees and expenses, court costs, any other fees or expenses incurred or expenditures or advances made by Pledgee in the protection, enforcement or exercise of its rights, powers or remedies hereunder).

(b) Second, to the payment of the Indebtedness secured by the Collateral.

(c) Third, to such Persons as required by applicable law including, without limitation, *Section 9-615 of the Uniform Commercial Code*,^{n*} or applicable U.C.C. Section.

(d) Fourth, to the extent of any surplus thereafter remaining, to Pledgor or as a court of competent jurisdiction may direct.

In the event that the proceeds of any collection, recovery, receipt, appropriation, realization or sale are insufficient to satisfy the Indebtedness, Pledgor shall be liable for the deficiency together with interest thereon at the rate [prescribed in the Loan Agreement as the Default Rate] [for Revolving Advances] [consisting of Domestic Rate Loans] [of _____% per annum] plus the costs and fees of any attorneys employed by Pledgee to collect such deficiency.

Pledgee, in its sole and absolute discretion, with or without notice to Pledgor, may deposit any proceeds of any collection, recovery, receipt, appropriation, realization, disposition or sale of the Collateral in a non-interest bearing cash collateral deposit account to be maintained as security for the Indebtedness.

12. Waiver of Marshaling.

Pledgor hereby waives any right to compel any marshaling of any of the Collateral.

13. Pledgee Appointed Attorney-In-Fact and Performance by Pledgee. Upon the occurrence of an Event of Default, Pledgor hereby irrevocably constitutes and appoints Pledgee as Pledgor's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to do in Pledgor's name, place and stead, all such acts, things and deeds for and on behalf of and in the name of Pledgor, which Pledgor could or might do or which Pledgee may deem necessary, desirable or convenient to accomplish the purposes of this Agreement, including, without limitation, to execute such instruments of assignment or transfer or orders and to register, convey or otherwise transfer title to the Collateral into Pledgee's name. Pledgor hereby ratifies and confirms all that said attorney-in-fact may so do and hereby declares this power of attorney to be coupled with an interest and irrevocable. If Pledgor fails to perform any agreement herein contained, Pledgee may itself perform or cause performance thereof, and any costs and expenses of Pledgee incurred in connection therewith shall be paid by Pledgor as provided in Section 24 hereof.

14. Termination.

This Agreement shall terminate and Pledgor shall be entitled to the return, at Pledgor's expense, of such of the Collateral as has not theretofore been sold, disposed of or otherwise applied pursuant to this Agreement upon payment in full of the Indebtedness and irrevocable termination of the [Loan Agreement] _____ [Guaranty]

15. Concerning Pledgee.

Pledgee shall be protected in relying upon any notice, consent, request or other paper or document believed by it to be genuine and correct and to have been signed by a proper person. The permissive rights of Pledgee hereunder shall not be construed as duties of Pledgee. Pledgee shall be under no obligation to take any action toward the enforcement of this Agreement or rights or remedies in respect of any of the Collateral. Pledgee shall not be personally liable for any action taken or omitted by it in good faith and reasonably believed by it to be within the power or discretion conferred upon it by this Agreement.

16. Notices.

Any notice or other communication required or permitted pursuant to this Agreement shall be deemed given (a) when personally delivered to any officer of the party to whom it is addressed, (b) on the earlier of actual receipt thereof or three (3) days following posting thereof by certified or registered mail, postage prepaid, (c) upon actual receipt thereof when sent by a recognized overnight delivery service or (d) upon actual receipt thereof when sent by telecopier to the number set forth below with electronic confirmation of receipt, in each case addressed to each party at its address or telecopier number set forth below or at such other address or telecopier number as has been furnished in writing by a party to the other by like notice:

If to Pledgee:

Attention: _____

—

Telephone: _____

—

Facsimile: _____

—

with a copy to:

Attention: _____

—

Telephone: _____

—

Facsimile: _____

—

If to Pledgor:

Attention: _____

—

Telephone: _____

—

Facsimile: _____

—

with a copy to:

Attention: _____

—

Telephone: _____

—

Facsimile: _____

—

17. Governing Law.

This Agreement and all rights and obligations hereunder shall be governed by and construed and enforced in all respects in accordance with the laws of the State of _____ applied to contracts to be performed wholly within the State of _____.

18. Waivers.

[(a)] EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OTHER AGREEMENT EXECUTED OR DELIVERED BY THEM IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HERETO HEREBY AGREES AND CONSENTS THAT ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

n1[(b) Pledgee may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of Pledgor, extend the time of payment of, exchange or surrender any collateral for, renew or extend any of the Indebtedness or increase or decrease the interest rate thereon, and may also make any agreement with [Borrower] or with any other party to or person liable on any of the Indebtedness, or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between Pledgee and [Borrower] or any such other party or person, or make any election of rights Pledgee may deem desirable under the United States Bankruptcy Code, as amended, or any other federal or state bankruptcy, reorganization, moratorium or insolvency law relating to or affecting the enforcement of creditors' rights generally without in any way impairing or affecting this Agreement.

(c) Pledgor further waives (i) notice of the making of any loans or extensions of credit by Pledgee to Borrower, and of

all notices and demands of any kind to which Pledgor may be entitled, including, without limitation, notice of adverse change in Borrower's financial condition or of any other fact which might materially increase the risk of Pledgor; and (ii) presentment to or demand of payment from anyone whomsoever liable upon any of the Indebtedness, protest, notices of presentment, non-payment or protest,

(e) Pledgor expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution or any other claim which Pledgor may now or hereafter have against Borrower or any other person directly or contingently liable for the Indebtedness, or against or with respect to Borrower's property (including, without limitation, property collateralizing Pledgor's obligations to Pledgee), arising from the existence or performance of this Agreement. In furtherance, and not in limitation, of the preceding waiver, Pledgor agrees that any payment to Pledgee by Pledgor pursuant to this Agreement shall be deemed a contribution to the capital of Borrower or other obligated party and any such payment shall not constitute Pledgor a creditor of any such party.]

19. Litigation.

PLEDGOR EXPRESSLY CONSENTS TO THE JURISDICTION AND VENUE OF EACH COURT OF COMPETENT JURISDICTION LOCATED IN THE STATE OF _____ FOR ALL PURPOSES IN CONNECTION WITH THIS AGREEMENT. ANY JUDICIAL PROCEEDING BY PLEDGOR AGAINST PLEDGEE INVOLVING, DIRECTLY OR INDIRECTLY ANY MATTER OR CLAIM IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS AGREEMENT SHALL BE BROUGHT ONLY IN A STATE COURT LOCATED IN THE COUNTY OF _____, STATE OF _____. PLEDGOR FURTHER CONSENTS THAT ANY SUMMONS, SUBPOENA OR OTHER PROCESS OR PAPERS (INCLUDING, WITHOUT LIMITATION, ANY NOTICE OR MOTION OR OTHER APPLICATION TO EITHER OF THE AFOREMENTIONED COURTS OR A JUDGE THEREOF) OR ANY NOTICE IN CONNECTION WITH ANY PROCEEDINGS HEREUNDER, MAY BE SERVED INSIDE OR OUTSIDE OF THE STATE OF _____ OR THE _____ DISTRICT OF _____ BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL SERVICE PROVIDED A REASONABLE TIME FOR APPEARANCE IS PERMITTED, OR IN SUCH OTHER MANNER AS MAY BE PERMISSIBLE UNDER THE RULES OF SAID COURTS. PLEDGOR WAIVES ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED HEREON AND SHALL NOT ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE OR BASED UPON FORUM NON CONVENIENS.

20. No Waiver; Cumulative Remedies.

Any and all of Pledgee's rights with respect to the Liens granted under this Agreement shall continue unimpaired, and Pledgor shall be and remain obligated in accordance with the terms hereof, notwithstanding (a) the bankruptcy, insolvency or reorganization of Pledgor, (b) the release or substitution of any item of the Collateral at any time, or of any rights or interests therein, or (c) any delay, extension of time, renewal, compromise or other indulgence granted by Pledgee in reference to any of the Indebtedness. Pledgor hereby waives all notice of any such delay, extension, release, substitution, renewal, compromise or other indulgence, and hereby consents to be bound hereby as fully and effectively as if Pledgor had expressly agreed thereto in advance. No failure on the part of Pledgee to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy by Pledgee preclude any other or further exercise thereof or the exercise of any right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

21. Severability.

In case any security interest or other right of Pledgee shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other security interest or other right, privilege or power

granted under this Agreement. In the event that any provision of this Agreement or the application thereof to Pledgor or any circumstance in any jurisdiction governing this Agreement shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provision to parties, jurisdictions, or circumstances other than to whom or to which it is held invalid or unenforceable shall not be affected thereby, nor shall same affect the validity or enforceability of any other provision of this Agreement.

22. Counterparts; Facsimiles.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Any signature delivered by a party by facsimile transmission shall be deemed an original signature hereto.

23. Miscellaneous.

(a) This Agreement constitutes the entire and final agreement among the parties with respect to the subject matter hereof and neither this Agreement nor any term hereof may be changed, discharged or terminated orally, but only by an instrument in writing, signed by Pledgee and Pledgor. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given.

(b) This Agreement shall be binding upon Pledgor, and Pledgor's [heirs, executors, administrators,] successors and assigns, and shall inure to the benefit of Pledgee and its successors and assigns. The term "Pledgee", as used herein, shall include any successor or assign of Pledgee at the time entitled to the pledged interest in the Collateral.

(c) The headings and captions in this Agreement are for purposes of reference only and shall not constitute part of this Agreement for any other purpose.

24. Expenses.

The Collateral shall also secure, and Pledgor shall pay to Pledgee on demand, from time to time, all costs and expenses, (including but not limited to, attorneys' fees and costs, taxes, and all transfer, recording, filing and other charges) of, or incidental to, the custody, care, transfer, administration of the Collateral or any other collateral, or in any way relating to the enforcement, protection or preservation of the rights or remedies of Pledgee under this Agreement or with respect to any of the Indebtedness.

25. Recapture

Anything in this Agreement to the contrary notwithstanding, if Pledgee receives any payment or payments on account of the Indebtedness, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under the United States Bankruptcy Code, as amended, or any other federal or state bankruptcy, reorganization, moratorium or insolvency law relating to or affecting the enforcement of creditors' rights generally, common law or equitable doctrine, then to the extent of any sum not finally retained by Pledgee, Pledgor's obligations to Pledgee shall be reinstated and this Agreement shall remain in full force and effect (or be reinstated) until payment shall have been made to Pledgee, which payment shall be due on demand.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first written above.

37TTT-1 California Legal Forms--Transaction Guide Form T1-7

[PLEDGOR]

By: _____

Name:

Title:

[PLEDGEE]

By: _____

Name:

Title:

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____ to me known, who, being by me duly sworn did depose and say that s/he is the _____ of _____, the corporation described in and which executed the above instrument; and that s/he signed her/his name thereto by order of the board of directors of said corporation.

Notary Public

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____ to me known, who, being by me duly sworn did depose and say that s/he is the _____ of _____, the corporation described in and which executed the above instrument; and that s/he was authorized to sign her/his name thereto.

Notary Public

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____ to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that s/he executed the same.

Notary Public

SCHEDULE A

PLEDGED STOCK

Issuer	Class of Stock	Stock Certificate Number	Par Value	Number of Shares
.....				
.....				
.....				
.....				
.....				

FOOTNOTES:

(n1)Footnote *. Review your state's statutory version of U.C.C. Section 9-615, as it may include variances from the model U.C.C. version.

(n2)Footnote 1. These waivers are required only in the case of a hypothecation.



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 1: Loans--Secured.

37TTT-1 California Legal Forms--Transaction Guide Form T1-8

Form T1-8 Pledge Agreement--Possessory Security Interest in Stock Certificates

Description: This form is for use in pledging stock certificates as collateral. This form is, in essence, a common law pledge agreement. It uses the common law terminology, which may be preferred by counsel or parties; however, the terminology, referring to the lender as the "secured party" and the borrower as the "debtor," may be substituted. The pledgee then would be referred to as the secured party, and the pledgor as the debtor.

Form T1-8 Pledge Agreement--Possessory Security Interest in Stock Certificates

PLEDGE AGREEMENT

This AGREEMENT is entered into on _____ [date], between _____ [name of pledgor] ("Pledgor"), _____ [address of pledgor], and _____ [name of pledgee] ("Pledgee"), _____ [address of pledgee].

Recitals

At the time of the execution of this Agreement, the Pledgee lent the Debtor \$_____, evidenced by the promissory note of the Pledgor dated _____.

To induce the Pledgee to make the loan, the Pledgor has agreed to pledge certain stock to the Pledgee as security for the repayment of the loan.

It is therefore agreed:

Pledge

1. In consideration of the sum of \$_____ lent to the Pledgor by the Pledgee, receipt of which is acknowledged, the Pledgor grants a security interest to the Pledgee in instruments of the following description: _____ [describe by name, number and type of shares and certificate numbers], endorsed in blank and

delivered to the Pledgee with this Agreement. The Pledgor appoints the Pledgee _____ its attorney-in-fact to arrange for the transfer of the pledged shares on the books of the issuer to the name of the Pledgee. The Pledgee will hold the pledged shares as security for the repayment of the loan, and will not encumber or dispose of the shares except in accordance with the provisions of Paragraph 8 of this Agreement.

Dividends

2. During the term of this pledge, all dividends and other amounts received by the Pledgee as a result of the Pledgee's record ownership of the pledged shares will be applied to the payment of the principal and interest on the loan.

Voting Rights

3. During the term of this pledge, and as long as the Pledgor is not in default in the performance of any of the terms of this Agreement or in the payment of the principal or interest of the loan, the Pledgor will have the right to vote the pledged shares on all corporate questions. The Pledgee will execute timely proxies in favor of the Pledgor to this end.

Representations

4. The Pledgor warrants that there are no restrictions on the transfer of any of the pledged shares, other than those that may appear on the face of the certificates, and that the Pledgor has the right to transfer the shares free of any encumbrances and without obtaining the consents of the other shareholders.

Adjustments

5. In the event that, during the term of this pledge, any share dividend, reclassification, readjustment, or other change is declared or made in the capital structure of the company that has issued the pledged shares, all new, substituted, and additional shares or other securities issued by reason of any change will be held by the Pledgee in the same manner as the shares originally pledged under this Agreement.

Warrants and Rights

6. In the event that during the term of this pledge, subscription warrants or any other rights or options will be issued in connection with the pledged shares, the warrants, rights, and options will be immediately assigned by the Pledgee to the Pledgor, and if exercised by the Pledgor, all new shares or other securities so acquired by the Pledgor will be immediately assigned to the Pledgee to be held in the same manner as the shares originally pledged under this Agreement.

Payment of Loan

7. On payment at maturity of the principal and interest of the loan, less amounts received and applied by the Pledgee in reduction of the loan, the Pledgee will transfer to the Pledgor all the pledged shares and all rights received by the Pledgee as a result of the Pledgee's record ownership of the pledged shares.

Default

8. In the event that the Pledgor defaults in the performance of any of the terms of this Agreement, or in the payment at maturity of the principal or interest of the loan, the Pledgee will have the rights and remedies provided in the _____ [state] Commercial Code. In this connection, the Pledgee may, on 10 days written notice to the Pledgor, and without liability for any diminution in price that may have occurred, sell all the pledged shares in the manner and for the price that the Pledgee may determine. At any bona fide public sale the Pledgee will be free to purchase all or any part of the pledged shares. Out of the proceeds of any sale the Pledgee may retain an amount equal to the principal and interest then due on the loan, plus the amount of the expenses of the sale, and will pay any balance of the proceeds of any sale to the Pledgor. If the proceeds of the sale are insufficient to cover the principal and interest of the loan plus expenses of the sale, the Pledgor will remain liable to the Pledgee for any deficiency, in accordance with the provisions set forth in _____ [state] Code Section _____.

Dated: _____

PLEDGOR

_____ [signature of pledgor]

_____ [typed name]

PLEDGEE

_____ [signature of pledgee]

_____ [typed name]



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 1: Loans--Secured.

37TTT-1 California Legal Forms--Transaction Guide Form T1-9

Form T1-9 Pledge Agreement--Possessory Security Interest in Notes Secured by Deeds of Trust or Land Sale Contracts

Description: This form is a security agreement creating a possessory interest in promissory notes secured by real estate deeds of trust or land sales contracts.

Form T1-9 Pledge Agreement--Possessory Security Interest in Notes Secured by Deeds of Trust or Land Sale Contracts

PLEDGE AGREEMENT

This PLEDGE AGREEMENT is entered into on _____ [date], between _____ [name of pledgee] ("Pledgee"), _____ [address of pledgee], and _____ [name of pledgor] ("Pledgor"), _____ [address of pledgor].

Recitals

The Pledgor desires to borrow from the Pledgee, and the Pledgee desires to lend to the Pledgor, the sum of \$_____, to be secured by the land sale contracts and promissory notes secured by deeds of trust described in this Pledge Agreement, which are to be pledged as collateral for the obligation described in this paragraph.

It is therefore agreed:

Pledge

1. In consideration of any financial accommodations given or to be given or continued to the Pledgor by the Pledgee, and as collateral security for the payment of any indebtedness, obligation, or liability of the Pledgor to the Pledgee, including but not limited to the obligation of the Pledgor to the Pledgee under the promissory notes executed concurrently with this Pledge Agreement, the Pledgor assigns, transfers to, and deposits with the Pledgee the promissory note(s), deed(s) of trust, and land sale contract(s) described in this Paragraph, delivered by the Pledgor to

the Pledgee, or currently held by the Pledgee, and any additional property as may later be delivered by the Pledgor to the Pledgee during the existence of this Pledge Agreement. The note(s), deed(s) of trust, and land sale contract(s) referred to in this paragraph (the "Collateral") are described as follows: _____ [*describe each item of collateral*].

Warranties

2. The Pledgor warrants and represents the following with respect to the Collateral:

- (1) The Pledgor is the absolute owner of the Collateral and the obligations described in the documents that compose the Collateral are due and payable as stated in those documents, and the obligor(s) under the Collateral _____ [is or are] not now in default in any respect as to any obligations under the Collateral.
- (2) The Collateral is not subject to any prior assignment, claim, lien, or security interest, and the Pledgor will not make any further assignment of the Collateral or create any further security interest in the Collateral, and will not permit its rights in the Collateral to be reached by attachment, levy, garnishment, or other judicial process.
- (3) The obligations of the obligors under the Collateral are not subject to any claim for credits, allowances, or adjustments.
- (4) No notice of the bankruptcy or insolvency of any obligor(s) under the Collateral has been received by the Pledgor. On the Pledgor's receipt of any such notice, the Pledgor will immediately give the Pledgee written notice.
- (5) The Pledgor has maintained and will continue to maintain accurate and complete records and accounts of all obligations given as the Collateral, and agrees to permit the Pledgee to inspect these records and accounts. The Pledgor further agrees to submit statements of these account to the Pledgee in any reasonable form prescribed by the Pledgee.

Power of Sale

3. The power of sale and all other powers granted by the Pledgor in this Pledge Agreement will apply to all collateral of any kind, including all moneys, negotiable instruments, bonds, stocks, and commercial paper, credits, choses in action, claims or demands of every kind at any time during the existence of this Pledge Agreement deposited with or in the possession or control of the Pledgee or any of its agents.

Substitution of Collateral

4. If, with the consent of the Pledgee, the Pledgor substitutes or exchanges other collateral, including but not limited to securities or instruments, in the place of the Collateral described in Paragraph 1, then all of the rights of the Pledgee and all of the obligations of the Pledgor under this Pledge Agreement will be applicable to the substituted or exchanged collateral, and will be the same in all respects as the rights and obligations concerning the Collateral originally pledged.

Collection of Collateral

5. The Pledgee will have the right to notify the obligor(s) under the Collateral to make payment directly to it and to take control of all the proceeds of the Collateral, or any part of it, and to enforce any of the obligations of the obligor(s) under the Collateral. The Pledgee may exercise the rights described in this Paragraph at any time, whether or not the Pledgor is then in default under this Pledge Agreement and whether or not the Pledgor had been making collections on the Collateral. Until such time as the Pledgee elects to exercise these rights by mailing written notice to the Pledgor, the Pledgor is authorized to collect payments and to enforce all rights under the Collateral concerning current and past-due payments, but is not authorized to collect any prepayments, fire insurance proceeds, or condemnation awards without the prior written consent of the Pledgee. The costs of collection and enforcement, including attorneys' fees and legal expenses, will be at the expense of the Pledgor. The Pledgor will reimburse any costs or expenses, including attorneys' fees and legal expenses, that are incurred by the Pledgee.

Fire Insurance

6. All fire insurance required to be maintained by the obligor(s) under the terms of the Collateral will be written with loss payable to the Pledgee. The policies, or certificates evidencing the policies, will be furnished to the Pledgee in a form satisfactory to it. If the obligor(s) and Pledgor fail to pay any premium on any such insurance, the Pledgee may, but will not be required to, pay the premium and may add the amount of the premium to the debt secured by this Pledge Agreement. The Pledgor appoints the Pledgee to be its attorney-in-fact to endorse any draft or check that may be payable to the Pledgor in order to collect the proceeds of any such insurance or any condemnation award, and any balance of proceeds remaining after payment in full of all amounts secured by this Pledge Agreement will be paid to the Pledgor. The amount collected under any fire or any other insurance policy and any condemnation award may be applied by the Pledgee to any indebtedness secured by this Pledge Agreement, in any order that the Pledgee may determine, or, at the option of the Pledgee, any or all of the entire amount collected may be released to the Pledgor.

Default

7. The Pledgor will be in default under this Pledge Agreement on the occurrence of any of the following events or conditions:

(a) Default in the payment or performance of any of the obligations, covenants, or liabilities secured by this Pledge Agreement.

(b) Any warranty, representation, or statement made or furnished to the Pledgee by or on behalf of the Pledgor proves to have been false in any material respect when made or furnished.

(c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the Collateral, assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency law by or against the Pledgor.

(d) Any default by any obligor(s) under the terms of the Collateral.

Remedies

8. On the occurrence of any event of default, and at any later time, the Pledgee may declare all the obligations and liabilities of the Pledgor under this Pledge Agreement to become immediately due and payable, notwithstanding any credit or extension of time allowed to the Pledgor by any instrument evidencing any of these liabilities. In addition, the

Pledgee may proceed to enforce payment and may exercise any rights and remedies provided by the _____ [state] Commercial Code, as well as other rights and remedies either at law or in equity possessed by the Pledgee, including but not limited to the following rights:

(a) On notice to the Pledgor as required by the _____ [state] Commercial Code, the Pledgee may sell or otherwise dispose of the Collateral. The sale may be as a unit or in parts, at any time and place and on any terms, provided the Pledgee acts in good faith and in a commercially reasonable manner. Out of the proceeds of any sale, the Pledgee may retain an amount equal to the principal and interest then due on the loan, plus the amount of the expenses of the sale, and will pay any balance of the proceeds of any sale to the Pledgor. The Pledgor agrees to pay to the Pledgee, on demand, whatever balance may be owing on the indebtedness secured by this Pledge Agreement after the sale of the Collateral and the application of the proceeds as provided by this Paragraph and as required by law.

(b) On notice as required by the _____ [state] Commercial Code, the Pledgee may accept the Collateral in satisfaction of all obligations of the Pledgor secured by this Pledge Agreement. If the Pledgor or other person entitled to receive notice objects in writing within 20 days after notice was sent, the Pledgee must dispose of the Collateral under the terms and conditions provided in paragraph (1), above, or as otherwise authorized by law. In the absence of any written objection, the Pledgee may accept the collateral, without any right of redemption, in full satisfaction of the Pledgor's obligations and indebtedness to the Pledgee.

Attorneys' Fees

9. In the event of _____ [any litigation or *specify more limited provision, e.g.,* any legal action based in contract law] between the parties to this Pledge Agreement, or involving any of them, regarding the rights and obligations of the parties under this Pledge Agreement or any obligation secured by this Pledge Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and legal expenses as determined by the court.

Waiver of Rights by Pledgor

10. Each Pledgor, if there is more than one, waives any right to require the Pledgee to (1) proceed against any person, (2) proceed or exhaust any collateral, or (3) pursue any other remedy in the Pledgee's power. Each Pledgor also waives any defense arising from any disability or other defense of any other Pledgor or any other person. Each Pledgor authorizes the Pledgee to (1) take and hold security, other than the Collateral, for the payment of the indebtedness or any part of the indebtedness, and exchange, enforce, waive, and release the Collateral or any part of it or any other security, and (2) release or substitute any other Pledgor.

Prior Agreements Superseded

11. This Pledge Agreement constitutes the only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Pledge Agreement.

Parties Bound

12. This Pledge Agreement is binding on and inures to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Pledge Agreement.

Assignment

13. This Assignment of a security interest in the Collateral will be for the benefit of the Pledgee and its successors or assigns. In the event that the Pledgee assigns, endorses, sells, or transfers to any other person or entity the Collateral, or any other notes, evidences of indebtedness, bonds, stocks, or other securities deposited under this Pledge Agreement or secured or intended to be secured by this Pledge Agreement, or any part of it, the assignment or transfer will automatically constitute an assignment and transfer of this Pledge Agreement and all of the rights granted by this Pledge Agreement. The assignee, endorsee, transferee, or successor of the Pledgee will have all of the rights given to the Pledgee in accordance with the terms of this Pledge Agreement.

Time of the Essence

14. Time is of the essence in this Pledge Agreement.

Payments and Notices

15. All payments and notices under this Pledge Agreement or otherwise required by law will be made to the Pledgee at _____ [address], and to the Pledgor at _____ [address], or to any other address as the party entitled to the payment or notice may designate to the other party in writing.

Satisfaction of Obligation

16. On the satisfaction of all obligations of the Pledgor to the Pledgee, the Pledgee will return to the Pledgor the Collateral and all other documents and securities given as collateral under this Pledge Agreement, and will endorse all instruments to the Pledgor and give an assignment of all of the Collateral, in recordable form.

Applicable law

17. This Pledge Agreement will be construed in accordance with the Uniform Commercial Code as enacted in _____ [state] and other applicable laws of the State of _____.

Validity and Construction

18. In case one or more of the provisions contained in this Agreement will for any reason be held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability of that provision will not affect any other provision of this Pledge Agreement, and this Pledge Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

Commercial Code Definitions Apply

19. All terms used in this Pledge Agreement that are defined in the _____ [state] Commercial Code will have the same meaning in this Pledge Agreement as in the Code.

Date: _____,

at _____ [city],
County of _____, _____ [state].

PLEDGOR

_____ [signature of pledgor]
_____ [typed name]

PLEDGEE

_____ [signature of pledgee]
_____ [typed name]



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 1: Loans--Secured.

37TTT-1 California Legal Forms--Transaction Guide Form T1-10

Form T1-10 General Nonpossessory Security Agreement and Note

Description: This form is a security agreement for use in granting a nonpossessory security interest in collateral owned or to be owned by the debtor. The form can be adapted for use with virtually any kind of collateral.

Form T1-10 General Nonpossessory Security Agreement and Note

GENERAL SECURITY AGREEMENT

This Security Agreement is entered into on _____ [date], between _____ [name of debtor], ("Debtor"), _____ [street address], _____ [city], _____ County, State of _____, and _____ [name of secured party], ("Secured Party"), _____ [street address], _____ [city], _____ County, State of _____, as follows:

For value received, the Debtor grants to the Secured Party a security interest in the following described property, referred to in this Security Agreement as the Collateral: _____ [list and describe personal property serving as collateral as accurately and precisely as possible, e.g., inventory of refrigerators, stoves, and other electrical appliances owned by the Debtor on the date of this Security Agreement; if collateral is crops growing or to be grown, timber to be cut, minerals, accounts from sale of minerals at wellhead or minehead, or fixtures, describe the land concerned] to secure:

- (1) The Debtor's note of \$_____ to the Secured Party of _____ [date], payable as to principal and interest as provided in the note;
- (2) Future advances by the Secured Party to the Debtor, to be evidenced by similar notes;
- (3) All expenditures by the Secured Party for taxes, insurance, and repairs to and maintenance of the Collateral incurred by the Secured Party in the collection and enforcement of the note and other indebtedness of the Debtor; and
- (4) All liabilities of the Debtor to the Secured Party now existing or incurred in the future, matured or

unmatured, direct or contingent, and any renewals, extensions, and substitutions of those liabilities.

The Debtor warrants:

[Have debtor initial the blank preceding any statement applicable to this agreement:]

_____ The Collateral is to be used for personal, family, or household purposes.

_____ The Collateral is to be used in business other than farming operations.

_____ The Collateral is equipment used in farming operations, or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer.

_____ The Collateral is accounts, and the records concerning the accounts are kept at
_____ [address].

_____ The Collateral is a fixture attached to or to become attached to the above-described land.

_____ The Collateral is being acquired by the Debtor from the Secured Party or is being acquired with the proceeds of the advance evidenced by this Security Agreement.

[Continue with the following:]

The Debtor's residence is located at _____ [residence address].

The Collateral will be kept at _____ [address].

The Debtor's chief place of business is located at _____ [address].

The Debtor agrees as follows:

Title

1. Except for the security interest granted by this agreement, the Debtor has, or on acquisition will have, full title to the Collateral free from any lien, security interest, encumbrance, or claim, and the Debtor, at the Debtor's cost and expense, will defend any action that may affect the Secured Party's security interest in, or the Debtor's title to, the Collateral.

Financing Statement

2. No financing statement covering the Collateral or any part of it or any proceeds of it *[add, if applicable: other than the financing statement executed in conjunction with this Security Agreement]* is on file in any public office. *[If financing statement has not yet been executed and filed, include: At the Secured Party's request, the Debtor will join in executing and pay the filing fees required for all necessary financing statements in forms satisfactory to the Secured Party and will further execute all other instruments deemed necessary by the Secured Party.] [If collateral is timber to be cut, minerals such as oil or gas, or accounts from sale of minerals at wellhead or minehead, or fixtures, add: The*

_____ (Debtor or Secured Party) will file the financing statement in the real estate records in the office where the mortgage on the real property described in this Security Agreement is filed or recorded.]

Sale, Lease, or Disposition of Collateral

3. The Debtor will not sell, contract to sell, lease, encumber, or dispose of the Collateral or any interest in it without the written consent of the Secured Party until this Security Agreement and all debts secured by it have been fully satisfied.

Insurance

4. Until final termination of this Security Agreement, the Debtor, at the Debtor's own cost and expense, will insure the Collateral with companies acceptable to the Secured Party against the casualties and in the amounts that the Secured Party will reasonably require, with a loss payable clause in favor of the Debtor and Secured Party as their interests may appear. The Secured Party is authorized to collect sums that may become due under any of the insurance policies and apply them to the obligations secured by this Security Agreement. Debtor must deliver a duplicate copy of each such policy must to the Secured Party.

Protection of Collateral

5. The Debtor will keep the Collateral in good order and repair and will not waste or destroy the Collateral or any part of it. The Debtor will not use the Collateral in violation of any statute or ordinance, and the Secured Party will have the right to examine and inspect the Collateral at any reasonable time.

Taxes and Assessments

6. The Debtor will pay promptly when due all taxes and assessments on the Collateral, or any part of the Collateral, or for its use and operation.

Location and Identification

7. The Debtor will keep the Collateral separate and identifiable and at the address shown above, and will not remove the Collateral from that address without the Secured Party's written consent, for as long as this Security Agreement remains in effect.

Security Interest in Proceeds and Accessions

8. The Debtor grants to the Secured Party a security interest in and to all proceeds, increases, substitutions, replacements, additions, and accessions to the Collateral and to any part of the Collateral. This provision shall not be construed to mean that the Debtor is authorized to sell, lease, or dispose of the Collateral without the prior written consent of the Secured Party.

Decrease in Value of Collateral

9. If, in the Secured Party's judgment, the Collateral has materially decreased in value or if the Secured Party at any time determines that the Secured Party is financially unstable, the Debtor will either provide enough additional Collateral to satisfy the Secured Party or reduce the total indebtedness by an amount sufficient to satisfy the Secured Party.

Reimbursement of Expenses

10. At the option of the Secured Party, the Secured Party may discharge taxes, liens, interest, or perform or cause to be performed for and on behalf of the Debtor any actions and conditions, obligations, or covenants that the Debtor has failed or refused to perform. In addition, the Secured Party may pay for the repair, maintenance, and preservation of the Collateral. The Secured Party also may enter the premises where the Collateral or any part of it is located and cause to be performed as agent and on the account of the Debtor any acts that the Secured Party deems necessary for the proper repair or maintenance of the Collateral or any part of it. All sums expended by the Secured Party under this paragraph, including but not limited to, attorneys' fees, court costs, agent's fees, or commissions, or any other costs or expenses, will bear interest from the date of payment at the annual rate of _____ percent, will be payable at the place designated in the Debtor's note, and will be secured by this Security Agreement.

Payment

11. The Debtor will pay the note secured by this Security Agreement and any renewal or extension of it and any other indebtedness secured by this agreement in accordance with the terms and provisions of the indebtedness. The Debtor also will repay immediately all sums expended by the Secured Party in accordance with the terms and provisions of this Security Agreement. On full payment by the Debtor of all indebtedness secured by this agreement in accordance with this Security Agreement, this Security Agreement will expire, and the Secured Party's security interest in the Collateral, as set forth in this Security Agreement, will terminate.

Change of Residence or Place of Business

12. The Debtor will promptly notify the Secured Party of any change of the Debtor's residence, chief place of business, or place where records concerning the collateral are kept.

[If secured party will be allowed to make collections regardless of whether debtor defaults on security agreement, add:]

Attorney-in-Fact

13. The Debtor appoints the Secured Party as the Debtor's attorney-in-fact to do any act that the Debtor is obligated by this Security Agreement to do, to exercise all rights of the Debtor in the Collateral, to make collections, to execute all papers and instruments, and to do all other things necessary to preserve and protect the Collateral, to make collections, and to protect the Secured Party's security interest in the Collateral.

[Continue with the following:]

Time of Performance and Waiver

14. In performing any act under this Security Agreement and the note secured by it, time is of the essence. The Secured Party's acceptance of partial or delinquent payments, or the failure of the Secured Party to exercise any right or remedy, will not constitute a waiver of any obligation of the Debtor or right of the Secured Party and will not constitute a waiver of any other similar default that occurs later.

Default

15. The Debtor will be in default under this Security Agreement on the occurrence of any of the following events or conditions:

- (a) Default in the payment or performance of any note, obligation, covenant, or liability secured by this Security Agreement;
- (b) Any warranty, representation, or statement made or furnished to the Secured Party by or on behalf of the Debtor proves to have been false in any material respect when made or furnished;
- (c) Any event that results in the acceleration of the maturity of the indebtedness of the Debtor to others under any indenture, agreement, or undertaking;
- (d) Loss, theft, substantial damage, destruction, sale, or encumbrance to or of any of the Collateral, or the making of any levy, seizure, or attachment of or on the Collateral;
- (e) Any time the Secured Party reasonably believes that the prospect of payment or any indebtedness secured by this Security Agreement or the performance of this Security Agreement is impaired; or
- (f) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the Collateral, assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency law by or against the Debtor or any guarantor or surety for the Debtor.

Remedies

16. On the occurrence of any event of default, and at any later time, the Secured Party may declare all obligations secured due and payable immediately and may proceed to enforce payment and exercise any and all of the rights and remedies provided by the _____ [state] Commercial Code as well as other rights and remedies either at law or in equity possessed by the Secured Party.

The Secured Party may require the Debtor to assemble the Collateral and make it available to the Secured Party at any place to be designated by the Secured Party that is reasonably convenient to both parties. Unless the Collateral is perishable, threatens to decline speedily in value, or is of a type customarily sold on a recognized market, the Secured Party will give the Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or any other intended disposition of the Collateral is to be made. The requirements of reasonable notice will be met if the notice is mailed, postage prepaid, to the address of the Debtor shown at the beginning of this Security Agreement at least 10 days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling, or the like will include the Secured Party's reasonable attorneys' fees and legal expenses.

Governing Law

17. This Security Agreement will be construed in accordance with the _____ [state] Commercial Code and other applicable laws of the State of _____. All obligations of the parties created under this Security Agreement are performable in _____ County, _____ [state].

Parties Bound

18. This Security Agreement will be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Security Agreement.

Attorneys' Fees

19. If _____ [any litigation or more limited provision, e.g., any legal action based in contract law] is begun between the parties to this Security Agreement concerning the Collateral, this Security Agreement, or the rights and duties of either party, the prevailing party will be entitled to a reasonable sum as reimbursement for that party's attorneys' fees and legal expenses.

Validity and Construction

20. If any one or more of the provisions contained in this Security Agreement is for any reason held to be invalid, illegal, or unenforceable, the invalidity, illegality, or unenforceability of that provision will not affect any other provision of this Security Agreement, and this Security Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

Sole Agreement

21. This Security Agreement constitutes the only agreement of the parties, and supersedes any prior understandings or written or oral agreements between the parties, respecting the subject matter of this Security Agreement.

Commercial Code Definitions Applicable

22. All terms used in this Security Agreement that are defined in the _____ [state] Commercial Code will have the same meaning in this Security Agreement as in the Code.

Dated: _____

DEBTOR

_____ [signature of debtor]

_____ [typed name]

SECURED PARTY

_____ [signature of secured party]

_____ [typed name]

NOTE

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_____ [city]
 _____ [county], _____ [state]

FOR VALUE RECEIVED, the undersigned promises to pay to the order of _____ [name of secured party] at _____ [city], _____ County, _____ [state], or at any other place in the State of _____ that any holder of this note may designate in writing, the sum of \$_____ with interest, from the date written above until paid, at the rate of _____ percent per year.

This note, together with all interest due on it, is due and payable as follows: _____ [*specify method of payment*].

The payment of this note is secured by a Security Agreement of this date from _____ [name of debtor] to _____ [name of secured party], granting a security interest in the following described property: _____ [*describe collateral*], together with all other property described in or referred to in the Security Agreement.

[*If right to prepayment of principal is desired, include:*]

The maker will have the right to prepay the principal of this note in whole or in part before its due date without premium or penalty.

[*Continue with the following:*]

If this note is placed for collection, or collected by a lawsuit or through a bankruptcy, probate, or any other court, either before or after maturity, reasonable attorneys' fees, costs, and other expenses incurred by the holder in enforcing the terms of this note will be paid to the holder of this note.

Failure to pay any part of the principal or interest of this note when due, or failure to carry out any of the terms of the Security Agreement, will authorize the holder of this note to declare as immediately due and payable the then-unpaid principal and to exercise all of the rights and remedies provided by the _____ [state] Commercial Code, as well as all other rights and remedies either at law or in equity possessed by the holder of this note.

The endorsers of this note, jointly and severally, waive presentment, notice of dishonor, and protest.

_____ [signature of debtor-maker]
 _____ [typed name]



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CHAPTER 1: Loans--Secured.

*37TTT-1 California Legal Forms--Transaction Guide Form T1-11***Form T1-11 Nonpossessory Security Interest in Business Equipment**

Description: This security agreement, which is similar to an installment sales contract, is for use by any seller for the sale of business equipment. It may be used for the sale of farm equipment unless the farm equipment is bought for personal, family, or household purposes. Because this form does not comply with the federal Truth in Lending Act, it cannot be used for the sale of consumer goods by a person in the business of making retail sales of consumer goods or extending credit.

Form T1-11 Nonpossessory Security Interest in Business Equipment

SECURITY AGREEMENT

This Security Agreement is entered into on _____ [date], between _____ [name of seller], a _____ [legal status, e.g., a _____ (state) corporation] ("Seller"), _____ [street address], _____ [city], _____ County, State of _____, and _____ [name of buyer], a _____ [legal status, e.g., a _____ (state) corporation] ("Buyer"), _____ [street address], _____ [city], _____ County, State of _____, as follows:

Sale and Purchase

1. The Seller will sell to the Buyer and the Buyer will purchase from the Seller the goods described as follows: _____ [describe goods], referred to in this Agreement as the "Goods," on the terms and conditions set forth in this Agreement.

Purchase Price

2. The total purchase price to be paid by the Buyer to the Seller for the Goods is the sum of \$ _____, payable as follows:

The sum of \$_____ on execution of this Agreement, receipt of which is acknowledged by the Seller, and the balance in equal monthly installments of \$_____ each on the _____ day of each month beginning on _____ [date] and continuing until the entire unpaid balance of the purchase price, together with interest at the rate of _____ percent per year from the date of this Agreement, has been paid. Each payment is to be credited first to the payment of interest then accrued, and then to the reduction of the principal balance of the purchase price.

Title and Security Interest

3. The Seller retains title to the Goods until the Buyer has performed all of the obligations owing to the Seller under this Agreement, and until the purchase price of the Goods has been fully paid. The Seller retains a security interest in the Goods, and in all accessions to, replacements of, and proceeds from the Goods, as security for the performance by the Buyer of all of the Buyer's obligations arising under this Agreement.

Receipt in Good Condition

4. The Buyer acknowledges that it has received possession of the Goods and that, at the time of receipt, the Goods were, and each part of them was, in good repair and in a safe, workable, and clean condition.

Use of Goods

5. The Buyer acknowledges that the Goods are not being purchased primarily for personal, family, or household use, but for lawful use in the Buyer's business. The goods will be located at the Buyer's place of business at _____ [street address], City of _____, State of _____, unless and until written consent to a change of their location is obtained from the Seller.

Risk of Loss

6. The Buyer assumes all risks of loss of the Goods and will not be released from any obligation or obligations under this Agreement because of any loss, damage, or disrepair suffered by the Goods or any part of the Goods.

Maintenance

7. The Buyer will maintain the Goods and each part of the Goods in good repair at the Buyer's cost and expense. The Buyer will not use the Goods or any part of the Goods in a manner that would subject them to waste or undue deterioration.

Insurance

8. During the continuance of this Agreement, the Buyer, at its own cost and expense, will keep the Goods and all parts of them insured for their full insurable value against loss or damage caused by fire, theft, the elements, or any other risk to which the Goods, or any part of them, might foreseeably be exposed. Insurance must be by insurance policies that are acceptable to the Seller. The Seller will be named as a loss payee under each policy obtained by the Buyer in fulfillment of its obligations under this paragraph.

Taxes and Assessments

9. The Buyer, at its own cost and expense, will pay as they become due, all taxes, assessments, or other charges levied or assessed on the Goods, or any part of them, during the continuance of this Agreement.

Sale of Goods

10. The Buyer will keep the Goods, and all parts of them, separate and identifiable from other property owned by the Buyer or located on the same premises as the Goods. The Buyer will not sell, lease, encumber, or otherwise dispose of any part of the Goods or of any of the Seller's rights under this Agreement without the prior written consent of the Seller, until all of the Buyer's obligations under this Agreement have been fully performed.

Inspection Rights

11. The Seller, either in person or by agent, may enter the premises where the Goods, or any part of them, are located, at any reasonable hour, and may inspect the Goods.

Financing Statement

12. The parties will execute any Financing Statements that may be required by the Uniform Commercial Code as enacted in _____ [state] to perfect the security interest in the Goods retained by the Seller under this Agreement. The Financing Statements will be on forms approved by the _____ [state] Secretary of State, will be executed with this Agreement, and will be filed as required by the Uniform Commercial Code as enacted in _____ [state].

Default

13. The Buyer will be in default under this Security Agreement on the occurrence of any of the following events or conditions:

- (a) Default in the payment or performance of any obligation, covenant, or liability secured by this Agreement;
- (b) Any warranty, representation, or statement made or furnished to the Seller by or on behalf of the Buyer proves to have been false in any material respect when made or furnished;
- (c) Any time the Seller reasonably believes that the prospect of payment of any indebtedness secured by this Agreement or the performance of this Agreement is impaired; or
- (d) Death, dissolution, termination of existence, insolvency, business failure, or the commencement of any proceeding under any bankruptcy or insolvency law by or against the Buyer or any guarantor or surety for the Buyer.

Remedies

14. On the occurrence of any event of default, and at any later time, the Seller may, at the Seller's option and without demand or notice to the Buyer, declare all amounts remaining unpaid under this Agreement to be immediately due and payable, and the Seller may proceed to enforce payment and exercise any and all of the rights and remedies provided by the _____ [state] Commercial Code as well as other rights and remedies either at law or in equity possessed by the Seller. Specifically, the Seller may exercise the following rights:

(a) Enter the Buyer's premises, render the Goods unusable, and dispose of the Goods on the Buyer's premises in the manner provided by the _____ [state] Commercial Code.

(b) Apply the proceeds received from the sale or other disposition of the Goods to, in addition to the items specified in _____ [section] of the _____ [state] Commercial Code, payment of reasonable attorneys' fees and legal expenses incurred by the Seller as a result of the Buyer's default.

Waiver

15. The Seller's acceptance of partial or delinquent payment, or the failure of the Seller to exercise any right or remedy will not be a waiver of any obligation of the Buyer or right of the Seller, will not be a modification of this Agreement or of any of buyer's obligations under this Agreement, and will not constitute a waiver of any other similar default that occurs later.

Attorneys' Fees

16. If _____ [any litigation or *specify more limited provision, e.g., any legal action based in contract law*] is begun between the parties to this Agreement concerning the Goods, this Agreement, or the rights and duties of either party in relation to them, the prevailing party will be entitled to a reasonable sum as reimbursement for its attorneys' fees and legal expenses.

Notices

17. Except as otherwise expressly provided in this Agreement or by law, any notice or other communication required or permitted by this Agreement or by law to be served on, given to, or delivered to either party to this Agreement by the other party will be in writing and will be considered served, given, delivered, and received when personally delivered to the party to whom it is directed or, in lieu of personal delivery, when it is deposited in the United States mail, first-class postage prepaid, addressed to the Buyer at _____ [street address], City of _____, State of _____, or to the Seller at _____ [street address], City of _____, State of _____. Either party, Buyer or Seller, may change its address for the purpose of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

Time of Essence

18. Time is expressly declared to be of the essence of this Agreement.

Governing Law

19. This Agreement will be construed in accordance with the Uniform Commercial Code as enacted in _____ [state] and other applicable laws of the State of _____.

Validity and Construction

20. If one or more of the provisions contained in this Agreement for any reason is held invalid, illegal, or unenforceable, the invalidity, illegality, or unenforceability of that provision will not affect any other provision of this Agreement; and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

Definitions

21. All terms used in this Agreement that are defined in the _____ [state] Commercial Code will have the same meaning in this Security Agreement as in the Code.

Effect on Heirs and Assigns

22. This Agreement and each of its provisions will be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of each of the parties to this Agreement. Nothing contained in this paragraph, however, will be deemed a consent to the sale, assignment, or transfer of the Goods or obligations under this Agreement by the Buyer.

Sole Agreement

23. This instrument constitutes the only agreement between the Buyer and Seller respecting the Goods. It correctly sets forth the rights, and duties of each to the other with respect to the Goods as of its date. Any prior agreements, promises, negotiations, or representations concerning the Goods or payment for the Goods not expressly set forth in this Agreement are no longer in effect.

Date: _____

At _____ [city], County of _____, State of _____.

SELLER

_____ [signature of debtor]

_____ [typed name]

BUYER

_____ [signature of secured party]

_____ [typed name]



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37TTT-1 California Legal Forms--Transaction Guide Form T1-12

Form T1-12 Cash Collateral Deposit Letter

Description: This form is a cash collateral deposit letter in which a cash deposit comprises the collateral in which a lender has a security interest.

Form T1-12 Cash Collateral Deposit Letter

CASH COLLATERAL DEPOSIT LETTER

_____,
20____

LENDER'S NAME

LENDER'S ADDRESS

Ladies and Gentlemen:

Reference is made to the [Revolving Credit] [Term Loan] and _____ [Security] Agreement dated as of the date hereof (as amended, modified, supplemented or restated from time to time, the "Loan Agreement") by and between _____ ("Borrower") and _____ ("Lender"). All capitalized terms used herein which are not defined shall have the meanings given to them in the Loan Agreement.

As collateral security for the Borrower's Liabilities under the Loan Agreement, the undersigned hereby deposits with Lender, the sum of \$_____, to be held by Lender for the uses and purposes herein stated (this deposit to be hereinafter referred to as the "Collateral Deposit").

Upon the occurrence of an Event of Default or if any default shall have occurred and be continuing under any agreement between the undersigned and Lender or the undersigned should at any time become insolvent, or make a general assignment, or if a proceeding in or under any federal or state bankruptcy, reorganization, moratorium or

insolvency law relating to or affecting the enforcement of creditor's rights generally, shall be filed or commenced by, or in respect of the undersigned, or if a notice of any lien, levy or assessment is filed of record with respect to any assets of the undersigned by the United States or any department, agency or instrumentality thereof, or if any taxes or debts owing at any time or times hereafter to any one of them becomes a lien or encumbrance upon any assets of the undersigned in Lender's possession or otherwise, Lender and its successors and assigns may, without demand of performance or advertisement or notice of any kind to or upon the undersigned (each of which demands, advertisements and/or notices are hereby expressly waived), forthwith or at any time or times thereafter, appropriate and apply all or any part of the Collateral Deposit to the payment in whole or in part, in such order as Lender may elect, of the Liabilities, whether then due or not due, returning the excess amount, if any, to the undersigned, who shall nevertheless remain liable to Lender for the payment of any deficiency.

When all of the Liabilities have been paid and/or are otherwise satisfied in full, the Loan Agreement has been irrevocably terminated and the Borrower has executed full releases in favor of Lender in form and substance satisfactory to Lender, any sums still on deposit hereunder shall be returned to the undersigned.

While any sums are on deposit with Lender hereunder, interest on the Collateral Deposit shall accrue at a rate per annum equal to the Prime Rate minus (b) _____ percent (_____%) and shall be added to the Collateral Deposit [remitted to the undersigned] on the first business day of each month with respect to the preceding month. Notwithstanding the foregoing, (a) upon the occurrence of an Event of Default, interest on the Collateral Deposit shall either, at Lender's option, accrue and be added to the Collateral Deposit or cease accruing and (b) upon the occurrence of a Liquidation (as hereafter defined), interest shall cease accruing on the Collateral Deposit at the option of Lender. For purposes hereof the term "Liquidation" shall mean the occurrence of any of the following events: (i) Borrower shall apply for or consent to the appointment of, or taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial part of its property; (ii) Borrower shall make a general assignment for the benefit of its creditors; (iii) Borrower shall commence a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect); (iv) Borrower shall be adjudicated a bankrupt or insolvent; (v) Borrower shall acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws; (vi) Borrower shall cease operations of its present business; (vii) Borrower shall, directly or indirectly, sell, assign, transfer or convey, or suffer or permit to occur any sale, assignment, transfer or conveyance of any assets of Borrower or any interest therein, except as permitted pursuant to the terms of the Loan Agreement; or (viii) Lender shall exercise its rights and remedies as a secured creditor.

This letter agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed by and construed in accordance with the laws of the State of _____.

Very truly yours,

By: _____

Title:

ACCEPTED:

LENDER

By: _____

Title:



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37TTT-1 California Legal Forms--Transaction Guide Form T1-13

Form T1-13 Control Agreement

Description: This form provides a sample account control agreement between a borrower, lender, and a securities intermediary.

Form T1-13 Control Agreement

ACCOUNT CONTROL AGREEMENT

_____, 20_____

_____ [Lender], with an office located at _____ ("Lender");

_____ [Borrower], with an office located at _____ ("Borrower"); and

_____ [Securities Intermediary], having a place of business at _____ ("Securities Intermediary")

hereby agree as follows:

P R E A M B L E

1. Securities Intermediary and Borrower have entered into a customer agreement, a copy of which is attached hereto as Exhibit A (the "Customer Agreement"), pursuant to which Securities Intermediary has established its securities account number

_____ in the name of Borrower (the "Account").

2. Borrower and Lender have entered into the Pledge Agreement of even date herewith, a copy of which is attached hereto as Exhibit B (the "Security Agreement"), in which Borrower has granted Lender a security interest in the Account.

3. Lender, Borrower and Securities Intermediary are entering into this Agreement to provide for the control of the Account and to perfect the security interest of Lender in the Account as more fully described in the Security Agreement.

TERMS

Section 1. The Account. Securities Intermediary hereby represents and warrants to Lender and Borrower that (i) the Account has been established in the name of Borrower as recited above, (ii) Exhibit C attached hereto is a complete and accurate statement of the Account and the financial assets carried therein and any free credit balance thereunder as of the date hereof, (iii) Exhibit C does not reflect any financial assets which are registered in the name of the Borrower, payable to his order, or specially endorsed to him, which have not been endorsed to Securities Intermediary or in blank, (iv) the Customer Agreement, the security entitlements arising out of the financial assets carried in the Account and such free credit balance are paid, are valid and legally binding obligations of Securities Intermediary, and (v) except for the claims and interest of Lender and of Borrower in the Account, Securities Intermediary does not know of any claim to or interest in the Account or in any financial asset carried therein. Securities Intermediary will treat all property held by it in the Account as financial assets under Article 8 of the Uniform Commercial Code of the State of _____.

Section 2. No Withdrawals. Notwithstanding the provisions of Section 3, below, Securities Intermediary shall neither accept nor comply with any entitlement order from Borrower withdrawing any financial assets from the Account nor deliver any such financial assets to Borrower nor pay any free credit balance or other amount owing from Securities Intermediary to Borrower with respect to the Account without the specific prior written consent of Lender.

Section 3. Priority of Lien. Securities Intermediary hereby acknowledges that it has received a copy of the Security Agreement, consents to the terms thereof and recognizes the security interest granted therein to Lender by Borrower. Securities Intermediary hereby confirms that the Account is a cash account and that it will not advance any margin or other credit to Borrower therein, either directly or by allowing him to trade in instruments such as options and commodities contracts that create similar obligations, nor hypothecate any securities carried in the Account. Securities Intermediary hereby waives and releases all liens, encumbrances, claims and rights of setoff it may have against the Account or any financial asset carried in the Account or any credit balance in the Account and agrees that, except for payment of its customary fees and commission pursuant to the Customer Agreement, it will not assert any such lien, encumbrance, claim or right against the Account or any financial asset carried in the Account or any credit balance in the Account. Securities Intermediary will not agree with any third party that Securities Intermediary will comply with entitlement orders concerning the Account originated by such third party without the prior written consent of Lender and Borrower.

Section 4. Control. Securities Intermediary will comply with entitlement orders originated by Lender concerning the Account without further consent by Borrower. Except as otherwise provided in Sections 2 and 3 above, Securities Intermediary shall make trades of financial assets held in the Account at the instruction of Borrower, or his authorized representatives, and comply with entitlement orders concerning the Account from Borrower or his authorized representatives, until such time as Lender delivers a written notice to Securities Intermediary which states that an Event of Default (as such term is defined in the Security Agreement) has occurred and is continuing and that Lender is thereby exercising exclusive control over the Account. Such notice may be referred to herein as the "Notice of Exclusive Control." After Securities Intermediary receives the Notice of Exclusive Control, it will immediately cease complying

with instructions or entitlement orders concerning the Account originated by Borrower or his representatives.

Section 5. Statements, Confirmations and Notices of Adverse Claims. Securities Intermediary will send copies of all statements, confirmations and other correspondence concerning the Account simultaneously to each of Borrower and Lender at the address set forth in the heading of this Agreement. If any person asserts any lien, encumbrance or adverse claim against the Account or in any financial asset carried therein, Securities Intermediary will promptly notify Lender and Borrower thereof.

Section 6. Responsibility of Securities Intermediary. Except for permitting a withdrawal or payment in violation of Section 2 above or advancing margin or other credit to Borrower in violation of Section 3 above, Securities Intermediary shall have no responsibility or liability to Lender for making trades of financial assets held in the Account at the instruction of Borrower, or his authorized representatives, or complying with entitlement orders concerning the Account from Borrower, or his authorized representatives, which are received by Securities Intermediary before Securities Intermediary receives a Notice of Exclusive Control. Securities Intermediary shall have no responsibility or liability to Borrower for complying with a Notice of Exclusive Control or complying with entitlement orders concerning the Account originated by Lender. Securities Intermediary shall have no duty to investigate or make any determination as to whether an Event of Default exists and shall comply with a Notice of Exclusive Control even if it believes that an Event of Default does not exist. Neither this Agreement nor the Security Agreement imposes or creates any obligation or duty of Securities Intermediary other than those expressly set forth herein.

Section 7. Tax Reporting. All items of income, gain, expense and loss recognized in the Account shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of Borrower.

Section 8. Customer Agreement. This Agreement supplements the Customer Agreement among the parties hereto. In the event of a conflict between this Agreement and the Customer Agreement, the terms of this Agreement will prevail. Regardless of any provision in the Customer Agreement, _____ [state] shall be deemed to be the Securities Intermediary's location for the purposes of this Agreement and the perfection and priority of creditor's security interest in the Account.

Section 9. Termination. The rights and powers granted herein to Lender have been granted in order to perfect its security interest in the Account, are powers coupled with an interest and will neither be affected by the bankruptcy of Borrower nor by the lapse of time. The obligations of Securities Intermediary under Sections 2, 3, 4 and 5 above shall continue in effect until the security interest of Lender in the Account has been terminated pursuant to the terms of the Security Agreement and Lender has notified Securities Intermediary of such termination in writing. Upon receipt of such notice the obligations of Securities Intermediary under Sections 2, 3, 4 and 5 above with respect to the operation and maintenance of the Account after the receipt of such notice shall terminate, Lender shall have no further right to originate entitlement orders concerning the Account and Securities Intermediary make take such steps as Borrower may request to vest full ownership and control of the Account in Borrower, including, but not limited to, removing the name of Lender from the Account or transferring all of the financial assets and credit balances in the Account to another securities account in the name of Borrower or his designee.

Section 10. This Agreement. This Agreement, the schedules and exhibits hereto and the agreements and instruments required to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof and supersede and discharge all prior agreements (written or oral) and negotiations and all contemporaneous oral agreements concerning such subject matter and negotiations. There are no oral conditions precedent to the effectiveness of this Agreement.

Section 11. Amendments. No amendment, modification or termination of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by the party to be charged.

Section 12. Severability. If any term or provision set forth in this Agreement shall be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances, other than those to which it is held invalid or unenforceable, shall be construed in all respects as if such invalid or unenforceable term or provision were omitted.

Section 13. Successors. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives.

Section 14. Rules of Construction. In this Agreement, words in the singular number include the plural, and in the plural include the singular; words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender and the word "or" is disjunctive but not exclusive. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit or describe the scope or intent of the provisions of this Agreement.

Section 15. Notices. Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received or two days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth next to such parties' name at the heading of this Agreement. Any party may change his address for notices in the manner set forth above.

Section 16. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

Section 17. Choice of Law. The parties hereto agree that certain material events, occurrences and transactions relating to this Agreement bear a reasonable relationship to the State of _____. The validity, terms, performance and enforcement of this Agreement shall be governed by those laws of the State of _____ which are applicable to agreements which are negotiated, executed, delivered and performed solely in the State of _____.

IN WITNESS WHEREOF, this Account Control Agreement has been duly executed as of the day and year first above written.

[Borrower]

By: _____

Name:

Title:

[Lender]

By: _____

Name:

Title:

[Securities Intermediary]

Name:

Title:

By:_____



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*37TTT-1 California Legal Forms--Transaction Guide Form T1-14***Form T1-14 Trade Style Letter**

Description: This form is a trade style letter in which accounts receivable listed under trade styles or names owned by the borrower are part of the collateral in which a lender has a security interest.

Form T1-14 Trade Style Letter

TRADE STYLE LETTER

_____,
20____

[Lender's Name and Address]

Ladies and Gentlemen:

Reference is made to the [Revolving Credit] [Term Loan] and _____ [Security] Agreement dated as of the date hereof (as amended, modified, supplemented or restated from time to time, the "Agreement") by and between _____ ("Borrower") and _____ ("Lender"). Capitalized terms used herein which are not defined shall have the meanings given to them in the Agreement.

Among the _____ [Receivables] _____ [Accounts] in which Lender is granted a security interest under the terms of the Agreement are or may be _____ [Receivables] _____ [Accounts] billed and/or to be billed under the trade names or trade styles set forth on the attached Schedule A (the "Trade Styles") which Trade Styles are owned by Borrower.

In order to induce Lender to make advances against such _____ [Receivables] _____

[Accounts] and in consideration of Lender so doing and/or Lender having so done, Borrower hereby warrants and confirms that for all purposes, _____ [Receivables] _____ [Accounts] heretofore or hereafter issued by Borrower under the applicable Trade Style shall be deemed _____ [Receivables] _____ [Accounts] of Borrower and shall be credited to the account of Borrower with Lender in the same manner that sales under Borrower's name are credited. Borrower further represents and warrants that the goods and/or services representing _____ [Receivables] _____ [Accounts] shall in all instances be the goods and/or services of Borrower and all of Lender's rights under the Agreement and all other documents executed by Borrower in connection with the transactions contemplated by the Agreement (collectively, the "Loan Documents") are applicable thereto.

Without in any way limiting the generality of the foregoing, the rights of Lender under the Agreement and the Loan Documents to endorse the name of Borrower on any and all checks or other forms of remittances received, whenever such endorsement is required to effectuate collection, is hereby extended to include the right on Lender's part to endorse the applicable Trade Style upon any such checks or other forms of remittance.

Very truly yours,

[BORROWER]

By: _____

Name: _____

Title: _____

SCHEDULE A

Trade Name/Trade Style



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*37TTT-1 California Legal Forms--Transaction Guide Form T1-15***Form T1-15 Participation Agreement**

Description: This form provides a sample form to establish a participation agreement in which loans or advances may be made to a borrower already under a secured lending agreement with lender. The loans or advances are secured by the original agreement's collateral.

Form T1-15 Participation Agreement

PARTICIPATION AGREEMENT

PARTICIPATION AGREEMENT dated as of _____, 20____ between _____, a _____ corporation having its principal place of business at _____ ("Lender") and _____, a _____ corporation having its principal place of business at _____ ("Participant").

BACKGROUND TO THE AGREEMENT

Lender has entered into a [Revolving Credit] [Term Loan] [and Security] Agreement with _____ (the "Borrower") dated _____, 20____ (the "Loan Agreement") and ancillary agreements and instruments executed in connection therewith, a schedule of which is annexed hereto as Annex 1 (the Loan Agreement and such ancillary agreements and instruments as now or hereafter supplemented and amended hereinafter collectively referred to as the "Financing Agreements"). Pursuant to the Loan Agreement, Lender has made and may hereafter make loans and/or advances (hereinafter collectively referred to as the "Advances") to the Borrower. By the terms of the Financing Agreements such Advances are and will be specifically secured by the Collateral.

Participant has agreed to buy from Lender and Lender has agreed to sell to Participant an undivided fractional interest ("Participation") in each of the Advances.

NOW, THEREFORE, in consideration of the premises, Lender and Participant agree as follows:

1. DEFINITIONS

1.1. Terms used herein which are capitalized and not defined herein are used with the meanings ascribed to them in the Loan Agreement.

2. SALE OF PARTICIPATION

2.1. Lender hereby sells to Participant and Participant hereby buys from Lender, without recourse, a Participation of _____ per cent (_____%) (which percentage is hereinafter called the "Participation Percentage") in all Advances now outstanding. Thereafter, Lender will sell to Participant and Participant will buy from Lender a like Participation in each subsequent Advance, subject to paragraph 3.3 hereof. The relationship between Participant and Lender shall be that of a purchaser and seller of a property interest and not a debtor and creditor relationship.

2.2. The purchase price for Participant's Participation in each Advance will be an amount equal to the Participation Percentage of the principal amount thereof. Each Participation in an Advance will include a Participation Percentage interest in all amounts received by Lender in repayment of the principal amount thereof (all hereinafter called "Collections") comprising:

- (a) Amounts received by Lender from the Borrower in repayment of the principal amount of Advances;
- (b) Amounts received by Lender through realization upon the Collateral, in repayment of the principal amount of the Advances;
- (c) Amounts received by Lender from guarantors under all guaranties of the Borrower's obligations to Lender to the extent that the same shall be applicable to repayment of the principal amount of the Advances; and
- (d) Amounts received by Lender through realization upon security other than the Collateral, to the extent that the same shall be applicable to repayment of the principal amount of the Advances as hereinafter provided.

2.3. Each sale of a Participation in an Advance will also include an interest in amounts received by Lender as interest on the Advances or as fees to the extent set forth in Paragraph 3.4 hereof.

2.4. The Participant shall have no interest in any property taken as collateral for any other loans or extensions of credit made to or for the Borrower by Lender, or in any property in the possession or control of Lender, or in any deposit held or other indebtedness owing by Lender, which may be or become available for payment of the Advances by reason of the general description of secured obligations contained in any security agreement or other agreement or instrument held by Lender or by reason of the right of set-off, counterclaim or otherwise, except that if such property, deposit or indebtedness or the proceeds thereof shall be applied in reduction of the amount of Advances outstanding under the Loan Agreement then the Participant shall be entitled to its proportionate share in such application.

2.5. If Participant shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of banker's lien, set-off, or counterclaim) on account of Participant's Participation in the Advances in excess of Participant's Participation Percentage of such payment on account of the Advances, Participant shall purchase from Lender and such other persons or entities to which Lender shall have sold Participations in the Advances (such other persons and entities, together with Participant and Lender, being referred to as "Participating Entities") such additional participation in the Advances as shall be necessary to cause Participant to share such excess payment ratably with the Participating Entities, provided that if all or any portion of such excess payment is thereafter recovered from Participant, such purchase shall be rescinded and the purchase price restored to the extent of such recovery (but without interest).

3. PROCEDURE

3.1. Simultaneously with the first sale of Participations, Lender will deliver a Participation Report to Participant, with appropriate schedules attached, showing the aggregate principal amount of Advances then outstanding and the aggregate amount of Collateral then held by Lender as security therefor. At the same time Participant will pay Lender the purchase price for its Participations in said outstanding Advances.

3.2. Periodically thereafter, further Participation Reports, with appropriate schedules attached, will be delivered by Lender to Participant showing, for the period since the last Participation Report, the aggregate principal amount of new Advances made by Lender to the Borrower, the aggregate amount of additional Collateral, the amount of Collections, the aggregate principal amount of Advances outstanding at the end of the period and the aggregate amount of Collateral at the end of the period. In each such Participation Report, Lender will credit against the purchase price payable by Participant for Participations in any new Advances therein reported, the amount of Participant's interest in any Collections therein reported. If the purchase price payable by Participant exceeds the amount of its interest in such Collections, the deficiency will promptly be paid by Participant to Lender, and if Participant's interest in Collections exceeds the purchase price payable by Participant, the excess will promptly be paid by Lender to Participant. In the event Participant fails to promptly pay any deficiency, Lender shall be entitled to exercise Participant's voting rights under this Participation Agreement until all required payments are received by Lender [Payment of interest by Participant to Lender at Fed Funds Rate and then at the Contract Rate as alternative to losing voting rights].

3.3. Participant's "Investment" in the Advances is hereby defined to mean the total of the purchase prices paid by Participant for Participations therein, less all amounts paid or credited by Lender to Participant out of Collections pursuant to Paragraph 3.2 hereof. Participant's total Investment at any one time outstanding in the Advances shall in no event exceed the sum of \$_____ (the "Maximum Investment"). If the total unpaid principal balance of the Advances shall at any time during the term hereof exceed the sum of \$_____, then so long as that condition shall exist Participant shall be under no obligation to pay to Lender any additional amounts for the purchase price for Participations in Advances and Lender shall be under no obligation to pay to Participant the Participation Percentage on Collections received by Lender.

3.4. (a) Whenever Lender receives a payment of principal, interest or fees (whether directly from the Borrower or under any guaranty or as respects Collateral), or whenever it makes an application of funds in connection with the Advances, it will promptly pay over to Participant, in the kind of funds as received or applied and subject to paragraph 3.2 hereof, an amount equal to:

(i) the Participant's Participation Percentage of any such payment determined by Lender to be a payment of principal;

(ii) in respect of any such payment determined by Lender to be allocable to interest on Advances, Participant shall receive monthly an amount equal to its Participation Percentage of such payment [less %]; and

(iii) in respect of any such payment determined by Lender to be allocable to Letter of Credit Fees and Acceptance Fees payable under the Loan Agreement, the Participant's Participation Percentage of such payment [less _____%].

(a) In calculating the Participant's Participation Percentage in any such payment determined by Lender to be allocable to interest on any of the Advances with respect to which the Participant has paid to Lender the amount of its Participation after such Advances have been made by Lender to the Borrower, the Participant's Participation Percentage in such payment shall be calculated from the date upon which Participant paid Lender the amount of its Participation therein.

(b) Any determination by Lender as to the allocation of any payment or application to the Participant's Participation Percentage or otherwise to the Advances or to interest, principal, fees, or any other amount payable in respect of the Loan Agreement or the other Financing Agreements shall be final and conclusive absent manifest error.

[(c) As additional consideration for entering into this Agreement, Lender shall remit to Participant, promptly following Participant's payment of its initial Participation hereunder, the sum of \$_____ which constitutes a portion of the facility fee received by Lender pursuant to the Loan Agreement.]

(d) Lender shall retain as its share of such fees and interest and as compensation for its services and the costs and expenses herein agreed to be borne by it, the difference between the total of such fees or interest received by Lender and the share thereof so allocated and paid to Participant.

3.5. The Advances, the Collateral, the Collections, any fees and interest on the Advances shall be retained by Lender in its own name, but to the extent of Participant's interest therein, as agent of Participant and subject to Participant's rights under this Participation Agreement.

3.6. Lender does not assume and shall not have any personal liability to Participant for the repayment of the purchase price of any Participation, the repayment of any Advance, the validity or value of any Collateral or the collectability of any Receivable.

3.7. Lender will appropriately mark its records to show the interest of the Participant in the Advances and the Collateral and, in recording the ownership of the Advances on its books and in all statements and reports as to its condition and assets, Lender will include only such amount of the Advances and the Collateral as shall equal its own pro-rata interest therein. [If Lender is a bank, add: This Participation must be approved by the Lender's Board of Directors or its Loan Committee, which approval shall be reflected in the minutes of such board or committee, and must be, continuously from the time of its execution, an official record of the bank.]

3.8. The obligation of Participant to make payments to Lender and of Lender to make payments to Participant in accordance with the provisions of this Agreement shall be absolute and unconditional. Except for payments by Lender or Participant made pursuant to the last sentence of this Paragraph 3.8, all payments hereunder shall be made without any deduction whatsoever, including, but not limited to, any deduction for any setoff, recoupment or counterclaim. Nothing herein contained shall confer upon either of the parties hereto to any interest in, or subject any of the parties hereto to any liability for, the assets or liability of the other party hereto, except only as to the transactions referred to herein. Lender may apply any payment to which the Participant is otherwise entitled pursuant to this Agreement to the payment of Participant's obligations to Lender hereunder.

3.9. (a) If Lender receives any payment (or payments) from Borrower or any guarantors, or any proceeds from realization upon the Collateral, on account of the Advances or any fees or interest relating to the Advances, which payment (or payments) or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under any bankruptcy act or code, state or federal law, common law or equitable doctrine, then to the extent of any sum not finally retained by Lender, Participant shall, upon notice from Lender, promptly pay over to Lender its proportionate share of such recovered amount to the extent received by Participant.

(b) If Lender fails to receive any payment (or payments) from Borrower or any indemnitor pursuant to any refinancing of the Advances, Participant shall, upon notice from Lender, promptly pay over to Lender its proportionate share of any amounts received by it with respect thereto.

4. MANAGEMENT

4.1. Lender will have the right to manage, perform and enforce the terms of the Financing Agreements and to exercise and enforce all privileges and rights exercisable or enforceable by it thereunder, for the joint benefit of Lender and Participant, according to Lender's discretion and the exercise of its business judgment. Lender will use normal prudence

and judgment in the servicing and collection of the Advances and the realization upon the Collateral and in the carrying out of the terms and provisions of the Financing Agreements.

4.2. At any reasonable time during business hours, Lender will permit such agents as may be designated to it in writing by Participant to examine its books, records and accounts relating to transactions with the Borrower under the Financing Agreements and will from time to time, at the request of Participant, furnish to Participant such information as it may have or be able to obtain with respect to the Financing Agreements, the carrying out of the provisions thereof and/or the condition and operations of the Borrower.

4.3. Lender will not be liable to Participant for any error in judgment or for any act taken or omitted to be taken in good faith under the Financing Agreements or this Participation Agreement or any transactions covered thereby. Without limitation of the generality of the foregoing, Lender (a) may rely on legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by Lender and shall not be liable for any action taken or omitted to be taken in good faith by Lender in accordance with the advice of such counsel, accountants or experts, (b) makes no warranty or representation and shall not be responsible for any statement, warranty or representation made in connection with the Financing Agreements or any document relative thereto or for the value of any Collateral, (c) shall not be responsible for the performance or observance of any of the terms, covenants or conditions of the Financing Agreements and shall not have any duty to inspect the property (including the books and records) of the Borrower, (d) makes no warranty or representation as to, and shall not be responsible for the due execution, legality, validity, enforceability of the Financing Agreements nor for the genuineness or sufficiency of any Collateral or the collectability of the Advances and (e) shall incur no liability under, or in respect of, the Financing Agreements or Collateral by acting upon any notice, consent, certificate or other instrument or writing (which may be by telegram, telecopier or telex) believed by Lender to be genuine and signed or sent by the proper party.

4.4. Lender may in its discretion and without the consent of Participant amend or modify the Financing Agreements, and any or all of the other documents which may be relevant to any of the transactions contemplated in connection with the Financing Agreements, or waive its rights thereunder; provided, that, without the prior written consent of Participants (including Lender, which for purposes of such percentage determination shall be deemed a Participant) having aggregate Participation Percentages equal to at least _____% (the "Required Percentage"), Lender will not enter into any material amendment, modification or waiver of any of the Financing Agreements; provided, however, that Lender will not amend the Financing Agreements to reduce interest and fees payable thereunder, extend the term thereof or increase the Advance Rates without the prior written consent of Participant, which consent shall not be unreasonably withheld. If Participant shall fail to respond within the time specified in any notice from Lender, such consent shall be deemed to be granted by Participant. For the purposes of this Agreement, a material amendment shall include, but not be limited to, the release of any Collateral having more than nominal value, the release of any guarantor, or a voluntary increase in the amount of the Advances to an amount in excess of the amount permitted by Paragraph 4.5 hereof.

4.5. Lender may voluntarily permit the Advances at any time to exceed the formulas for Advances (determined in accordance with the terms of the Loan Agreement) by not more than _____% but Lender will not voluntarily permit the Advances to exceed the formulas for Advances during any period consisting of more than _____ (_____) consecutive days. For the purposes of the preceding sentence, the discretion granted to Lender hereunder shall not preclude involuntary overadvances that may result from time to time from the fact that the formulas set forth in the Loan Agreement were unintentionally exceeded (whether at the time of any Advance or at the time of the issuance of a Letter of Credit or creation of an Acceptance resulting in an Advance) for any reasons including, but not limited to, Collateral believed to be eligible in fact being or becoming ineligible or the return of uncollected checks or other items applied to the reduction of the Advances or overadvances made to protect or preserve Collateral. In the event that Lender involuntarily permits the Advances to exceed formula availability (determined as provided above) by more than _____%, Lender shall decrease such excess in as expeditious a manner as is practicable under the circumstances and not inconsistent with the reasons for such excess.

Advances made after Lender has determined the existence of involuntary overadvances shall be deemed to be involuntary overadvances and shall be decreased in accordance with the preceding sentence.

5. LIQUIDATION

5.1. Upon default by the Borrower in the payment or performance of its Obligations under the Financing Agreements, Lender may by itself or shall, at the written request of Participants (including the Lender) having aggregate Participation Percentages equal to or greater than the Required Percentage, take any action which it is entitled to take under the Financing Agreements or by law for the protection or realization of the Collateral or for the repayment of the Advances, the enforcement of any of the terms and provisions of the Financing Agreements or of any guaranties of the Borrower's obligations to Lender thereunder.

5.2. All normal overhead costs and expenses of collection shall be borne by Lender. Extraordinary Expenses shall include all other reasonable expenses incurred or sustained by Lender in connection with the enforcement of rights and remedies against Borrower or with regard to any Collateral, or for the protection and/or preservation of any Collateral, including without limitation all court costs, out-of-pocket costs and expenses of collection by outside attorneys or agencies, including their reasonable fees and disbursements and accountants' fees and disbursements, filing and recording fees, title investigation and insurance charges, appraisal fees, expenses of special examinations and audits, and other out-of-pocket expenses. Extraordinary Expenses shall be borne by Lender and Participant pro rata in accordance with their respective Participations in the Advances to the extent not reimbursed by Borrower. Lender may, in its discretion, reserve such portion of the Collections as may be necessary to cover Extraordinary Expenses which have accrued or are foreseeable.

5.3. If the Borrower, any stockholder or guarantor thereof, any receiver or trustee in bankruptcy, or any other party threatens or commences any action, or makes any claim or demand upon Lender or Participant at any time, because of any alleged usurious, ultra vires or invalid transaction, or any alleged voidable preferential or fraudulent transfer, or asserts any other action, claim or demand arising directly or indirectly out of any transaction under or in relation to the Financing Agreements, any of the Advances, or the Collateral, then any monies paid in satisfaction or compromise of such action, claim or demand, and any costs, outside attorneys' fees and disbursements, and other out-of-pocket expenses incurred in connection therewith shall be deemed Extraordinary Expenses.

5.4. If the Borrower defaults under any of the Financing Agreements and Lender takes action to realize upon the Collateral or to enforce Lender's rights against the Borrower, or if Lender makes demand for payment under the Loan Agreement or if Lender terminates the Loan Agreement, then the transaction with the Borrower shall immediately be deemed to be "in liquidation" and Participant or Lender, as appropriate, will promptly thereafter by wire transfer make such payments as may be required so that Participant's participating share in the Advances shall equal its Participation Percentage thereof. All Collections and all monies received or held by Lender in connection with the Financing Documents after the transactions with the Borrower are deemed to be in liquidation and the proceeds from the sale, collection or other disposition of the Collateral shall be applied as follows:

(a) First, to the costs and expenses (including attorneys' fees) incurred by Lender in effecting or attempting to effect any recovery of such monies or in enforcing or attempting to enforce any right or remedy under the Financing Agreements or in retaking, protecting, preserving or disposing of the Collateral;

(b) Second, in such order as Lender shall determine, to the aggregate amount of the accrued interest owing on, and the outstanding principal amount of, Participant's and Lender's respective participating shares in the Advances then payable, together with fees payable to Lender under the Financing Agreements, as follows: (i) with respect to amounts so determined to be applicable to such interest, pro rata in accordance with the respective ratios that the amounts of aggregate accrued interest payable to Participant then bear to the amount of aggregate accrued interest owing by the Borrower which are to be retained by Lender, (ii) with respect to amounts so determined to be applicable to such

principal, pro rata in accordance with Participant's Participation Percentage, and (iii) with respect to amounts so determined to be applicable to such fees, pro rata in accordance with Participant's participating share thereof [Note: (i) assumes an override but (iii) does not]; and

(c) Third, to all other debts and obligations owing by Borrower to Lender other than the Advances that are secured by the Collateral.

5.5. Lender and Participant acknowledge that defaults are sometimes not declared against the Borrower and that the occurrence of a default shall not by that fact alone give rise to a liquidation. It is also recognized that an orderly liquidation may require that Advances be made to Borrower and that all such Advances shall be treated as Extraordinary Expenses.

6. TERMINATION

6.1. In the event that (i) Participant shall not have consented to any material amendment, modification or waiver of any of the Financing Documents within five (5) Business Days of a request therefor, or (ii) due to a change in applicable law or regulation, Participant becomes unable to purchase its Participation Percentage of the Acceptances to be created (or caused to be created) or Letters of Credit to be issued (or caused to be issued) by Lender, then Lender may terminate Participant's Participation in the manner, upon the condition, and with the effect specified in subparagraph 6.2 below.

6.2. In accordance with subparagraph 6.1 above, Lender may terminate Participant's participation as to future transactions (i) in the case of a termination pursuant to subparagraph 6.1 of this paragraph, immediately upon notice to Participant, and (ii) in any other case, by giving not less than ninety (90) days' prior written notice to Participant of such termination and, after the date of such notice, the amount of Participant's Participation shall not exceed the amount of its Participation on the date of such notice.

6.3. Participant may request termination effective with any termination date as set forth in Section [] of the Loan Agreement upon giving Lender not less than one hundred-twenty (120) days' prior written notice of such termination. In such event, Lender shall, at the earliest date permitted under the Loan Agreement, give notice of termination and, upon the effective date of such termination, make demand for payment of the Advances, or purchase Participant's Participation in accordance with paragraph 6.6 hereof.

6.4. Participant shall not have any right of termination (or the exercise of such right shall be ineffective) if prior to the effective date of termination the account is deemed "in liquidation" pursuant to paragraph 5.4 hereof or if an Event of Default or Incipient Event of Default exists under the Loan Agreement.

6.5. From and after the effective date of such termination, neither Participant nor Lender shall be obliged to make any further purchases or sales (as the case may be) of Participations in the Advances, but the provisions of this Participation Agreement shall continue to apply with respect to all Advances in which Participant shall own Participations at the effective date of termination. Rights and obligations of the parties shall not be affected prior to the effective date of termination. Notwithstanding the foregoing, from and after the effective date of such termination, Participant shall have no voting rights hereunder.

6.6. Upon the effective date of termination, Lender will have the option to repurchase from Participant all of its Participations in Advances then outstanding at a price equal to: (a) Participant's Investment in the Advances then outstanding, plus (b) Participant's share of all fees or interest earned on the Advances to such Date. If Lender exercises its option as aforesaid, this Participation Agreement shall terminate for all purposes and each of the parties will be relieved of any liability to the other arising from any prior transactions hereunder, except paragraphs 3.9 and 7.4 shall survive. If Lender does not exercise its option as aforesaid, then the Participation Percentage of Participant shall be recalculated as of the effective date of termination to the percentage equivalent of a fraction of which the numerator is

the outstanding Investment and the denominator is the total outstanding principal balance of the Advances and the Participation Percentage shall be fixed at the percentage so calculated. Thereafter, Participant shall receive its new Participation Percentage of all payments determined by Lender to be a payment of principal until Participant's Participation in the Advances has been paid in full. Payments of interest, fees or other charges shall be applied as set forth in paragraph 3.4.

7. MISCELLANEOUS

7.1. The Participant acknowledges that it has, independently and without reliance upon Lender and based on the financial statements referred to in the Loan Agreement and such other documents and information as the Participant has deemed appropriate, made its own credit analysis and decision to enter into this Agreement, is not relying and will not rely in the future upon any financial projections, estimates, appraisals, financial summaries or credit memoranda prepared by or on behalf of Lender and given directly or indirectly to Participant to assist Participant in making its own independent credit analysis.

7.2. Participant will maintain any information received from Lender on a confidential basis and not disclose it to any person who is not an officer, employee, legal counsel, authorized agent, or other person necessary to the operation of the business of Participant. Notwithstanding the foregoing, Participant need not maintain the confidentiality of, and may disclose, any information obtained pursuant hereto (i) which has become or hereafter becomes generally available to the public other than as a result of Participant's disclosure; (ii) which becomes available on a non-confidential basis from a source other than Lender; (iii) to any regulatory body having jurisdiction over Participant or otherwise as required by law; (iv) in any litigation or other legal proceeding at law, equity or in bankruptcy to which Lender or Participant are parties, provided that Participant will give Lender not less than fifteen (15) Business Days prior written notice of Participant's intention to disclose such confidential information in order to allow Lender to seek an appropriate protective order; and (v) the disclosure of which is consented to in writing in advance by Lender. Participant shall hold Lender harmless from any claims or expenses resulting from a breach of Participant's obligations pursuant to this paragraph.

7.3. Participant represents, warrants and covenants that on the date of each creation of an Acceptance or issuance of a Letter of Credit it will be able, consistent with applicable law and regulation, in effect on the date hereof, to purchase its Participation Percentage of the Acceptances to be created or Letters of Credit to be issued, or which are caused to be created or issued by Lender, on such date. Participant hereby further covenants that, notwithstanding Participant's breach of its obligations under the preceding sentence, Lender may nonetheless create (or cause to be created) Acceptances and issue (or cause to be issued) Letters of Credit as contemplated by the Loan Agreement and Participant shall be liable with respect to its Participation Percentage of Advances made with respect to such Acceptances and Letters of Credit.

7.4. Participant represents that it is entitled to receive any payments hereunder without the withholding of any tax and will furnish to Lender such forms, certifications, statements and other documents as Lender may request from time to time to evidence Participant's exemption from the withholding of any tax imposed by any jurisdiction or to enable Lender to comply with any applicable laws or regulations relating thereto. Participant shall reimburse and indemnify Lender for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed upon, incurred by or asserted against Lender due to its reliance upon the representation made hereunder that Participant is exempt from the withholding of tax.

7.5. This Agreement shall be governed by the laws of the State of _____, shall not be amended except by a writing signed by both Lender and Participant, may be executed in several counterparts, each of which shall be deemed to be an original, and shall inure to the benefit of and be binding upon their respective successors and assigns. The parties hereto consent to the jurisdiction of the Supreme Court of the State of _____ or the United States District Court for the _____ District of _____ [state] and further consent that

any process or notice or other application to any court or a judge thereof may be served within or without the State of _____ or _____ District of _____ [state] by certified mail or by personal service, provided a reasonable time for appearance is allowed. Lender and Participant each hereby waive their right to trial by jury with respect to any legal proceeding arising out of or in connection with this Agreement.

7.6. Any notice or request hereunder may be given to Participant or Lender at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section. Any notice or request hereunder shall be given by (a) hand delivery (b) overnight courier, (c) telex or telegram, subsequently confirmed by registered or certified mail, or (d) telecopy to the number set out below (or to such other number as may hereafter be specified in a notice designated as a notice of change of address) with telephone communication to a duly authorized officer of the recipient confirming its receipt as subsequently confirmed by registered or certified mail. Notices and requests shall be deemed effective only when received.

A. If to Lender, at:

Attention:

Telephone:

Fax: _____

B. If to Participant, at:

Attention:

Telephone:

Fax: _____

7.7. Neither Lender nor Participant shall, without the prior written consent of the other, sell, pledge, assign, or transfer any of its rights under this Agreement other than to a successor of its portfolio or affiliate or subsidiary of Lender or the Participant respectively if Lender or Participant, as the case may be, shall have guaranteed the obligations hereunder of such successor, affiliate or subsidiary.

7.8. Lender will furnish to Participant copies of such documents as Lender shall receive pursuant to the Financing Agreements and as the Participant shall reasonably request; but Lender assumes no responsibility with respect to the authenticity, validity, accuracy or completeness thereof. Lender will use its best efforts to give prompt notice to the Participant of the occurrence of any Event of Default under any Financing Agreement of which it shall have actual knowledge, but failure to give the Participant any such notice shall not result in any liability on Lender's part to the Participant.

7.9. The Lender shall be fully justified in failing or refusing to take any action under any Financing Agreement unless it shall first receive such advice or concurrence of the Participant as it deems appropriate and it shall first be indemnified to its satisfaction by Participant against any and all liability and expense which may be incurred by it by reason of the taking or continuation of any such action.

7.10. This Participation is not intended to constitute the sale of any investment security for purposes of the Securities Act of 1933, as amended, and the Securities and Exchange Act of 1934, as amended, or any other similar securities act (state or federal), or regulations issued thereunder.

7.11. Nothing herein shall be construed to be or to create any partnership, joint venture or other joint enterprise between Lender and Participant or any sort of fiduciary relationship between Lender and Participant.

7.12. In the event that Participant comes under the supervision of the Resolution Trust Corporation, the Federal Deposit Insurance Corporation or any equivalent agency, department or successor thereto, then Lender shall have the right to retain any sums which would otherwise have been due to Participant hereunder in order to assure Participant's compliance with its obligations herein and Lender may setoff or otherwise apply such sums against any obligation of Participant to purchase its Participation Percentage of any Advances hereunder or to fulfill any other payment or funding obligation to Lender howsoever arising.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above.

[LENDER]

By:_____

Name:

Its:

[PARTICIPANT]

By:_____

Name:

Its:



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CHAPTER 2: Loans--Business and Commercial.

37TTT-2 California Legal Forms--Transaction Guide 2.syn

§ 2.syn Synopsis to Chapter 2: Loans--Business and Commercial.

Form T2-1 Partnership Authorization for Borrowing

Form T2-1 Partnership Authorization for Borrowing

Form T2-2 Corporate Resolution Authorizing Borrowing

Form T2-2 Corporate Resolution Authorizing Borrowing

Form T2-3 Resolution to Borrow Money

Form T2-3 Resolution to Borrow Money

Form T2-4 Secretary's Certificate with Corporate Borrowing Resolutions

Form T2-4 Secretary's Certificate with Corporate Borrowing Resolutions

Form T2-5 Secretary's Certificate with Corporate Guarantor's Resolutions

Form T2-5 Secretary's Certificate with Corporate Guarantor's Resolutions

Form T2-6 Consent of Stockholders

Form T2-6 Consent of Stockholders

Form T2-7 Power of Attorney to Borrow Money and Execute Security for It

Form T2-7 Power of attorney to borrow money and execute security for it

Form T2-8 Loan Agreement

Form T2-8 Loan Agreement

Form T2-9 Proposal Letter for Term Loan (Short-Form)

Form T2-9 Proposal Letter (Short-Form) for Term Loan

Form T2-10 Commitment Letter For Revolving and Term Loans (Long Form)

Form T2-10 Commitment Letter (Long Form) For Revolving and Term Loans

Form T2-11 Sample Long-Form Commercial Loan Agreement

Scope

Scope

Form T2-12 Asset-Based Loan Agreement

Form T2-12 Asset-Based Loan Agreement

Form T2-13 Revolving Credit Agreement

Form T2-13 Revolving Credit Agreement

Form T2-14 Opinion of Counsel

Form T2-14 Opinion of Counsel



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37TTT-2 California Legal Forms--Transaction Guide Form T2-1

Form T2-1 Partnership Authorization for Borrowing

Description: This form is an authorization used to establish that partners of a partnership authorize the partnership to obtain a bank loan.

Form T2-1 Partnership Authorization for Borrowing

AUTHORIZATION FOR BORROWING

_____ [Name of partnership]

A _____ [type, *e.g.*, General Partnership]

Dear Madam or Sir:

We, the undersigned, are all the [general] partners of _____ [name of partnership] a _____ [describe status, *e.g.*, a general partnership organized under the laws of _____ (state)]. The name _____ [name of partnership] is the correct partnership name, and is the name used in the conduct of the partnership's business.

The undersigned, jointly and severally as individuals and as partners of [name of partnership] [name of partnership], agree that _____ [number of partners needed to bind partnership, *e.g.*, any two partners] of this Partnership _____ [is or are] authorized in the name and on behalf of each and all of the undersigned individuals and on behalf of the Partnership itself from time to time to do any or all of the following acts:

1. To borrow money and to obtain credit from _____ [name of bank].
2. To enter into or execute any and all loan agreements, security agreements, notes, financing statements, or other document necessary to implement a loan or credit transaction.
3. To mortgage or offer as collateral any and all real or personal property of the partnership in connection with loan or credit transactions.

4. To provide guaranties for any loan transaction.

This borrowing authorization will continue in full force and effect for purposes of any loan or credit transaction involving _____ [name of bank] unless and until the undersigned provide and deliver written notice of any changes.

Very truly yours,

[name and signature of each partner]



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37TTT-2 California Legal Forms--Transaction Guide Form T2-2

Form T2-2 Corporate Resolution Authorizing Borrowing

Description: This form is a corporate resolution intended to provide a lender with assurances that the officers or directors of a corporate borrower are entitled to arrange a loan on the corporation's behalf.

Form T2-2 Corporate Resolution Authorizing Borrowing

RESOLUTION AUTHORIZING BORROWING BY CORPORATION

_____ [Name of corporation]

WHEREAS _____ [name of corporation] will from time to time need to obtain loans or enter into other financing arrangements;

WHEREAS, _____ [name of corporation] may desire to obtain the loans or financing from _____ [name of corporation];

RESOLVED, that any _____ [number, *e.g.*, one or two] of the following officers, _____ [names and titles of designated officers] may:

1. From time to time borrow money in the name of the Corporation from _____ [name of bank] [and its successors].
2. Execute any and all necessary agreements to implement the borrowing.
3. Give the Corporation's notes in exchange for the loan or financing.
4. Offer any real or personal property as security or collateral for the loan.

FURTHER RESOLVED, that examples of the true and correct signatures of the officers entitled to arrange loans and other financing are set forth below:

[signature, typed name and title of each officer]

Dated: _____ [date]

By: _____ [name of secretary]

[Include corporate seal]

Certification

I, _____ [name of secretary], Secretary of the _____ [name of corporation], a _____ [state] corporation, certify that I am keeper of the records and the minutes of the proceedings of the Board of Directors of the corporation. On _____ [date], at a meeting at which a quorum was present, _____ [all or a majority] of the directors of _____ [name of corporation] passed the foregoing resolution, acting in accordance with the charter and bylaws of the corporation.

Date: _____

_____ [signature]

_____ [typed name and title]



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37TTT-2 California Legal Forms--Transaction Guide Form T2-3

Form T2-3 Resolution to Borrow Money

Description: This form is a set of resolutions for use by the board of directors to authorize corporate officers to borrow money from a bank or other lending institution.

Form T2-3 Resolution to Borrow Money

RESOLUTION TO BORROW MONEY

RESOLVED, that _____ [name(s) and title(s) of corporate officers] are authorized in the name of this corporation and as its own act to borrow the sum of \$_____ from _____ [name of lending institution], and on behalf of and as the act of this corporation to execute and deliver to _____ [name of lending institution] the promissory note of this corporation in a form substantially the same as that submitted to this Board.

RESOLVED FURTHER, that the _____ [*designate officer, e.g., Secretary*] is directed to attach the promissory note described above to the minutes of this meeting, providing for repayment of the principal and interest at the rate of _____ percent per annum at the rate of \$_____ per _____ [*designate time period, e.g., month or year*].

RESOLVED FURTHER, that as and for security for this loan, the officers named above are authorized and directed to execute and deliver to the lending institution documents evidencing the mortgage or pledge of property of the corporation in a form to be agreed on by the officers and the lending institution.

RESOLVED FURTHER, that the _____ [*designate officer, e.g., Secretary*] of the corporation is directed to certify the minutes of this meeting and the contents of these resolutions and to deliver the certification in support of the authority of the officers name above to act on behalf of this corporation.



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37TTT-2 California Legal Forms--Transaction Guide Form T2-4

Form T2-4 Secretary's Certificate with Corporate Borrowing Resolutions

Description: This form is a sample form prepared by a corporate board's Secretary certifying corporate borrowing resolutions. (As an alternative, a corporate board's resolution may approve the execution of an agreement substantially in the form attached to the corporate borrowing resolutions.)

Form T2-4 Secretary's Certificate with Corporate Borrowing Resolutions

SECRETARY'S CERTIFICATE

I, _____, Secretary of _____, a corporation duly organized and existing under the laws of the State of _____, and having its chief executive office at _____ (this "Corporation") HEREBY CERTIFY that the following is a true copy of a resolution duly adopted by the Board of Directors of this Corporation on _____, 20____, that such resolution is now in full force and effect and is in accordance with the provisions of the charter and by-laws of this Corporation and the law of the jurisdiction of its incorporation, and that the undersigned is authorized to certify and furnish a copy of this resolution to _____.

RESOLVED:

1. That the Chairman of the Board, President, any Vice President, Secretary and Treasurer are each hereby authorized from time to time on behalf of _____ (this "Corporation"):

a. To borrow money and obtain credit and other financial accommodations for or on behalf of this Corporation at any time, and from time to time, from

_____ ("Lender");

b. To apply for letters of credit or engage in acceptance financing;

c. To pledge, mortgage, grant a security interest in, assign, endorse, negotiate, deliver or otherwise hypothecate or transfer to Lender any and all assets now or hereafter held, owned or controlled by this

37TTT-2 California Legal Forms--Transaction Guide Form T2-4

Corporation as security for any loan, credit or financial accommodation from Lender to this Corporation or any parent, affiliate or subsidiary of this Corporation;

d. To execute and deliver in the name of this Corporation any agreement or agreements (the "Agreements") with Lender with respect to financial or credit accommodations to this Corporation with such modifications thereof agreed to by any such officer, which execution and delivery shall be deemed conclusive evidence of the approval by this Corporation of the terms and agreements thereof;

e. To make, execute and deliver to Lender any and all financing statements, consents, certificates, documents, instruments, assignments, including, but not limited to, assignments of insurance policies covering the assets of this Corporation, schedules, endorsements, guarantees, indemnities, agreements, waivers (including, without limitation, a waiver of jury trial), amendments, consents, notices or other instruments as may be required by Lender, from time to time, in connection with or in furtherance of the Agreements or of any other transactions; and

f. To do and perform all other acts and things from time to time deemed by any officer or agent of Lender or other person designated by any of them, necessary, convenient or proper to carry out, modify or supplement the Agreements or to fully carry out the intent of this resolution, and the execution, delivery or performance thereof by such officer or officers of this Corporation shall be deemed conclusive evidence of the approval thereof by this Corporation.

2. That the Secretary or an Assistant Secretary of this Corporation be and hereby is authorized and directed to certify to Lender the names of the present officers of this Corporation and other persons authorized to sign for it, and the offices respectively held by them, together with specimens of their signatures and from time to time hereafter, as changes in such personnel are made, immediately to certify such changes to Lender.

3. That the Secretary or an Assistant Secretary of this Corporation be and hereby is authorized and directed to certify to Lender that this resolution has been duly adopted, is in full force and effect and is in accordance with the provisions of the charter and by-laws of this Corporation.

4. That any other transactions heretofore made on behalf of this Corporation with Lender be and hereby are ratified, confirmed and approved, and that Lender is hereby authorized to rely upon the authority conferred by this resolution. In the event that Lender, for any reason, is uncertain as to the continuing effectiveness of the authority conferred by this resolution or any other resolution of this Corporation, Lender may refrain from taking any action until such time as Lender is satisfied as to the authority of this Corporation, and Lender shall be indemnified and held harmless, from any claims, demands, expenses (including attorneys' fees), losses or damages resulting from or arising out of its refraining from taking any action.

I FURTHER CERTIFY that the following are the names and signatures of the duly elected officers of this Corporation now holding the respective offices referred to in the foregoing resolution:

Name: _____	_____
Title: _____	Signature
Name: _____	_____
Title: _____	Signature
Name: _____	_____
Title: _____	Signature
Name: _____	_____

Title: _____

Signature

and that attached hereto are true and complete copies of this Corporation's charter and by-laws as in effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of this Corporation and affixed its corporate seal by order of its Board of Directors on this _____ day of _____, 20_____.

[Corporate Seal]

Name:

Title: Secretary

The undersigned hereby certifies that the foregoing instrument has been signed by the Secretary of this Corporation and sealed with the seal of this Corporation (to be signed by an officer other than the Secretary).

Name:_____
Title:



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*37TTT-2 California Legal Forms--Transaction Guide Form T2-5***Form T2-5 Secretary's Certificate with Corporate Guarantor's Resolutions**

Description: This form is a sample form prepared by a corporate board's Secretary certifying corporate guarantor's resolutions. (As an alternative, a corporate board's resolution may approve the execution of an agreement substantially in the form attached to the corporate guarantor's resolutions.)

Form T2-5 Secretary's Certificate with Corporate Guarantor's Resolutions

SECRETARY'S CERTIFICATE

I, _____, Secretary of _____, a corporation duly organized and existing under the laws of the State of _____, and having its chief executive office at _____ (this "Corporation"), HEREBY CERTIFY that the following is a true copy of a resolution duly adopted by the Board of Directors of this Corporation on _____, 20____, that such resolution is now in full force and effect and is in accordance with the provisions of the charter and by-laws of this Corporation and the law of the jurisdiction of its incorporation, and that the undersigned is authorized to certify and furnish a copy of this resolution to _____.

RESOLVED:

1. That the Chairman of the Board, President, any Vice President, Secretary and Treasurer are each hereby authorized from time to time on behalf of _____ (this "Corporation"):

To guarantee to _____ ("Lender") the payment and performance of all obligations and liabilities of _____ to Lender, whether now existing or hereafter incurred, upon terms and conditions satisfactory to Lender and to execute and deliver to Lender a guarantee and, if required, pledge, mortgage, grant a security interest in, assign, endorse, negotiate, deliver or otherwise hypothecate or transfer to Lender any and all assets now or hereafter held, owned or controlled by this Corporation as security for its obligations under such guaranty, and to make, execute, and deliver to Lender any and all security agreements, mortgages, financing statements, assignments, documents, instruments, papers or writings as may be required or desirable in connection with, or in furtherance of, the guarantee above described and any liens securing such guaranty, the same to be in form and substance satisfactory to Lender, and to do any and all other acts necessary or desirable to effectuate the guarantee and any liens securing such guaranty.

2. That the Secretary or an Assistant Secretary of this Corporation be and hereby is authorized and directed to certify to Lender the names of the present officers of this Corporation and other persons authorized to sign for it, and the offices respectively held by them, together with specimens of their signatures and from time to time hereafter, as changes in such personnel are made, immediately to certify such changes to Lender, and Lender shall be fully protected in relying on such certificates and shall be indemnified and held harmless from any claims, demands, expenses (including reasonable attorneys' fees), losses or damages resulting from, or arising out of, honoring any signature so certified or refusing to honor any signature not so certified.

3. That the Secretary or an Assistant Secretary of this Corporation be and hereby is authorized and directed to certify to Lender that this resolution has been duly adopted, is in full force and effect and is in accordance with the provisions of the charter and by-laws of this Corporation.

4. That any other transactions heretofore made on behalf of this Corporation with Lender be and hereby are ratified, confirmed and approved, and that Lender is hereby authorized to rely upon the authority conferred by this resolution. In the event that Lender, for any reason, is uncertain as to the continuing effectiveness of the authority conferred by this resolution or any other resolution of this Corporation, Lender may refrain from taking any action until such time as Lender is satisfied as to the authority of this Corporation, and Lender shall be indemnified and held harmless, from any claims, demands, expenses (including attorneys' fees), losses or damages resulting from or arising out of its refraining from taking any action.

I FURTHER CERTIFY that the following are the names and signatures of the duly elected officers of this Corporation now holding the respective offices referred to in the foregoing resolution:

Name: _____	_____
Title: _____	Signature
Name: _____	_____
Title: _____	Signature
Name: _____	_____
Title: _____	Signature
Name: _____	_____
Title: _____	Signature

and that attached hereto are true and complete copies of this Corporation's charter and by-laws as in effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of this Corporation and affixed its corporate seal by order of its Board of Directors on this _____ day of _____, 20____.

[Corporate Seal]

 Name:
 Title: Secretary

The undersigned hereby certifies that the foregoing instrument has been signed by the Secretary of this Corporation and sealed with the seal of this Corporation (to be signed by an officer other than the Secretary).

Name:

Title:



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*37TTT-2 California Legal Forms--Transaction Guide Form T2-6***Form T2-6 Consent of Stockholders****Description:** This form provides a sample form to document the consent of stockholders to an agreement with a lender.**Form T2-6 Consent of Stockholders**

CONSENT OF STOCKHOLDERS

We, the undersigned stockholders of _____, a corporation organized under the laws of the State of _____, holding the number of shares of stock set opposite our respective signatures hereto, and together holding all of the total number of shares outstanding of the capital stock of said corporation entitled to vote thereon, hereby consent to the execution and delivery by said corporation to _____ ("Lender"), or any corporation controlled by it, or any individual, firm or corporation for which Lender or any such corporation may act as agent, of an agreement of guaranty by this corporation of the debts and obligations of _____, a corporation organized under the laws of the State of _____, now existing or hereafter arising, and that such agreement of guaranty to be in such form and with such terms, provisions and conditions and for such amount as the officer or agent of said corporation executing the same may deem proper, the act of said officer or agent in executing the same to be conclusively deemed to be the act of said corporation, hereby ratifying, approving and confirming all that any of said officers or agents have done or may do in the premises.

Stockholders	No. of Shares	Stockholders	% of Shares
_____	_____	_____	_____
_____	_____	[signature]	_____
[print name]	_____	_____	_____
_____	—	_____	—
_____	_____	_____	_____
_____	_____	[signature]	_____
[print name]	_____	_____	_____
_____	—	_____	—
_____	_____	_____	_____
_____	_____	[signature]	_____

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[print name] _____

 [Corporate Name] _____

By: _____
 Its: _____

Individual Acknowledgment(s) [if any]:

STATE OF)
 COUNTY OF) ss.:
)

On this _____ day of _____, 20____, before me personally came _____, to me known and known to be the individuals who executed the foregoing instrument and severally duly acknowledged that they executed the same.

Corporate Acknowledgment(s) [if any]:

STATE OF)
 COUNTY OF) ss.:
)

On this _____ day of _____, 20____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____; that is he is _____ [list position] of _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal aforesaid to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereof by like order.

Certificate

_____, President of _____, a corporation organized under the laws of the State of _____, and _____, Secretary of said corporation, DO HEREBY CERTIFY that the holders of all of the total number of shares outstanding of the capital stock of said corporation entitled to vote thereon, have duly consented in writing to the execution and delivery by said corporation to _____ ("Lender") or any corporation controlled by it, or any individual, firm or corporation for which Lender or any such corporation may act as agent, of an agreement of guaranty by this corporation of the debts and obligations of _____, a

corporation organized under the laws of the State of _____, now existing or hereafter arising and that such agreement of guaranty to be in such form and with such terms, provisions and conditions and for such amount as the officer or agent of said corporation executing the same may deem proper, the act of said officer or agent in executing the same to be conclusively deemed to be the act of said corporation.

In Witness Whereof, said corporation has hereunto caused its corporate seal to be affixed and said President and Secretary have hereunto subscribed their names, this _____ day of _____, 20_____.

[Corporate Seal]

(President)

(Secretary)



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*37TTT-2 California Legal Forms--Transaction Guide Form T2-7***Form T2-7 Power of Attorney to Borrow Money and Execute Security for It**

Description: This form is used for a limited power of attorney that appoints an agent only for the purpose of borrowing money on the principal's behalf. It places a cap on the amount of money the agent may borrow. The agent is authorized to use the principal's property, either real or personal, as security in connection with such loan. The agent is specifically authorized to sign any instruments necessary for the loan.

Form T2-7 Power of attorney to borrow money and execute security for it

State of _____)
 County of _____) ss:

Know that I, _____ [name of principal], residing at _____ [address], do hereby make, constitute, and appoint _____ [name of agent], of _____ [address], my true and lawful attorney-in-fact for me and in my name, place, and stead:

To borrow from time to time such sums of money upon such terms and security as to my attorney-in-fact may seem fit and proper (to an amount not to exceed \$_____) upon the security of any of my property, either real or personal or otherwise, and to execute, sign, acknowledge and deliver in such form as may be required any promissory note, bond and mortgage, chattel mortgage or any other instrument that may be required to give to the lender the right to resort to my property as security for the repayment of any such loan.

Dated:

(signature of principal)



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*37TTT-2 California Legal Forms--Transaction Guide Form T2-8***Form T2-8 Loan Agreement**

Description: This form is used for a business loan; it sets out distinct terms between borrower and lender. It details security, conditions, affirmative covenants and negative covenants, default, and remedies.

Form T2-8 Loan Agreement

AGREEMENT TO MAKE LOAN

_____ [Name of lender] ("Lender"), with its principal place of business located at _____ [address], and _____ [name of borrower] ("Borrower"), with its principal place of business located at _____ [address], enter into the following loan agreement.

I. LOAN

Subject to the terms and conditions stated in this loan agreement, Lender will lend the amount of \$_____ to Borrower. The indebtedness is to be evidenced by a note in substantially the form of the note set out in Exhibit _____ of this agreement, in the principal amount of \$_____, with interest as follows: _____ *[include interest provision]*.

II. PREPAYMENT

The Borrower will have the right to prepay the loan in whole or in part *[add any restrictions, e.g., provided that written notice is given to lender, and prepayment is in the amount of \$_____ or multiples of that amount]*.

III. SECURITY

As security for this loan, Borrower will create a security interest in _____ *[describe collateral or refer to listing in exhibit]*, executing a valid security agreement in the form approved by Lender, and taking all steps necessary to perfect that interest, including filing a valid financing statement, and paying any necessary expenses and fees.

IV. USE OF PROCEEDS

The proceeds of this loan may be used _____ [*describe, e.g., to provide working capital for Borrower*].

V. REPRESENTATIONS OF BORROWER

Borrower represents as follows:

- (a) Borrower is _____ [*describe status, e.g., a* _____ (state) corporation] in good standing.
- (b) Borrower is authorized by its constituent documents and applicable law to enter into this agreement.
- (c) All information provided by Borrower to Lender, including financial reports, is true and correct.
- (d) There are no security interests in or financing statements covering any asset of Borrower [*add if appropriate: except as specified in Exhibit* _____].

VI. CONDITIONS PRECEDENT TO LOAN

Lender is obligated to make the loan provided for in this agreement only after receiving all of the following in a form satisfactory to lender: _____ [*describe, e.g., an opinion of counsel concerning the legal status of Borrower and the validity of this transaction, an inventory of Borrower's assets, an executed note, and a security agreement in the form prescribed by Lender*].

VII. AFFIRMATIVE COVENANTS OF BORROWER

Borrower covenants and agrees that it will:

- (a) Keep accurate financial records of all business operations, and provide lender with _____ [*e.g., unaudited financial statements 30 days after the close of each quarter and audited statements 60 days after the close of each quarter*].
- (b) Properly use and maintain the collateral offered in connection with this loan agreement, maintaining insurance of a type and in amounts agreeable to Lender.
- (c) Permit inspections of its books, records, premises, and assets by Lender _____ [on reasonable notice or at Lender's discretion].
- (d) Promptly notify Lender of any threatened litigation or change in business conditions that may adversely affect Borrower.

VIII. NEGATIVE COVENANTS OF BORROWER

Borrower covenants and agrees that it will not:

- (a) Encumber or permit any mortgages, security interests, or other encumbrances to be assessed against _____ [*e.g., the collateral offered as security for this agreement or the equipment to be purchased with loan proceeds*].
- (b) Increase salaries of any officers by more than \$_____ during the term of this loan, except with prior consent of

Lender.

(c) Allow working capital at anytime to be less than \$_____.

(d) Declare any dividends or distributions without written consent of Lender.

IX. EVENTS OF DEFAULT

The occurrence of any or all of the following events or conditions will be an event of default: _____
[list, e.g., any failure by debtor to make a payment or perform an obligation when due; breach or failure by borrower to perform any term or condition of this obligation; dissolution of Borrower; insolvency of Borrower; or filing of any bankruptcy proceedings by or against Borrower].

X. REMEDIES

On the occurrence of any event of default, all obligations under this loan will immediately become due and payable on demand of Lender without presentation, demand for payment, notice of dishonor, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower. Lender will have all remedies provided by the _____ [state] Business and Commerce Code, as well as all other remedies available at law or equity, and provided under this loan agreement and related agreements and instruments.

XI. WAIVER

Lender's failure or delay to exercise any right or privilege under this agreement will not operate as a waiver of any such right or privilege or any further exercise of the right or privilege.

XII. MISCELLANEOUS

_____ [Include general provisions as desired, e.g.:

(a) _____ [state] law will govern this agreement.

(b) This agreement sets out the entire agreement of the parties.

(c) If any part of this agreement is held to be invalid, all other parts will continue in effect as if the invalid provision had never been included].

In witness hereof, the parties have executed this agreement:

Date: _____

LENDER

_____ [name]

By: _____ [signature]

_____ [typed name and title]

Date: _____

BORROWER

_____ [name]

By: _____ [signature]

_____ [typed name and title]

[Add attachments and exhibits as appropriate]



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37TTT-2 California Legal Forms--Transaction Guide Form T2-9

Form T2-9 Proposal Letter for Term Loan (Short-Form)

Description: This form is a short letter used for a business loan, and sets out distinct terms between borrower and lender. It gives a brief outline of the loan, summarizing equipment, costs, terms, interest rates, structure, and conditions.

Form T2-9 Proposal Letter (Short-Form) for Term Loan

_____, 20____

[Name]

[Title]

[Proposed Borrower]

[Street Address]

[City, State, ZIP]

Dear _____:

This will confirm our business understanding to proceed to negotiate a loan on the basis of the attached Outline of Terms.

This letter is intended to be an aid to negotiations only, and is not intended to be a legally-binding contract on either

party, except as provided in the following paragraph.

If you agree that the attached Outline of Terms provides a basis for an agreement, please countersign and return the enclosed copy of this letter, along with a check for \$_____. After receiving both, we will prepare loan documentation based on the Outline, and send it to you. If our companies reach final agreement on a loan per the Outline, the \$_____ will be applied to the first rental payment. If no closing occurs by _____, 20____, [Lender] will refund the \$_____ minus a \$_____ audit charge and [Lender]'s expenses (including legal fees).

Very truly yours,

[Lender]

By: _____

[Name]

[Title]

Enclosures

Agreed:

[Proposed Borrower]

By: _____

Outline of Terms

Borrower:	_____
Lender:	_____ or any of its affiliates
Equipment:	One new _____
Equipment Cost:	\$_____ + 5%
Closing Date:	On or before _____, 20 _____
Loan Term:	_____ months
Interest Rate:	_____ Bank prime + _____% per annum
Repayments:	_____ payments, monthly in arrears, each equal to _____% of Equipment Cost, plus accrued interest
Structure:	Secured loan, with maintenance, insurance, indemnity, default, and other provisions customary for secured loans
Expenses:	Payable by Borrower, including filing fees and Lender's legal fees
Closing Conditions:	Satisfactory final documentation, appraisal, Borrower's legal opinion, and other customary conditions



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*37TTT-2 California Legal Forms--Transaction Guide Form T2-10***Form T2-10 Commitment Letter For Revolving and Term Loans (Long Form)**

Description: This form is used for a business loan, and sets out distinct terms between borrower and lender. It provides a detailed summary of services, conditions, obligations, and fees.

Form T2-10 Commitment Letter (Long Form) For Revolving and Term Loans

_____, 20____
 _____ [Borrower]
 _____ [Street Address]
 _____ [City, State, Zip]

Ladies and Gentlemen:

_____, N.A. ("Bank") is pleased to offer its commitment for a \$_____ million senior credit facility (the "Senior Credit Facility") to _____ ("Borrower"), on the terms of this letter and the attached Summary of Terms (the "SoT").

Bank's commitment and Bank's agreement to provide the services described herein are subject to the satisfaction of each of the following conditions precedent in a manner acceptable to Bank in its sole discretion: (a) each of the conditions set forth herein and in the SoT; (b) the completion of all due diligence with respect to Borrower and its subsidiaries in scope and determination satisfactory to Bank in its sole discretion; (c) the absence of a material breach of any representation, warranty, or agreement of Borrower set forth herein; (d) Bank's satisfaction that, until the closing of the Senior Credit Facility, there shall be no competing offering, placement, or arrangement of any debt securities or bank financing by or on behalf of Borrower; (e) the negotiation, execution, and delivery of definitive documentation for the Senior Credit Facility consistent with the SoT and otherwise satisfactory to Bank; (f) no change, occurrence, or development that could, in Bank's opinion, have a materially adverse effect on the business, assets, liabilities (actual or contingent), operations, condition (financial or otherwise), or prospects of Borrower and its subsidiaries (taken as a whole) shall have occurred or become known to Bank; and (g) Bank does not become aware after the date hereof of any information or other matter which in Bank's judgment is inconsistent in a material and adverse manner with any information or other matter disclosed to Bank prior to the date hereof with respect to Borrower, Borrower's business or

financial condition, or the transactions contemplated in connection with the Senior Credit Facility (and, if it does, Bank may, in its sole discretion, suggest alternative financing amounts or structures that ensure adequate protection for Bank or terminate this letter and any commitment or undertaking hereunder).

Borrower hereby represents, warrants, and covenants that (a) all information, other than Projections (defined below), which has been or is hereafter made available to Bank by Borrower or any of Borrower's representatives in connection with the transactions contemplated hereby (the "Information") is and will be complete and correct in all material respects, and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading, and (b) all financial projections concerning Borrower and its subsidiaries that have been or are hereafter made available to Bank by Borrower or any of Borrower's representatives (the "Projections") have been or will be prepared in good faith based upon assumptions Borrower believes to be reasonable. Borrower agrees to furnish Bank with such Information and Projections as Bank may reasonably request and to supplement the Information and the Projections from time to time until the closing date for the Senior Credit Facility so that the representations, warranties, and covenants in the preceding sentence are correct on such closing date. Borrower understands that in underwriting the Senior Credit Facility, Bank will be using and relying on the Information and the Projections without independent verification thereof.

By acceptance of this offer, Borrower agrees to pay all costs and expenses of Bank described in the SoT (the "Reimbursable Expenses").

In consideration of Bank's issuance of this commitment, Borrower shall deliver to Bank, with the executed copy of this letter, a deposit of \$_____ (the "Initial Deposit"). In addition, Borrower agrees to deliver to Bank from time to time such additional deposits as may be necessary to cover Reimbursable Expenses in excess of the Initial Deposit (together with the Initial Deposit, the "Deposit").

If the Senior Credit Facility closes, then the Deposit, less all Reimbursable Expenses, will be applied to closing fees and expenses. If the Senior Credit Facility does not close for any reason whatsoever, then Bank will be entitled to retain all unused portions of the Deposit.

Borrower agrees to indemnify and hold harmless Bank and each of its affiliates and its directors, officers, employees, advisors, and agents (each, an "Indemnified Party") from and against (and will reimburse each Indemnified Party as the same are incurred) any and all losses, claims, damages, liabilities, and expenses (including the reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including in connection with any investigation, litigation, or proceeding or preparation of a defense in connection therewith) any matters contemplated by this letter, any related transaction, the Senior Credit Facility, or any use made or proposed to be made with the proceeds thereof, unless and only to the extent that, as to any Indemnified Party, it shall be determined in a final, nonappealable judgment by a court of competent jurisdiction that such losses, claims, damages, liabilities, or expenses resulted primarily from the gross negligence or willful misconduct of such Indemnified Party. Borrower agrees that no Indemnified Party shall have any liability for any indirect or consequential damages in connection with the Senior Credit Facility.

Borrower agrees to provide to Bank, in a reasonably prompt manner and in any event at or before such time as Bank may deem necessary for a complete and satisfactory review by Bank, all such documents, reports, agreements, financial and other information, environmental reports, and other items as Bank or its counsel may reasonably request with respect to Borrower and its business.

The terms of this letter and the SoT are confidential and, except for disclosure on a confidential basis to accountants, attorneys, and other professional advisors retained by Borrower in connection with the Senior Credit Facility or as may be required by law, may not be disclosed in whole or in part to any other person or entity without Bank's prior written consent.

All of Borrower's reimbursement, indemnification, and confidentiality obligations set forth in this letter shall remain in full force and effect regardless of whether any definitive documentation for the Senior Credit Facility is ever signed and notwithstanding the termination of this letter or any commitment or undertaking hereunder.

If Borrower breaches any of its obligations or agreements in this letter, at Bank's option this letter and Bank's commitment hereunder shall terminate and Borrower shall forfeit any unused portion of the Deposit and any fees paid to Bank prior to such termination.

Borrower agrees that Bank may charge any and all amounts due by Borrower to Bank under or in connection with this letter to any account of Borrower maintained with Bank.

This letter and the SoT shall be governed by laws of the state of _____. Each of Borrower and Bank hereby irrevocably waives all right to trial by jury in any action, proceeding, or counterclaim (whether based on contract, tort, or otherwise) arising out of or relating to this letter, the SoT, the transactions contemplated hereby and thereby, or the actions of Bank in the negotiation, performance, or enforcement hereof.

This letter, together with the SoT, set forth the entire understanding of Borrower and Bank with respect to the Senior Credit Facility. This letter may be modified or amended only by the written agreement of Borrower and Bank. This letter is not assignable by Borrower without Bank's prior written consent and is intended to be solely for the benefit of Borrower, Bank, and the Indemnified Parties.

In consideration of Bank's commitment set forth in this letter, Borrower will pay Bank a commitment fee as described in the SoT (the "Commitment Fee"). The Commitment Fee will be due and payable on the date that Borrower signs this letter. The Commitment Fee shall be fully-earned upon becoming due and payable, and shall be non-refundable for any reason whatsoever.

This offer will expire at 5:00 p.m. _____ time on _____, 20____, unless Borrower signs this letter and returns it to Bank before that time (which may be by facsimile transmission), together with the Initial Deposit and all fees due upon acceptance of this commitment in accordance with the terms of this letter, whereupon this letter (which may be signed in one or more counterparts) shall become a binding agreement. Thereafter, this undertaking and commitment will expire on _____, 20____, unless definitive documentation for the Senior Credit Facility is signed and delivered before such date.

We look forward to working with you in the weeks ahead.

Very truly yours,

_____ [name of bank], N.A.

By: _____

Title: _____

Accepted and Agreed to as of

_____, 20_____:

[Borrower]

By: _____

Title: _____

EXHIBIT A

SUMMARY OF TERMS

Borrower: _____ ("Borrower").

[Guarantor: _____ ("Guarantor").]

Lender: _____, N.A. ("Bank").

Credit Facility: A senior credit facility (the "Senior Credit Facility") consisting of (a) a revolving credit facility of up to \$_____ million (the "Revolving Credit Facility"), including a \$_____ million sub-limit for letters of credit (letters of credit will be 100% reserved against borrowing availability under the Senior Credit Facility), and (b) a term loan of up to \$_____ million to be made on the closing date (the "Term Loan").

Purpose: The Senior Credit Facility will be used by Borrower to refinance existing indebtedness, to issue standby or commercial letters of credit, and to finance ongoing working capital needs.

Loan Availability: Advances under the Revolving Credit Facility will be limited to (a) up to _____% of eligible accounts receivable, plus (b) up to _____% of the net amount of eligible inventory, minus (c) such reserves as Bank may establish in good faith. Advances against eligible inventory will be subject to a sub-limit of \$_____ million.

Standards of eligibility will be established by Bank in good faith, but in any event will include the following ineligible categories:

Ineligible Accounts Receivable: (i) accounts outstanding for more than _____ days after the invoice date or _____ days after the due date, (ii) intercompany accounts, (iii) foreign accounts, (iv) all accounts owing by an account debtor as to which fifty percent 50% or more of the accounts owing by such account debtor are otherwise ineligible, (v) contra accounts, (vi) government accounts, (vii) accounts to any one account debtor or group of affiliated account debtors that are in excess of _____% of total eligible accounts, and (viii) such other categories as Bank may establish in good faith.

Ineligible Inventory. (i) slow-moving, obsolete, and defective inventory, (ii) work-in-process inventory, (iii) inventory in transit, (iv) returns, (v) off-site inventory for which appropriate lien releases and waivers have not been obtained, (vi) packing and shipping materials, (vii) inventory that is subject to a third party's trademark or other proprietary right, unless Bank is satisfied that it could sell such inventory on satisfactory terms in a default, and (viii) such other categories as Bank may establish in good faith.

Advances under the Term Loan will be limited to (a) _____% of the fair market value of Borrower's eligible real estate, plus (b) _____% of the orderly liquidation value of Borrower's eligible equipment, in each case as established by appraisals satisfactory to Bank.

Minimum Excess Availability: Bank will require minimum excess availability under the Revolving Credit Facility of \$_____ million at closing and \$_____ million at all times thereafter.

Security: All obligations to Bank will be secured by first-priority liens upon all of Borrower's existing and future acquired assets, including accounts receivable, inventory, vehicles, machinery and equipment, real prop-

erty, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, general intangibles, intellectual property, and investment property.

Maturity and
Amortization:

The Senior Credit Facility will mature _____ years after the closing date. If Borrower terminates the Senior Credit Facility before the maturity date, Borrower will pay the outstanding balance of the Term Loan, and will pay to Bank an early termination fee of (a) _____% of the Revolving Credit Facility commitment if termination occurs in the first year after closing, (b) _____% of the Revolving Credit Facility commitment if termination occurs in the second year after closing, and (c) _____% of the Revolving Credit Facility commitment if termination occurs thereafter.

The Term Loan will amortize in [monthly] [quarterly] payments on the basis of a level _____-year amortization with a balloon payment of all unpaid amounts due upon the maturity of the Revolving Credit Facility. The Term Loan will be subject to certain mandatory prepayments, such as mandatory prepayments from the proceeds of asset sales and equity offerings.

Interest Rates:

The Revolving Credit Facility will bear interest at a rate equal to LIBOR plus _____% or Base Rate plus _____% per annum. The Term Loan will bear interest at a rate equal to LIBOR plus _____% or Base Rate plus _____% per annum.

LIBOR will be defined in accordance with Bank's customary practices. Base Rate will mean Bank's prime rate, which is not necessarily the lowest rate at which Bank makes loans.

LIBOR loans will be subject to customary provisions, including applicable reserve requirements, limits on the number of outstanding LIBOR loans, and minimum dollar amounts of each LIBOR loan.

All interest will be calculated on the basis of actual number of days elapsed in a year of 360 days. If an event of default exists, all loans and other obligations will bear interest at a rate 2% per annum above the otherwise-applicable rate.

Unused Line
Fee:

A _____% per annum (calculated on the basis of actual number of days elapsed in a year of 360 days) unused line fee calculated on the unused portion of the Revolving Credit Facility will be payable monthly in arrears.

Letter of Credit
Fees:

Borrower will pay (a) a letter of credit fee monthly in arrears on all letters of credit equal to the applicable per annum LIBOR margin (calculated on the basis of actual number of days elapsed in a year of 360 days), (b) a _____% fronting fee to Bank upon the issuance of each letter of credit, and (c) Bank's customary fees and charges in connection with all amendments, extensions, draws, and other actions with respect to letters of credit.

Commitment Fee:

Borrower will pay to Bank a commitment fee of \$_____, due and payable on the date that Borrower signs the attached commitment letter.

Closing Fee:	Borrower will pay to Bank a fee of \$_____ on the date of the closing of the Senior Credit Facility, minus the amount of the Commitment Fee received by Bank before the closing date.
Administration Fee:	Borrower will pay to Bank an annual fee of \$_____ on the closing date for the Senior Credit Facility and on each anniversary thereof.
Collection Days Fee:	In order to reimburse Bank for the cost of delays in the collection and clearance of remittances applied to the Revolving Credit Facility, Borrower will pay to Bank a fee, calculated on such remittances at the applicable interest rates on the Revolving Credit Facility, as if each remittance was received _____ business day(s) after its actual receipt. Such fee shall be payable monthly in arrears.
Expenses:	Borrower will pay (a) all Bank's reasonable out-of-pocket costs and expenses (including legal fees of Bank's counsel) associated with the Senior Credit Facility, including costs and expenses of (i) Bank's due diligence, including field examinations, appraisals, and environmental audits, and (ii) preparing, administering, and enforcing all documents executed in connection with the Senior Credit Facility, plus (b) a \$750 per day per field examiner charge, in addition to all out-of-pocket expenses for field examinations. Borrower will remain obligated for all such amounts whether or not the Senior Credit Facility closes.
Terms and Conditions:	The financing agreements will contain representations and warranties, covenants, events of default, and other provisions acceptable to Bank, including the following: 1. Financial covenants acceptable to Bank, including but not limited to a fixed charge coverage ratio, a funded debt to EBITDA ratio, and a minimum tangible net worth requirement. 2. Borrower's agreement to provide Bank with periodic financial and collateral reporting, including annual audited financial statements, monthly and quarterly internally-prepared financial statements, annual financial projections, and periodic borrowing base certificates, receivables agings, and inventory reports. 3. Borrower's agreement to maintain insurance, with insurance carriers acceptable to Bank, against such risks and in such amounts as is customary for similar businesses, naming Bank as mortgagee/loss payee. 4. Restrictions on, among other things, distributions and dividends, acquisitions and investments, indebtedness, liens, affiliate transactions, and capital expenditures. 5. Borrower's agreement to cause all proceeds of accounts receivable to be forwarded to a lockbox or, with Bank's consent, deposited in a blocked account. 6. Borrower's agreement to provide Bank updated appraisals of Borrower's real estate and equipment at such times as Bank may require.
Conditions Precedent:	The extension of the aforementioned financing arrangement is subject to the fulfillment of a number of conditions to Bank's satisfaction, including, but not limited to, the following:

1. The execution and delivery, in form and substance acceptable to Bank and its counsel, of Bank's customary agreements, documents, instruments, financing statements, consents, landlord waivers, documents indicating compliance with all applicable federal and state environmental laws and regulations, evidences of corporate authority, opinions of counsel, and other writings to confirm and effectuate the Senior Credit Facility as may be required by Bank and its counsel.
2. The absence of any materially adverse change, in the opinion of Bank, in Borrower's assets, liabilities, business, financial condition, business prospects, or results of operations.
3. The absence of any action, suit, investigation, litigation, or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality that (in Bank's judgment) (a) could have a materially adverse effect on Borrower's assets, liabilities, business, financial condition, business prospects, or results of operations or which could impair Borrower's ability to perform satisfactorily under the Senior Credit Facility, or (b) could materially adversely affect the Senior Credit Facility or the transactions contemplated thereby.
4. Bank's receipt, in form and substance satisfactory to Bank, of (a) a pro forma balance sheet of Borrower, dated as of the date of closing, which reflects no material changes from the most-recent pro forma balance sheet of Borrower previously delivered to Bank, (b) financial projections of Borrower, evidencing Borrower's ability to comply with the financial covenants set forth in the financing agreement, and (c) interim financial statements for Borrower as of a date not more than 30 days before the closing date.
5. Bank's satisfaction that Borrower is adequately capitalized, that the fair saleable value of Borrower's assets will exceed its liabilities at closing, and that Borrower will have sufficient working capital to pay its debts as they become due.
6. Bank's receipt of insurance certificates with respect to Borrower's property and liability insurance, together with a loss payable endorsement naming Bank as loss payee, all in form and substance satisfactory to Bank.
7. Borrower's having obtained all governmental and third party consents and approvals as may be necessary or appropriate in connection with the Senior Credit Facility.
8. Bank's satisfaction with all environmental aspects relating to Borrower and its business, including all environmental reports required by Bank.
9. Bank's receipt of a satisfactory appraisal of Borrower's real estate and equipment, and a satisfactory appraisal of Borrower's inventory.

Other: This Summary of Terms is intended as an outline only, and does not purport to summarize all the conditions, covenants, representations, warranties, and other provisions which will be contained in definitive legal documentation for the Senior Credit Facility contemplated hereby.



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 2: Loans--Business and Commercial.

*37TTT-2 California Legal Forms--Transaction Guide Form T2-11***Form T2-11 Sample Long-Form Commercial Loan Agreement**

Description: This form is used for a business loan; it provides in-depth language detailing definitions, obligations, warranties, conditions, covenants, and collateral.

LOAN AND SECURITY AGREEMENT**BETWEEN****[NAME OF BORROWER]****AND****[NAME OF BANK]****Dated as of:** _____ **[Agreement Date]****Introduction****Recitals**

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Signatures

Acknowledgments

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Exhibit C	Addresses for Notice and Service
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Exhibit F	Form of Borrowing Base Certificate
Exhibit G	Form of Letter of Credit and Exhibits

[Although Schedules 3.01(c) thru 3.13 do not appear in this form, they are referred to in the text.]

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[Schedule 3.02	Certain Conflicts, Etc.]
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Introduction

This Loan and Security Agreement, dated as of _____ [Agreement Date], is by and between _____ [Name of Borrower], a _____ corporation currently having an address at _____ (the "*Borrower*"), and _____ [Name of Bank], a _____ [national banking association] currently having an address at _____ [Bank Address] (the "*Bank*").

Recitals

The Borrower desires to borrow from the Bank, and the Bank desires to lend to the Borrower, the \$_____ Term Loan (as this and the other terms, words and phrases used in these Recitals are defined in Article I hereof), the proceeds of which will be used to finance _____. The Borrower also desires to have established, and the Bank desires to establish, a \$_____ committed revolving facility, the proceeds of which will be used to finance the working capital needs of the Borrower. The Borrower has offered to collateralize these Loans with all of its assets and properties.

In order to induce the Bank to make those Loans and enter into this Agreement, the Guarantors have agreed to secure the Obligations of the Borrower with their guaranty, which will be secured by [a pledge of all of their equity interests in the Borrower and] _____.

Accordingly, the Borrower and the Bank have entered into this Agreement in order to provide for (among other things) the making and repayment of the Loans, the collateralization of the Obligations of the Borrower and the documentation of the various representations of and agreements with the Borrower, all upon the terms and provisions and subject to the conditions hereinafter set forth.

Agreement

In consideration of the foregoing, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration (the receipt and adequacy of which is hereby acknowledged by the Borrower), the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. *Certain Defined Terms.* As used in this Agreement, the following capitalized terms and non-capitalized words and phrases shall have the meanings respectively assigned to them below, which meanings shall be applicable equally to the singular and plural forms of the terms so defined:

"*Accounts Receivable*" shall mean all of the referenced person's accounts (as defined in the UCC) and other rights to receive payments for any inventory, goods or other products, assets or properties sold, leased or otherwise disposed of or for services rendered, whether or not earned by performance, recognized by the referenced person or recorded on its books and records, and irrespective of whether any may be characterized as or constitute an account (as defined in the UCC) or may be characterized as or also constitute chattel paper, chose-in-action, contract right, general intangible, instrument, invoice, letter of credit right, note, payment intangible or other collateral type in any document, by any person or under any Applicable Law in each case whether now or hereafter acquired, created, executed, modified or otherwise existing (including, without limitation, during the pendency of any Bankruptcy Proceeding).

"*Adjusted Capital Expenditures*" of the Borrower [and its subsidiaries] for any referenced Computation Period shall mean the aggregate capital expenditures of the Borrower [and its subsidiaries]

for such Computation Period, each as determined [and consolidated] in accordance with GAAP consistently applied.

"*Adjusted Current Assets*" shall mean, as at any date of determination, the current assets of the of the Borrower [and its subsidiaries] at such date, each as determined [and consolidated] in accordance with GAAP consistently applied [; *provided that* those current assets shall be deemed to be increased by the unadvanced portion of the Commitment (with the Letter of Credit Amount being considered an advance under the Commitment) at such date].

"*Adjusted Current Liabilities*" shall mean, as at any date of determination, [the current liabilities of the Borrower [and its subsidiaries] at such date, each as determined [and consolidated] in accordance with GAAP consistently applied] [OR: the sum of (i) the aggregate amount of the current portion of all Adjusted Debt of the Borrower [and its subsidiaries] at such date, and (ii) the aggregate amount of all other current liabilities of the Borrower [and its subsidiaries] at such date, each as determined [and consolidated] in accordance with GAAP consistently applied, except that Adjusted Debt shall be determined in accordance with the definition thereof].

"*Adjusted Debt*" shall mean, as at any date of determination, the sum of the aggregate amount of all Indebtedness [and Credit Support] of the Borrower [and its subsidiaries] at such date determined in accordance with the definitions thereof, which Indebtedness shall include the unadvanced amount of all commitments, lines of credit and letters of credit as if fully advanced at such date[, and which Credit Support shall equal the amount of the Indebtedness thereby supported (including the unadvanced amount of all commitments, lines of credit and letters of credit as if fully advanced) at such date], in each case irrespective of any other treatment under GAAP.

"*Adjusted Debt Service Ratio*" shall mean, as at any date of determination, the ratio of (a) the Adjusted EBITDA of the Borrower [and its subsidiaries] for the Computation Period ending at such date, to (b) the Adjusted Debt Service of the Borrower [and its subsidiaries] determined at such date.

"*Adjusted Debt Service*" shall mean, as at any date of determination, the sum of all payments of principal and interest on Indebtedness of or Credit Support from the Borrower [and its subsidiaries] (including, without limitation, all commissions, discounts and other fees and charges owed with respect to any and all commitments, lines of credit, banker's acceptances, letters of credit, and interest rate protection, foreign currency exchange, or other interest or exchange rate swap or hedging agreements or arrangements, and the interest and principal components of capitalized leases) [ACTUAL IN ARREARS: paid or payable during the Computation Period ending at such date[, *in each case* adjusted on a pro forma basis to (i) include the amounts that would have been payable on Indebtedness incurred or increased during or after such period had amounts thereunder been payable for the full Computation Period, and (ii) exclude amounts paid during such Computation Period under existing Indebtedness repaid or replaced in full with such new or increased Indebtedness.] [PROSPECTIVE: payable during the Computation Period beginning on the day following such determination date, assuming interest at the [rates in effect on such determination date] [rate of _____% per annum]. [provided, however, that the amount of payments on any revolving line of credit shall be deemed to be the net decrease, if any, in the principal balance thereof during such period].

"*Adjusted Debt to Equity Ratio*" shall mean, as at any date of determination, the ratio of (a) the Adjusted Debt of the Borrower [and its subsidiaries] at such date, to (b) the Adjusted Net Worth of the Borrower [and its subsidiaries] at such date.

"*Adjusted EBITDA*" of the Borrower [and its subsidiaries] for any referenced Computation Period shall mean the aggregate earnings of the Borrower [and its subsidiaries] before interest, income and

franchise taxes, amortization and depreciation for such Computation Period, excluding extraordinary items, each as determined [and consolidated] in accordance with GAAP consistently applied.

"*Adjusted Leverage Ratio*" shall mean, as at any date of determination, the ratio of (a) the Adjusted Liabilities of the Borrower [and its subsidiaries] at such date, to (b) the Adjusted Net Worth of the Borrower [and its subsidiaries] at such date.

"*Adjusted Liabilities*" shall mean, as at any date of determination, the sum of (i) the aggregate amount of all Adjusted Debt of the Borrower [and its subsidiaries] at such date, and (ii) the aggregate amount of all other liabilities of the Borrower [and its subsidiaries] at such date, each as determined [and consolidated] in accordance with GAAP consistently applied, except that Adjusted Debt shall be determined in accordance with the definition thereof.

"*Adjusted LIBO Rate*" shall mean the rate of interest in effect for a particular Interest Period with respect to the portion of the Loans subject to it, which rate shall be equal to the sum of:

(a) the rate per annum (rounded upward to the nearest whole multiple of [1/16th] [1/100] of one percent per annum, if such amount is not such a multiple) obtained by dividing (i) the rate of interest per annum (rounded upward to the nearest whole multiple of [1/16th] [1/100] of one percent per annum, if such average is not such a multiple) at which deposits in United States Dollars are offered by the principal office of the Bank in London, England, to prime banks in the London interbank market at 11:00 A.M. (London time) two Business Days before the first day of such Interest Period in an amount approximately equal or comparable to the portion of the Loans to which such rate is to apply and with a maturity equal to the Interest Period selected by the Borrower for such portion as provided in Section 2.04 hereof by (ii) a percentage equal to 100% minus the applicable Reserve Percentage for such Interest Period;

(b) the Assessment Rate per annum applicable with respect thereto, if any, for such Interest Period;

(c) a rate per annum calculated by the Bank so as to reimburse the Bank for any of the increased costs and reduced receipts described in Section 2.04(d) or (f) hereof determined from time to time by the Bank in accordance with those Sections (and not otherwise paid or reimbursed pursuant to those Sections), including (without limitation) any capital adequacy assessment (without, however, limiting the Bank's rights under those Sections if no adjustment or an incomplete adjustment is made pursuant to this clause); and

(d) the Applicable LIBO Spread per annum.

The Adjusted LIBO Rate shall change from time to time simultaneously with each corresponding change in the Applicable LIBO Spread, applicable Reserve Percentage or applicable Assessment Rate, including, without limitation, changes within Interest Periods.

"*Adjusted Net Current Assets*" shall mean, as at any date of determination, (i) the Adjusted Current Assets of the Borrower [and its subsidiaries] at such date, *minus* (ii) the Adjusted Current Liabilities of the Borrower [and its subsidiaries] at such date.

"*Adjusted Net Worth*" shall mean, as at any date of determination, (a) the aggregate book value of all assets and properties of the Borrower [and its subsidiaries] at such date, [IF TANGIBLE NET WORTH: *minus* the aggregate book value of all good will and other assets and properties of the Borrower [and its subsidiaries] properly classified as "intangible assets" at such date,] *minus* (b) the Adjusted Liabilities of the Borrower [and its subsidiaries] at such date, each as determined [and consolidated] in accordance with GAAP consistently applied, except that Adjusted Liabilities shall be determined in accordance with

the definition thereof.

"*Adjusted Quick Assets*" shall mean, as at any date of determination, the quick assets (consisting of cash, marketable securities and Accounts Receivable) of the Borrower [and its subsidiaries] at such date, each as determined [and consolidated] in accordance with GAAP consistently applied [; *provided that* those quick assets shall be deemed to be increased by the unadvanced portion of the Commitment (with the Letter of Credit Amount being considered an advance under the Commitment) at such date].

"*Adjusted Quick Ratio*" shall mean, as at any date of determination, the ratio of (a) the [unencumbered] Adjusted Current Assets of the Borrower [and its subsidiaries] at such date [(treating as unencumbered for this purpose those assets and properties that are subject only to the security interests of the Bank)], to (b) the Adjusted Current Liabilities of the Borrower [and its subsidiaries] at such date [(excluding from current liabilities for this purpose the current portion of long term Adjusted Debt)].

"*Advance*" shall have the meaning assigned to it in Section 2.01(b) hereof.

"*Advance Date*" shall mean either (i) the date duly requested by the Borrower under Section 2.01(b) for a particular Advance or under Section 2.02 for a particular Term Loan advance, [or such later date as may be proposed by the Bank,] or (ii) the actual date of the Advance or Term Loan advance if made, as applicable.

"*Affiliate*" of a referenced person shall mean (a) another person controlling, controlled by or under common control with such referenced person, (b) any other person beneficially owning or controlling ten percent (10%) or more of the outstanding voting securities or rights, participants or interests in the capital, distributions or profits of the referenced person provided that the Bank shall not under any circumstance be deemed an affiliate of the Borrower (whether as a result of any securities or other pledge or otherwise), (c) any other person operating the business or substantially all of the property of the referenced person, or vice versa, or (d) any director, officer, manager or other executive of or partner, member or joint venturer in the referenced person. If the referenced person is an individual, then the term "*affiliate*" also shall include members of the immediate family (including parents, spouse and children) of such individual and any "*affiliate*" of one or more of those family members. The terms "*control*", "*controlling*", "*controlled*" and the like shall mean the direct or indirect possession of the power to direct or cause the direction of the management or policies of a person or the disposition of its assets or properties, whether through ownership, by contract, arrangement or understanding, or otherwise.

"*Agreement*" shall mean this Loan and Security Agreement, together with all schedules and exhibits hereto, as the same may be supplemented, modified, amended, restated or replaced from time to time in the manner provided herein.

"*Alternate Base Rate*" shall mean a fluctuating annual rate of interest in effect from time to time that for any day shall be equal to the highest of:

(a) the rate of interest for such day announced publicly by the Bank in New York, New York, from time to time, as the Bank's [Alternate A: prime commercial lending] [Alternate B: prime] [Alternate C: base] rate; [or]

(b) [Alternate D: the sum (adjusted to the nearest one-quarter of one percent or, if there is no nearest one-quarter of one percent, to the next higher one-quarter of one percent) of (i) one-half of one percent per annum, *plus* (ii) the rate per annum obtained by dividing (A) the latest three-week moving average of secondary market morning offering rates in the United States for three-month certificates of deposit of major United States money market banks, such three-week moving average being determined weekly on each Monday (or, if any such day is not a Business Day, on the next succeeding Business Day) for the

three-week period ending on the previous Friday by the Bank on the basis of such rates reported by certificate of deposit dealers to and published by the Federal Reserve Bank of New York or, if such publication shall be suspended or terminated, on the basis of quotations for such rates received by the Bank from three New York certificate of deposit dealers of recognized standing selected by the Bank, by (B) a percentage equal to 100% minus the average of the daily percentages specified during such three-week period by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, but not limited to, any emergency, supplemental or other marginal reserve requirement) for the Bank in respect of liabilities consisting of or including (among other liabilities) three-month U.S. dollar nonpersonal time deposits in the United States, *plus* (iii) the average during such three-week period of the annual assessment rates estimated by the Bank for determining the then current annual assessment payable by the Bank to the Federal Deposit Insurance Corporation (or any successor) for insuring U.S. dollar deposits of the Bank in the United States; or]

(c) the Federal Funds Rate for such day plus one percent per annum.

The Borrower acknowledges and agrees that the Bank announces such rate for reference purposes only and such rate may not represent the lowest or best rate available to its customers.

"*Applicable Law*" shall mean any applicable law, including (without limitation) any applicable: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive; (c) common law or other legal or quasi-legal precedent; (d) arbitrator's, mediator's or referee's decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory or governing body or organization; in each case (i) whether domestic or foreign, (ii) whether at law, in equity, in rem or otherwise, and (iii) as the same may be adopted, supplemented, modified, amended, restated or replaced from time to time or any corresponding or succeeding provisions thereof.

"*Applicable Spread*" shall mean the fluctuating rate of interest per annum equal to the rate set forth below for Loans bearing interest at the Adjusted LIBO Rate (the "*Applicable LIBO Spread*") or based upon the Alternate Base Rate (the "*Applicable Base Spread*") for the Pricing Level that contains the actual [Financial Ratio] of the Borrower within the range of the [Financial Ratios] of the Borrower for that Pricing Level:

Pricing Level	[Financial Ratio]	Applicable LIBO Spread	Applicable Base Spread
Level 1	0.00:1 up to x.00:1	_____ __%	_____ __%
Level 2	x.00:1 through x.y0:1	_____ __%	_____ __%
Level 3	any ratio over x.y0:1	_____ __%	_____ __%

The Applicable Spreads (i.e., the Applicable LIBO Spread *and* the Applicable Base Spread) shall be determined (and change, depending upon such determination) from time to time quarterly on the first Business Day of each fiscal quarter of the Borrower based upon the certificate (if any) delivered during the preceding quarter to the Bank under Section 5.02(e) hereof containing the required calculation of its [Financial Ratio] for the applicable Calculation Period

(which is the period ending with the fiscal quarter immediately preceding the date such certificate is due); *provided, however, that* irrespective of the [Financial Ratio] of the Borrower, the Applicable Spreads shall be equal to (i) Level 3 through _____, and (ii) Level 3 for any fiscal quarter following a quarter in which the Borrower shall not have timely delivered the required calculation certificate.

"*Assessment Rate*" for any Interest Period for the corresponding portion of the Loans shall mean the annual assessment rate per annum estimated by the Bank on the first day of such Interest Period for determining the then current annual assessment payable by the Bank to the Federal Deposit Insurance Corporation (or any successor) for such Corporation's (or such successor's) insuring United States Dollar deposits of the Bank in the United States.

"*Authority*" shall mean any governmental or quasi-governmental authority, including (without limitation) any federal, state, territorial, county, municipal or other government or governmental or quasi-governmental agency, board, branch, bureau, commission, court, department or other instrumentality or political unit or subdivision, whether domestic or foreign[, or any national securities exchange or market or other self-regulatory organization].

"*Bank*" shall have the meaning assigned to it in the Introduction, above.

"*Bank Indemnitee*" shall mean each of the Bank, its participants, affiliates and designees, and their respective shareholders, partners, members, directors, officers, managers, employees, attorneys, agents and other representatives.

"*Bankruptcy Law*" shall mean the United States Bankruptcy Code, as amended, or any other present or future Applicable Law respecting bankruptcy, reorganization, insolvency, readjustment of debts, relief of debtors, dissolution or liquidation, any corresponding Applicable Law of any State [or foreign jurisdiction], or any succeeding Applicable Law, and the rules and regulations promulgated thereunder; in each case as the same may have been and hereafter may be adopted, supplemented, modified, amended, restated or replaced from time to time.

"*Bankruptcy Proceeding*" shall mean the filing or submission of any petition, answer, pleading or other document for relief, bankruptcy, insolvency, receivership or other remedy, or the existence of any case, action, suit, or proceeding, whether voluntary or involuntary, under any Bankruptcy Law, including (without limitation) any event referenced in Section [8.01(h)] or [8.01(i)] hereof.

"*Books and Records*," "*books*" and "*records*" each shall mean all of the referenced person's books and records, including (without limitation) any and all (i) corporate, partnership or limited liability company books and minutes or other records of proceedings, stock, partner or membership books and transfer ledgers, (ii) other instruments, indentures, agreements, charters, by-laws, certificates or other documents or statutory equivalents respecting the referenced person or its organization, governance or operation, (iii) financial books, ledgers, bills and other invoices, canceled checks and check registers, and other receipt, disbursement or financial records and data, (iv) customer and vendor lists, and rent rolls, and computer and other data bases, (v) bills of sale, contracts, invoices, and other evidence of sales, leases or other dispositions and purchases, leases or other acquisitions, (vi) tax returns, registrations, reports and other filings with Authorities, (vii) leases, contracts and other agreements, (viii) insurance policies, (ix) correspondence, and (x) other documents, papers and data, *in each case* whether on paper or film, in computer or other electronic storage or in some other storage medium, and whether or not in the possession of such person or a third party service provider, and as each has been and hereafter may be supplemented, renewed, extended, modified, amended, restated or replaced from time to time, in each case whether now or hereafter acquired, created, executed, modified or otherwise existing (including, without limitation, during the pendency of any Bankruptcy Proceeding).

"*Borrower*" shall have the meaning assigned to it in the Introduction, above.

"*Borrowing Base*" shall mean the amount determined as of a particular date equal to the sum of: (a) _____% of _____; (b) _____% of _____; and (c) _____% of _____; *provided, however, that* (i) only Collateral for which the Borrower's representations and warranties under this Agreement and the other Loan Instruments are true and correct at

the time of calculation shall be included in the aggregate Borrowing Base, (ii) the Bank at any time and from time to time may adjust the preceding percentages or modify or add categories of eligibility in order to reflect the composition of and experience with its _____, and (iii) if the Bank at any time determines any such method of valuation overstates the actual fair market value at the time, the Bank may recalculate those values to fair market value. The Bank may determine the Borrowing Base at any time and from time to time, which may (but need not) be based upon the periodic report of the Borrower in the most recently delivered Borrowing Base Certificate required under Section [5.02(f)] hereof.

"*Business Day*" shall mean any day during which the Bank is open for business in _____ [city], _____ [state], other than any Saturday, Sunday or other applicable legal holiday; *provided, however, that* for the purposes of particular Fixed Rate elections or transactions (excluding payments) involving a foreign jurisdiction, "Business Day" shall be further limited to one during which dealings are carried on in the relevant interbank market.

"*Code*" shall mean the Internal Revenue Code of 1986, as amended, [or any corresponding provisions of any Applicable Law in any foreign jurisdiction,] and as the same may be supplemented, modified, amended, restated or replaced from time to time, and the rules and regulations promulgated thereunder, or any corresponding or succeeding provisions of Applicable Law.

"*Collateral*" shall have the meaning assigned to it in Section 7.01 hereof.

["*Collateral Acknowledgment*" and "*Collateral Acknowledgments*" shall respectively mean any one or more Collateral Notices acknowledged or consented to in writing (whether as part of such notice or in a separate document) by any broker, investment adviser, trader, financial intermediary, custodian, holder, clearing corporation or other person with respect any Pledged Security, or by any partnership, limited liability company, trust or other issuer of any Pledged Security in uncertificated form, in each case whether now or hereafter existing, and as each has been and hereafter may be supplemented, renewed, extended, modified, amended or restated from time to time.]

["*Collateral Notice*" and "*Collateral Notices*" shall respectively mean any one or more consents, acknowledgments, letters, notices, transfer instructions and other documents and communications given by the Borrower to any broker, investment adviser, trader, financial intermediary, custodian, holder, clearing corporation or other person with respect any Pledged Security, or to any partnership, limited liability company, trust or other issuer of any Pledged Security in uncertificated form, with respect to any of the security interests of the Bank in any Pledged Security or any of the rights, powers, privileges, remedies and interests of the Bank in and to such Collateral, in each case whether now or hereafter existing, and irrespective of whether reduced to writing, and as each has been and hereafter may be supplemented, renewed, extended, modified, amended or restated from time to time.]

"*Commitment*" shall mean the commitment to make revolving credit loans to the Borrower by the Bank in the aggregate principal amount outstanding [(including the Letter of Credit Amount as if all outstanding Letters of Credit were fully advanced and outstanding)] at any one time not to exceed \$_____, as such amount may be reduced from time to time or terminated pursuant to the terms of this Agreement.

"*Commitment Fee*" shall have the meaning assigned to it in Section 2.06 hereof.

["*Computation Period*" shall mean any period of four consecutive fiscal quarters of the Borrower (including any fiscal year).]

"*Corporate Document*" and "*Corporate Documents*" shall respectively mean any and all of the following: (a) the Certificate of Incorporation or By-Laws of the Borrower; (b) any resolution with continuing effect adopted by the Board of Directors, any management or other committee of directors, or the shareholders of the Borrower; (c) any term or provision of any shareholders' agreement or trust respecting the securities issued by the Borrower or any related rights; or (d) any other instrument, indenture, agreement, or other document or any statutory equivalent respecting the

organization, governance or operation of the Borrower; *in each case* whether now or hereafter existing, and irrespective of whether reduced to writing, and as each has been and hereafter may be supplemented, modified, amended, restated or replaced from time to time.

["*Corporate Guarantor*" and "*Corporate Guarantors*" shall respectively mean any one or more of _____.]

["*Corporate Guarantors' Adverse Effect*" shall mean any "*Material Adverse Effect*" as defined in the Corporate Guaranty.]

["*Corporate Guaranty*" shall mean the Guaranty [and Security Agreement] dated as of [Agreement Date], among the Corporate Guarantors and the Bank, together with all schedules and exhibits thereto, as the same may be supplemented, modified, amended, restated or replaced from time to time in the manner provided therein.]

"*Credit Support*" shall respectively mean any and all agreements, arrangements and obligations whereby the referenced person directly or indirectly has guaranteed, assumed or otherwise become liable or responsible for the Indebtedness or other obligation of any other person, whether contingent or otherwise, and whether or not recourse is limited to specified amounts or any asset or property of the referenced person, including (without limitation) (a) any guaranty or other assurance of payment or performance of any obligation of any other person, (b) any indemnification, hold harmless or similar agreement, arrangement or obligation respecting any obligation of any other person, (c) any pledge, hypothecation or other encumbrance, or any loan or other availability, of any asset or property of the referenced person in respect of any obligation of any other person, or (d) any agreement, arrangement or other obligation (i) to purchase, repurchase or otherwise acquire any obligation of any other person, (ii) to purchase, repurchase, sell, lease or otherwise provide any securities or other assets and properties in connection with any obligation of any other person, (iii) to provide any discounts, services or other accommodations in connection with any obligation of any other person, (iv) to make any capital contribution, advance or loan in connection with the obligation of any other person or (v) to otherwise enhance, support, repay or discharge any obligation of any other person; *excluding, however*, any endorsement of a negotiable instrument for collection or deposit in the ordinary course of the referenced person's business GAAP.

["*Custody Document*" shall mean any instrument, indenture, agreement, policy or other document or any statutory equivalent respecting the investment or custody any of the Pledged Securities with or by any holder thereof, in each case whether now or hereafter existing, and irrespective of whether reduced to writing, and as each has been and hereafter may be executed, supplemented, renewed, extended, modified, amended or restated from time to time.]

"*Default*" shall mean any event that, with or without the giving or receipt of notice, the acquisition of knowledge or the passage of time (or any combination thereof), would constitute an Event of Default.

"*Effective Date*" shall have the meaning assigned to it in Section 9.11 hereof.

"*Environmental Claim*" shall mean: (a) any responsibility, liability or unlawful act or omission under any Environmental Law (whether alleged or otherwise); (b) any tortious act or omission or breach of contract pertaining to any Environmental Substance (whether alleged or otherwise); or (c) any other violation or claim under any Environmental Law or in respect of any Environmental Substance (whether alleged or otherwise).

"*Environmental Law*" and "*Environmental Laws*" shall respectively mean any one or more of the Applicable Laws pertaining to: (a) any emission, discharge, release, runoff, disposal or presence in the environment of any Environmental Substance; (b) any cleanup, containment, manufacturing, treatment, handling, transportation, storage or sale of or other activity pertaining to any Environmental Substance; or (c) any other peril to public or occupational health or safety or to the environment that may be posed by an Environmental Substance.

"*Environmental Substance*" shall mean any toxic substance, hazardous material, contaminant, waste, pollutant or

other [similar] product or substance that may pose a threat to public or occupational health or safety or to the environment.

"*ERISA*" shall mean the Employee Retirement Income Security Act of 1974, as amended, and as the same may be supplemented, modified, amended, restated or replaced from time to time, and the rules and regulations promulgated thereunder, or any corresponding or succeeding provisions of Applicable Law.

"*ERISA Affiliate*" and "*ERISA Affiliates*" shall respectively mean any one or more of any[: (i) subsidiary of the Borrower; and (ii) other] trade, business, person or persons that together with the Borrower would be deemed to be a single employer within the meaning of Section 4001 of ERISA.

"*ERISA Effect*" shall mean any material and adverse effect on (a) any Plan, (b) the assets and properties of any Plan or (c) any funding or other liability of any one or more of the Borrower or any ERISA Affiliate in respect of any Plan (individually or in the aggregate).

"*ERISA Event*" shall mean any (a) "accumulated funding deficiency" (whether or not waived), "prohibited transaction," "reportable event" [(other than any event for which the 30-day notice requirement has been waived by regulation)], "disqualification," "partial withdrawal" or "withdrawal," [involuntary] "partial termination" or "termination," "insolvency," "reorganization," or the imposition of any "penalty" or "withdrawal liability" in respect of any Plan under (and as such words and phrases are defined in) ERISA or the Code, as applicable, (b) any other violation of ERISA, the Code or any other Applicable Law in respect of any Plan (whether alleged or otherwise), (c) supplement or amendment to or modification or restatement of any Plan that could have or has had an ERISA Effect, or (d) imposition, increase or other adverse change in any funding obligation or other liability of any one or more of the Borrower or any ERISA Affiliate in respect of any Plan or to the Pension Benefit Guaranty Corporation (individually or in the aggregate).

"*Event*" shall include (without limitation) any event, occurrence, circumstance, condition or state of facts.

"*Event of Default*" shall have the meaning assigned to it in Section 8.01 hereof.

"*Federal Funds Rate*" shall mean a fluctuating annual rate of interest in effect from time to time that for any day shall be equal 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 which is a Business Day, the average of the quotations for such day on such transactions received by the Bank from three Federal funds brokers of recognized standing selected by it.

"*Fixed Rate*" shall mean the rate of interest in effect for a particular Interest Period with respect to the portion of the Loans subject to such rate, which rate shall be equal to (i) Adjusted LIBO Rate as selected in accordance with Sections 2.04(b) and 2.04(c) hereof, or (ii) such other rate as the Bank may offer from time to time in its sole and absolute discretion and the Borrower may accept pursuant to Sections 2.04(b) and 2.04(c) hereof. The Fixed Rate shall change from time to time simultaneously with each corresponding change in the Applicable LIBO Spread, applicable Reserve Percentage or applicable Assessment Rate, including, without limitation, changes within Interest Periods.

"*Fixed Rate Loan*" and "*Fixed Rate Loans*" shall respectively mean any and all portions of the Loans bearing interest at any Fixed Rate(s).

"*GAAP*" shall mean generally accepted accounting principles in the United States of America consistent with those applied in the preparation of the financial statements referred to in Section 3.06 hereof.

["*Guarantor*" or "*Guarantors*" shall respectively mean any one or more of the Individual Guarantors and the Corporate Guarantors.]

["*Guarantor's Adverse Effect*" shall mean any Corporate Guarantors' Adverse Effect or Individual Guarantor's Adverse Effect.]

["*Guaranty*" and "*Guaranties*" shall respectively mean any one or more of the Individual Guaranty and the Corporate Guaranty.]

"*hereunder*," "*herein*," "*hereof*" and other words and phrases of like import shall refer to each and every term and provision of this Agreement.

"*Indebtedness*" of any referenced person shall mean any and all obligations of the referenced person: (a) for borrowed money, however evidenced; (b) evidenced by any promissory note, bond, debenture or other [similar] written obligation to pay money; (c) for the deferred purchase price of any asset, property or service; (d) under any interest rate protection, foreign currency exchange, or other cap, swap, exchange, forward contract or other option or hedging agreement or arrangement, whether interest, currency, equity or otherwise; (e) in respect of any letter of credit or banker's acceptance; (f) to reimburse or compensate any other person respecting any provisional or other temporary credit in advance of collection for deposits of any checks, instruments or other documents made by the referenced person or any of its affiliates; (g) as lessee under leases that have been capitalized or should be capitalized under GAAP; (h) respecting [Subordinated Intercompany Debt or other] loans or advances from any subsidiary or other affiliate; (i) respecting any preferred stock issued by the referenced person bearing any mandatory dividend, interest or other return, or subject to any repurchase or redemption, that is payable in cash or any other property (other than as payable only with common stock or like preferred stock); [(j) respecting unfunded accrued benefits under plans covered by Title IV of ERISA and unfunded accrued post-retirement benefits under any "welfare benefit plan" (as defined in ERISA);] [(k) under any guaranty or other Credit Support;] or (l) respecting other items treated as liabilities under GAAP; *provided, however, that* Indebtedness shall not include any trade liability owed by the referenced person to any other person that arose from the purchase or sale from such other person of goods or services by the referenced person in the ordinary course of its business and is treated (in its entirety) as a current accounts payable under GAAP. In the event the referenced person is a corporation with one or more subsidiaries, the term "*Indebtedness*" shall mean the Indebtedness of all of them consolidated in accordance with GAAP consistently applied as of the date of calculation.

["*Individual Guarantor*" and "*Individual Guarantors*" shall respectively mean any one or more of _____.]

["*Individual Guarantors' Adverse Effect*" shall mean any "*Material Adverse Effect*" as defined in the Individual Guaranty.]

["*Individual Guaranty*" shall mean the Guaranty [and Security Agreement] dated as of [Agreement Date], among the Individual Guarantors and the Bank, together with all schedules and exhibits thereto, as the same may be supplemented, modified, amended, restated or replaced from time to time in the manner provided therein.]

"*Intellectual Property*" shall mean any and all copyrights and copyrighted materials, logos, patents, service marks, trademarks, trade names, domain names, advertisements and other promotional materials (whether or not copyrighted), know how, designs, discoveries, formulae, ideas, inventions, products, programs, computer programs and other software and firmware (whether in source code, object code or otherwise, including all "shrinkwrap" licenses that accompanied any item of Equipment or software when obtained), specifications, styles, techniques, and other trade secrets, works of authorship and other intellectual properties of the referenced person, including (without limitation) all applications, invention disclosures and pending items, all license royalties and other payment intangibles, the proceeds of infringement suits and other proceeds, the right to sue for past, present and future infringement, all rights corresponding thereto throughout the world, and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, and, in the case of trademarks, the good will of the business to which each of them relates, in each case (a) whether now or hereafter acquired, created, developed, executed, held, licensed, modified, owned or otherwise existing (including, without limitation, during the pendency of any Bankruptcy Proceeding), (b) whether

acquired, created, developed, executed, held, licensed, modified or owned (i) beneficially or of record and (ii) individually, jointly or otherwise, and (c) irrespective of whether any patent, copyright, trademark or other right or protection has been or can be sought, issued or obtained in connection therewith; including (without limitation) the name "[Name of Borrower]" and any and all derivatives thereof.

"*Intercreditor Agreement*" and "*Intercreditor Agreements*" shall respectively mean any one or more of the separate Intercreditor Agreements with affiliates of the Borrower or any Surety respecting any Subordinated Intercompany Debt (as defined in this Agreement) or any "Subordinated Intercompany Debt" under (and as defined in) any Guaranty or any other Loan Instrument, which each shall be in form and substance acceptable to the Bank containing subordination, enforcement and miscellaneous provisions substantially similar to those in the Guaranties, *in each case* whether now or hereafter existing, and as each has been and hereafter may be supplemented, modified, amended, restated or replaced from time to time.]

"*Interest Period*" shall mean the period during which a Fixed Rate is applicable to a portion of the Loans, which period shall be as determined pursuant to Sections 2.04(b) and (c) hereof.

"*Inventory*" shall mean any and all inventory and other goods, merchandise and other items held by the referenced person (or on its behalf) for manufacture, sale, lease or other delivery or consumption, wherever located, whether raw materials, supplies, parts or other components, work-in-progress, finished goods, returned goods or otherwise, in each case whether now or hereafter acquired, created, modified, finished or otherwise existing (including, without limitation, during the pendency of any Bankruptcy Proceeding).

"*Investment*" shall mean, with respect to any referenced person, (a) any stock, warrant, option, put, call, bond, debenture, commercial paper, governmental obligation, note, certificate of deposit, partnership interest (general or limited), limited liability company membership, trust interest, contract, commodity [(other than Inventory)], or future, any foreign currency [or other money], any bank, brokerage, trading or other account, any other security, investment property, financial asset, investment or interest, or any other obligation or right to acquire or benefit from any such item, (b) any direct or indirect capital or other equity contribution to any other person made or committed to by the referenced person, (c) any purchase by the referenced person of all or substantially all of the assets and properties of any other person or any discrete division or other business unit of such other person, (d) any agreement or arrangement by or with the referenced person for the purpose of entering into any partnership or joint venture with or providing funds or credit to or for the benefit of any other person, or (e) any direct or indirect loan, advance or Credit Support by the referenced person to or for the benefit of any other person, *excluding, however*, any [(i)] current trade liability (other than any Indebtedness) owed to the referenced person by any other person that arose from the purchase or sale from the referenced person of goods or services in the ordinary course of its business[, or (ii) prepayment of expenses (A) where such expenses are being incurred by the referenced person in the ordinary course of its business, (B) such expenses are of a type customarily prepaid, and (C) such prepayment is in a commercially reasonable amount for a commercially reasonable period]. The amount of any Investment shall be the original cost of such Investment, *plus* the cost of all additions thereto, and *minus* the amount of any return of capital or principal to the extent such return is in cash with respect to such Investment, without, however, any adjustments for increases or decreases in value or write-ups, write-downs or write-offs with respect to such Investment.

"*Investment Company Act*" shall mean the Investment Company Act of 1940, as amended, or any corresponding provisions of any Applicable Law in any foreign jurisdiction, and as the same may be supplemented, modified, amended or restated from time to time, and the rules and regulations promulgated thereunder, or any corresponding or succeeding provisions of Applicable Law.

"*Letter of Credit*" and "*Letters of Credit*" shall mean respectively any one or more of the letters of credit issued for the account of the Borrower or Guarantor pursuant to Section 2.07 hereof, whether issued by or through the actions of the Bank, as the same may be transferred, renewed, modified, amended, restated or replaced from time to time in the manner provided therein.]

["*Letter of Credit Advance*" shall have the meaning assigned to it in Section 2.07(d) hereof.]

["*Letter of Credit Amount*" as of a particular date shall mean the sum of (i) the aggregate issued but unadvanced face amount of all Letters of Credit then outstanding under this Agreement and (ii) the principal balance of the Letter of Credit Advances then outstanding [and not converted to Revolving Credit Loans].]

["*Letter of Credit Beneficiary*" shall have the meaning assigned to it in Section 2.07(b) hereof.]

["*Letter of Credit Expiration Date*" shall mean such "expiration" or "expiry" date as may be specified in a Letter of Credit, as and if extended pursuant thereto.]

["*Letter of Credit Fee*" shall have the meaning assigned to it in Section 2.07(e) hereof.]

["*Letter of Credit Issuance Date*" shall mean either (i) the date duly requested by the Borrower under Section 2.07(b) for the issuance, renewal or extension of a particular Letter of Credit, [or such later date as may be proposed by the Bank,] or (ii) the actual date of issuance, renewal or extension of the Letter of Credit if issued, as applicable.]

"*Lien*" and "*Liens*" shall respectively refer to any one or more of the following to which the referenced or relevant person is a party or by which the referenced or relevant person, any of its assets or properties or any other referenced assets or properties may be bound or subject: (a) any assignment, pledge, mortgage, hypothecation or security interest (irrespective of whether the referenced person is personally obligated with respect to any obligation thereby secured); (b) any filed financing statement (other than as secured party [or as a lessee under a true operating lease]); (c) any consignment, finance lease, conditional sale contract or other title retention agreement; (d) any assignment, pledge or other transfer, restriction or encumbrance of any right to receive any income or other distributions or proceeds; (e) any sale/leaseback transaction in which the referenced person is the seller/lessee; (f) any lien, charge, claim or other encumbrance arising under any Applicable Law, whether in favor of an Authority or otherwise, including (without limitation) liens for taxes, assessments and other governmental charges and liens of mechanics, carriers, warehouses, suppliers and laborers; (g) any restrictive covenant, lease, license, right of use, possession or first refusal, infringement, community property or other joint ownership interest, limitation or restriction on use or transfer, exception to title, or other limitation or restriction on the extent, exercise or enforcement of any right or interest respecting any asset or property; (h) with respect to any real estate, any easement, right-of-way, servitude, encroachment, restrictive covenant, reservation, or other exception to title; (i) any covenant or agreement with any other person to a "Negative Pledge" (*i.e.*, that the referenced or relevant person will not (A) do any one or more of the things specified in the preceding clauses or (B) sell, lease, sublease, transfer, exchange, abandon or otherwise dispose of, surrender management, physical possession or control of, physically alter or relocate all or any portion of its assets or properties); or (j) any other lien, encumbrance or adverse right or claim of any nature in, to or against any asset or property.

["*Liquid Investment*" shall respectively mean any stock, bond, debenture, commercial paper, governmental obligation, certificate of deposit, or other security or similar investment that (a) is actively traded (i) on a national securities exchange, (ii) over the counter or (iii) in other recognized quoted markets for securities and other investments, (b) may be resold without restriction or further registration under any Applicable Law pertaining to securities, and (c) is owned and held of record and beneficially by one or more of the Borrowers or any Liquid Partnership, in each case whether now or hereafter acquired, created, executed, modified or otherwise existing (including, without limitation, during the pendency of any Bankruptcy Proceeding).]

["*Liquid Partnership*" shall respectively mean any partnership or limited liability company that (a) is a private investment company (*i.e.*, is not registered or required to be registered under the Investment Company Act), (b) is controlled by one or more of the Borrowers, (c) permits partners or members to withdraw, redeem or otherwise liquidate their interests at least annually, and (d) invests in: (i) Liquid Investments; and/or (ii) partnership interests or memberships in any other partnership or limited liability company that (A) is a private investment company (*i.e.*, is not registered or required to be registered under the Investment Company Act), (B) permits partners or members to

withdraw, redeem or otherwise liquidate their interests at least annually, and (C) invests substantially all of its assets in Liquid Investments in each case whether now or hereafter acquired, created, executed, modified or otherwise existing (including, without limitation, during the pendency of any Bankruptcy Proceeding).]

"*Loan*" and "*Loans*" shall respectively mean any and all principal amounts outstanding from time to time (including future advances) in respect of the Revolving Credit Loans, the Term Loan, [the Letter of Credit Advances] and all other amounts advanced from time to time to or on behalf of the Borrower by the Bank or its designee pursuant to this Agreement or any other Loan Instrument (including future advances) in respect of the Revolving Credit Loans, the Term Loan, [the Letter of Credit Advances] and all other amounts advanced from time to time to or on behalf of the Borrower by the Bank or its designee pursuant to this Agreement or any other Loan Instrument (including, without limitation, during the pendency of any Bankruptcy Proceeding).

"*Loan Instrument*" and "*Loan Instruments*" shall respectively mean any one or more of this Agreement, the Notes, [the Letters of Credit, the applications for Letters of Credit,] the [Guaranty] [Guaranties], [the Collateral Acknowledgments and Collateral Notices,] the various mortgages, assignments, agreements, guaranties, instruments and other documents creating, evidencing, perfecting, governing or supporting any of the Obligations or any Surety's Obligations or any interest of the Bank in any collateral securing or intended to secure anyone's obligations under any of the foregoing, [the Intercreditor Agreements,] and all waivers, consents, agreements, reports, statements, certificates, schedules and other documents executed by the requisite person(s) pursuant to or in connection with any of the foregoing and accepted or delivered by the Bank (whether prior to, on or from time to time after the Effective Date), as each may be supplemented, modified, amended, restated or replaced from time to time in the manner provided therein.

"*Margin Stock*" shall mean any "margin stock" as defined in any applicable Margin Stock Regulations.

"*Margin Stock Regulations*" shall mean Regulation T, U and/or X of the Board of Governors of the Federal Reserve System, as applicable, and the rules and regulations promulgated thereunder, as the same may be supplemented, modified, amended, restated or replaced from time to time, or any corresponding or succeeding provisions of Applicable Law.

"*Material Adverse Effect*" shall mean any material and adverse effect, whether individually or in the aggregate, upon (a) the assets, business, cash flow, expenses, income, liabilities, operations, properties, prospectus, reputation or condition, financial or otherwise, of the Borrower, (b) the ability of the Borrower to make payment as and when due of all or any part of the Obligations, or (c) the Collateral or its value or the validity, enforceability, perfection or priority of any security interest of the Bank therein.

"*Material Document*" shall mean any [] [Organizational Document, Custody Document or other] material instrument, indenture, agreement, document, arrangement or other obligation: (a) to which the Borrower [or any Surety] is or may be a party; (b) by which the Borrower[, any Surety] or any of the Collateral is or may be bound or subject; or (c) by which any of the other [material] assets and properties of the Borrower [or any Surety] is or may be bound or subject; *in each case* whether now or hereafter existing, and irrespective of whether reduced to writing, and as each has been and hereafter may be supplemented, modified, amended, restated or replaced from time to time.

"*Maturity Date*" shall mean the earliest of (a) _____, with respect to the Revolving Credit Loans and related Obligations[, or such later date, if any, to which such scheduled maturity date may be extended in writing by the Bank (in its sole and absolute discretion) as provided in Section 2.01(d) hereof)], (b) _____, with respect to the Term Loan and related Obligations[, or such later date, if any, to which such scheduled maturity date may be extended in writing by the Bank (in its sole and absolute discretion) as provided in Section 2.02() hereof)], (c) with respect to the Revolving Credit Loans, the date on which the Commitment shall have been reduced permanently to zero [(other than pursuant to the conversion set forth in Section 2.01(e) hereof)], [(d) the 45th day following the then scheduled Letter of Credit Expiration Date for a Letter of Credit

and related Obligations,] and (e) with respect to all Obligations the date on which the maturity of the Obligations shall have been accelerated pursuant to Section 8.02 hereof.

"*Net Liquid Investments*" at a particular date shall mean the aggregate fair market value of the ownership interests in the Liquid Investments and the Liquid Partnerships solely owned beneficially and of record by one or more of the Borrowers, in each case whether now or hereafter acquired, created, executed, modified or otherwise existing (including, without limitation, during the pendency of any Bankruptcy Proceeding), *provided, however, that* only those Liquid Investments and the Liquid Partnerships that are free and clear of any and all Liens (other than in favor of the Bank under this Agreement or any other Loan Instrument) and for which the representations and warranties under this Agreement and the other Loan Instruments (whether specifically or otherwise) are true and correct at the time of calculation shall be included in such aggregate net asset value.

"*Note*" and "*Notes*" shall respectively mean any one or more of the Revolving Credit Note and the Term Note.

"*Obligations*" as of any date shall mean any and all of the obligations of the Borrower (i) to repay the balance of the Loans then outstanding (including future advances), including accrued and unpaid interest thereon, (ii) to pay or otherwise perform or satisfy all of the other amounts to be paid and obligations to be performed or otherwise satisfied by the Borrower under this Agreement and the other Loan Instruments (whether individually, jointly, severally or otherwise), (iii) to pay or otherwise perform or satisfy all of the other amounts to be paid and obligations to be performed or otherwise satisfied by the Borrower under any interest rate protection, foreign currency exchange, or other interest or exchange rate swap or hedging agreement or arrangement (whether individually, jointly, severally or otherwise) with the Bank or any of its affiliates, and (iv) to pay or otherwise satisfy any and all overdrafts of the Borrower honored by the Bank (in its sole and absolute discretion) [and other indebtedness, liabilities or obligations (whether under any note, guaranty or other instrument or document or otherwise) now or hereafter owed to the Bank by the Borrower (whether individually, jointly, severally or otherwise), together with accrued and unpaid interest thereon].

"*Organizational Document*" shall mean any instrument, indenture, agreement, charter, by-laws, certificate or other document or any statutory equivalent respecting any of the Pledged Securities or the organization, governance or operation of any issuer of any of the Pledged Securities, in each case whether now or hereafter existing, and irrespective of whether reduced to writing, and as each has been and hereafter may be supplemented, renewed, extended, modified, amended or restated from time to time.]

"*Other Taxes*" shall have the meaning assigned to it in Section [2.09] hereof.

"*Permitted Investments*" shall mean: (a) certificates of deposit, commercial paper or other market rate instruments with final maturities of [180 days] [one year] or less issued by [and normal business banking accounts with] (i) the Bank, (ii) any commercial bank that is organized under the laws of the United States or any state thereof and has total capital and surplus in excess of [\$1,000,000,000], or (iii) the holding company of any such bank [or any subsidiary of such holding company]; (b) commercial paper or other debt securities with final maturities of [180 days] [one year] or less from the date of acquisition and a rating from Standard & Poor's Ratings Group, a Division of McGraw Hill, Inc., or Moody's Investors Services, Inc., of not less than "A-1" or "P-1," respectively; (c) securities or other obligations with final maturities of [180 days] [one year] or less from the date of acquisition issued [or unconditionally guaranteed] by the government of the United States of America or any agency or instrumentality thereof (but only to the extent backed by the full faith and credit of the United States of America); (d) money market preferred stock with a Standard & Poor's Corporation rating of "A" or greater; and (e) shares of money market mutual or similar funds having net assets in excess of [\$1,000,000,000].

"*Permitted Lien*" for a referenced person shall mean any of the following: (a) statutory liens incurred in the ordinary course of the referenced person's business (i) for taxes, assessments or other governmental charges, levies or claims, (ii) of mechanics, carriers, warehouses, suppliers and laborers, (iii) respecting worker's compensation, unemployment insurance, statutory obligations or social security legislation, or (iv) required by law as a condition

precedent to the transaction of the referenced person's business or the exercise of any of the privileges or licenses by the referenced person subject to such Lien, *in each case* so long as the underlying obligations are not then required to be paid under Section 5.06 hereof and any reserve has been established [and any bond or insurance has been obtained] as required by that Section; (b) liens incurred in respect of judgments and awards discharged within 30 days from the making thereof; (c) in the case of real estate [other than Collateral], easements, rights-of-way, restrictions, covenants and other agreements of record and other similar charges or encumbrances not interfering with the ordinary conduct of the business of the referenced person; (d) in the case of personal assets and properties [other than Collateral], any deposits made or other security interests incurred in the ordinary course of the referenced person's business to secure the performance of its tenders, bids, leases (other than capitalized leases), contracts (other than for Indebtedness or guaranties or other Credit Support), and similar obligations arising as a result of progress payments under government contracts; (e) [the security interests or liens (including leases treated as security interests or liens) encumbering equipment purchased or property leased by the referenced person with financings permitted by [Section 6.02(a)(ii)] hereof so long as they respectively secure only the corresponding purchase money Indebtedness or capitalized lease obligations;] (f) the Liens granted from time to time to the Bank; and (g) currently existing Liens that [(A)] are disclosed in Schedule 3.11(a) hereto, [and] (B) do not encumber any Collateral [and (C) do not secure Indebtedness (including purchase money obligations),] but those Liens shall not be increased[, renewed or extended] or extended to other Indebtedness unless otherwise permitted by the terms and provisions of this Agreement.

"person" shall include (without limitation) any manner of association, business trust, company, corporation, estate, governmental or other Authority, joint venture, limited liability company, natural person, partnership, trust or other entity.

"Plan" and "Plans" shall have the meanings respectively assigned to them in Section 3.12(b) hereof.

["Pledged Security" and "Pledged Securities" for a referenced person shall respectively mean any and all of the following: (a) any and all of the referenced person's Investments and other financial assets [, including (without limitation) any Investment(s)] (i) in or to or issued by [_____] [the Borrower,] [any Surety] [or any other subsidiary or affiliate of the referenced person], [(ii) held in any account of or for the benefit of the referenced person by the Bank or any of its affiliates or designees,] [(ii) held in Account No(s). _____ of the referenced person by _____,] or (iv) consisting of any item listed or described as a Pledged Security in (A) Schedule _____ hereto, (B) any supplement or amendment to this Agreement or any schedule thereto, [(C) any Collateral Notice or Collateral Acknowledgment,] or (D) any UCC Financing Statement filed in connection with any of the [Obligations] [Guarantor's Obligations]; (b) any and all dividends, interest and distributions on, under or related to any of the foregoing items and splits and reclassifications thereof, including (without limitation) any and all securities, investment property, financial assets, investments, interests or other assets or properties received by the referenced person on account of or related to any of the foregoing items; (c) any and all options, warrants and other rights to acquire any such securities, investment property, financial assets, investments or interests; (d) any and all advances, indebtedness and other amounts (including interest) directly or indirectly owed to the referenced person on account of or related to any of the foregoing items; and (e) any and all security entitlements and other rights, powers, privileges, remedies and interests of the referenced person in, to and under any and all the foregoing and any and all Organizational Documents and Custody Documents pertaining thereto; *in each case* to the extent owned or held of record by or beneficially (or otherwise) for the referenced person, whether owned or held individually, jointly or otherwise, and whether now or hereafter acquired or created, executed, modified or otherwise existing (including, without limitation, during the pendency of any Bankruptcy Proceeding)].

"Pro Forma Effect" shall mean the effect(s) any action or other event proposed by or on behalf of the Borrower (if it were to happen as proposed) could have on (a) the assets, business, cash flow, expenses, income, liabilities, operations, properties, prospectus, reputation or condition, financial or otherwise, of the Borrower, (b) the ability of the Borrower to make payment, or to otherwise perform or satisfy, of all or any part of the Obligations as and when due, or (c) the Collateral, including (without limitation) the effect(s) of including any proposed sale or disposition, new or altered Indebtedness or other obligation (and the payments required thereunder), payment or other action or event in a

pro forma recalculation of the various financial (among other things) the various financial measurements and covenants set forth in this Agreement for or as at the end of the applicable computation or reporting period then most recently ended (based on the then most recently required compliance calculations and any and all subsequent pro forma calculations on a cumulative basis with respect to other action(s) or event(s), if and to the extent they occurred or continue to be proposed).

"*Representative*" and "*Representatives*" shall respectively mean any or all of: (a) in the case of any referenced person (including, without limitation, the Bank [or Letter of Credit issuer]), such referenced person's affiliates, directors, officers, employees, attorneys, agents and other representatives; and (b) in addition in the case of the Bank [or Letter of Credit issuer], such referenced person's participants, correspondents, [confirming banks,] custodians and designees and their respective affiliates, directors, officers, employees, attorneys, agents and other representatives.

"*Reserve Percentage*" for any Interest Period for the corresponding portion of the Loans shall mean the percentage established from time to time by the Board of Governors of the Federal Reserve System (or any successor) and then in effect for determining the maximum reserve requirement (including, but not limited to, any marginal reserve requirement) for a member bank of the Federal Reserve System in New York City with deposits exceeding [one] billion dollars (or any higher threshold) with respect to liabilities consisting of or including (among other liabilities) eurocurrency liabilities or liabilities respecting United States Dollar non-personal time deposits in the United States (whichever may be relevant to the particular Fixed Rate) with maturities equal or comparable to such Interest Period. The Borrower acknowledges and agrees that: any portion of the Loans bearing interest at the Adjusted LIBO Rate [or similar Fixed Rate] shall be deemed to constitute a "eurocurrency liability" as defined in Regulation D of said Board of Governors and to be subject to the reserve requirements of such Regulation; and the Reserve Percentage shall be calculated without any regard to or benefit of any credit, proration, deduction, offset or other reduction that otherwise may be available from time to time under such Regulation.

"*Revolving Credit Loans*" shall have the meaning assigned to it in Section 2.01(a) hereof.

"*Revolving Credit Note*" shall mean the Revolving Promissory Note dated as of [Agreement Date], issued by the Borrower to the Bank to evidence the Revolving Credit Loans (as referenced in Section 2.03(a) hereof), as the same may be modified, amended, restated or replaced from time to time in the manner provided therein.

"*Revolving Credit Period*" shall mean that period commencing on the Effective Date and terminating on the earlier of (a) _____ [(or such later date, if any, to which it may be extended pursuant to Section 2.01(d) hereof)], or (b) the Maturity Date.

"*Securities*" of any person shall mean any and all equity securities and debt securities, general or limited partnership interests, limited liability company memberships or interests, investment contracts, and any other instrument or interest commonly understood to be a security issued by that person.

"*Securities Act*" shall mean the Securities Act of 1933, as amended, or any corresponding provisions of any Applicable Law in any state [or foreign jurisdiction], and as the same may be supplemented, modified, amended, restated or replaced from time to time, and the rules and regulations promulgated thereunder, or any corresponding or succeeding provisions of Applicable Law.]

"*Subordinated Intercompany Debt*" shall mean any and all Indebtedness owed by the Borrower to any [Corporate] Guarantor that is (i) subordinated to the Obligations and "Guarantors' Obligations" (as defined in the Corporate Guaranty) pursuant to the relevant Guaranty with the lender thereof, or an Intercreditor Agreement between the lender thereof and the Bank, (ii) unsecured, and (iii) evidenced and otherwise documented either (A) as intercompany advances only through book entries on the respective books of the parties thereto, or (B) with Subordinated Intercompany Debt Documents duly approved by the Bank as contemplated in Section [6.12] hereof.]

"*Subordinated Intercompany Debt Document*" and "*Subordinated Intercompany Debt Documents*" shall

respectively mean any and all notes, drafts, debentures, indentures, agreements and other instruments and documents evidencing, governing, securing, assuring or respecting Subordinated Intercompany Debt, and any and all waivers, consents, agreements, instruments and other documents executed by the requisite person(s) pursuant to or in connection with any of the foregoing, *in each case* whether now or hereafter existing, and irrespective of whether reduced to writing, and as each may be executed, supplemented, modified, amended, restated or replaced from time to time.]

"*Subsidiary*" shall mean any corporation or other entity in respect of which a person at the time shall own directly, or indirectly (through one or more corporations, nominees or other persons or otherwise), at least one-half of the aggregate voting interests of such corporation or other entity, whether owned or held (i) of record or beneficially or (ii) individually, jointly or otherwise.

"*Surety*" and "*Sureties*" shall respectively mean any one or more of any [Guarantor or other] co-obligor, indemnitor, guarantor, pledgor or surety of or other person providing Credit Support for any of the Obligations or any Surety's Obligations, whether or not disclosed to the Borrower or any other Surety.

"*Surety's Obligations*" shall mean any and all: (a) "Guarantor's Obligations" or "Guarantors' Obligations" under (and as defined in) any Guaranty, as applicable; and (b) other Credit Support and obligations of any other Surety under any Loan Instrument.

"*Taxes*" shall have the meaning assigned to it in Section [2.09] hereof.

"*Term Loan*" shall have the meaning assigned to it in Section 2.02 hereof.

"*Term Note*" shall mean the Term Promissory Note dated as of [Agreement Date], issued by the Borrower to the Bank to evidence the Term Loan (as referenced in Section 2.03(b) hereof), as the same may be modified, amended, restated or replaced from time to time in the manner provided therein.

"*UCC*" shall mean the Uniform Commercial Code of the State of _____, or any corresponding or succeeding provisions of Applicable Law of the State of _____ [or other relevant jurisdiction], or any corresponding or succeeding provisions of Applicable Law, in each case as the same may have been and hereafter may be adopted, supplemented, modified, amended, restated or replaced from time to time.

Section 1.02. *Certain Definitions in Other Loan Instruments.* Capitalized terms used and not otherwise defined herein shall have the meanings respectively assigned to them in [the Individual Guaranty] [the Corporate Guaranty] [and] the other applicable Loan Instruments.

Section 1.03. *UCC Definitions.* The following terms shall have the meanings respectively assigned to them in the UCC: "chattel paper"; "commercial tort claim"; "deposit account"; "equipment"; "farm product"; "financial asset"; "fixture"; "general intangibles"; "goods"; "instrument"; "inventory"; "investment property"; "letter of credit rights"; "payment intangible"; "proceeds"; "products"; "securities account"; "security entitlement"; and "software". The term "document of title" shall mean a "document" as defined in the UCC.

Section 1.04. *Singular and Plural Terms.* Each definition in this Agreement or any other Loan Instrument using a singular capitalized term or other word or phrase also shall apply to the plural form of such term, word or phrase, and vice versa, and all references to the masculine gender shall include reference to the feminine or neuter gender, and vice versa, in each case as the context may permit or require.

Section 1.05. *Pronouns.* Each use in this Agreement or any other Loan Instrument of a neuter pronoun shall be deemed to include references to the masculine and feminine variations thereof, and vice versa, and a singular pronoun shall be deemed to include a reference to the plural variation thereof, and vice versa, *in each case* as the context may permit or require.

Section 1.06. *Including*. The term "including" shall mean "including (without limitation)", whether or not so stated. The terms "including", "including, but not limited to", "including (without limitation)" and similar phrases (i) mean that the items specifically listed after such term are examples of the provision preceding such term and are not intended to be all inclusive, (ii) shall not in any way limit (or be deemed or construed to limit) the generality of the provision preceding such term, and (iii) shall not in any way preclude (or be deemed or construed to preclude) any other applicable item encompassed by the provision preceding such term.

Section 1.07. *Section and Other Headings*. The table of contents and section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

ARTICLE II

Amounts and Terms of the Obligations

Section 2.01. *The Revolving Credit Loans*. (a) Upon the terms and provisions and subject to the conditions contained in this Agreement, the Bank shall make revolving credit loans (with all such loans by the Bank being referred to collectively as the "*Revolving Credit Loans*") from time to time during the Revolving Credit Period to the Borrower at its request (as provided in subsection (b), below) up to an aggregate maximum principal amount outstanding [(including the Letter of Credit Amount as if all outstanding Letters of Credit were fully advanced and outstanding)] at any one time not to exceed the Commitment; *provided that* the maximum obligation of the Bank shall be further limited to the amount of the Borrowing Base from time to time if the Borrowing Base is less than the Commitment. Subject to the terms and provisions of this Agreement, during the Revolving Credit Period the Borrower may reborrow Advances previously repaid by it.

(b) The Borrower from time to time may request an advance of Revolving Credit Loans pursuant to subsection (a) of this Section (as made by the Bank, an "*Advance*") by giving the Bank a signed notice of its request, or by giving the Bank notice of its request [both] by telephone [and] [or] telecopy of a signed notice and promptly confirming its request by delivery of an original copy of the signed notice to the Bank. The notice requesting an Advance (i) may be combined with a request under Section 2.04(c) hereof that all or a portion of the Advance bear interest at a Fixed Rate when made, (ii) shall be delivered to the Bank at least [one] Business Day prior to the requested Advance Date [or such greater number of Business Days as may be required under Section 2.04(c) hereof if combined with such a Fixed Rate request] (unless the Bank permits a shorter notice period in its sole and absolute discretion), (iii) shall be deemed to have been delivered on the following Business Day unless actually received by the Bank prior to [11:00 A.M.] (New York City time) on a Business Day, [and] (iv) [shall be irrevocable once given, and (v)] shall specify (A) the requested Advance Date, (B) the principal amount of the requested Advance and (C) the purpose or purposes to which the Borrower will apply the requested Advance. Each requested Advance shall be for an integral multiple of [\$10,000] in an amount that is not less than [\$100,000] or such larger multiple and minimum as may be required under Section 2.04(b) hereof if the Advance is to bear interest at a Fixed Rate. Subject to compliance with the terms and provisions of Article IV of this Agreement, the Bank shall make the requested Advance on the proposed Advance Date. Each Advance shall be made by crediting the demand deposit account maintained by the Borrower with the Bank at its office at _____, _____ [city], _____ [state].

(c) The Borrower may voluntarily elect to permanently reduce the Commitment in whole at any time, or in part from time to time in integral multiples of [\$100,000] [in an amount that is not less than \$ _____], by giving the Bank a signed notice of its election, or by giving the Bank notice of its election [both] by telephone [and] [or] telecopy of a signed notice and promptly confirming its election by delivery of an original copy of the signed notice to the Bank; *provided, however, that* no such reduction shall be made that would result in the payment or prepayment of any portion of any Fixed Rate Loan] [unless the Borrower repays such Fixed Rate Loan in full and concurrently pays all amounts (if any) required under Section 2.04(d) hereof]. Notice of such reduction election (i) shall be delivered to the Bank at least three Business Days prior to the requested reduction date (unless the Bank permits a shorter notice period in its sole and absolute discretion), (ii) shall be deemed to have been delivered on the following Business Day unless

actually received by the Bank prior to [11:00 A.M.] (New York City time) on a Business Day, and (iii) shall be irrevocable once given. Each such reduction shall be accompanied by a prepayment of the Revolving Credit Loans in the amount, if any, necessary to make the aggregate outstanding principal balance of the Revolving Credit Loans [plus the Letter of Credit Amount], after giving effect to the prepayment, not more than the Commitment (as so reduced) or the Borrowing Base, whichever is less.

(d) On or before _____, and each anniversary thereof (if extended as hereinafter provided), at the request of the Borrower (by a signed notice to the Bank), the Bank shall have the right in its sole and absolute discretion to extend the Revolving Credit Period for an additional year by giving written notice (which may be sent by telecopy) to that effect to the Borrower. Such extension (if made) also shall postpone the scheduled date for repayment of the Revolving Credit Loans to [the _____ anniversary of] the expiration of the Revolving Credit Period as so extended.

[(e) Upon the expiration of the Revolving Credit Period (other than through the occurrence of the Maturity Date), subject to compliance with the terms and provisions of Article IV of this Agreement as if the outstanding balance were a new Advance, the principal balance of the Revolving Credit Loans [and Letter of Credit Advances] outstanding at such time shall be deemed to be converted into a loan from the Bank on a term basis, repayable as provided in Section 2.05 hereof. The Loans as so converted are intended, and shall be deemed and construed, to be a continuation (without repayment, satisfaction, cancellation, novation, interruption, recommencement or readvance) of the original Advances then outstanding.]

Section 2.02. *The Term Loan.* Upon the terms and provisions and subject to the conditions contained in this Agreement, on the Effective Date the Bank shall make a term loan to the Borrower of \$_____ (the "Term Loan"). Subject to compliance with the terms and provisions of Article IV of this Agreement as if the Term Loan were an Advance, the Bank shall make the Term Loan advance on the Advance Date by crediting the demand deposit account maintained by the Borrower with the Bank at its office at _____, _____ [city], _____ [state]. [In addition, at the request of the Borrower the Bank in its sole and absolute discretion may readvance under the Term Loan amounts previously repaid up to a maximum principal amount outstanding at any one time of \$_____.] The Borrower may not reborrow portions of the Term Loan previously repaid by it. [On or before the 30th day preceding the then scheduled Maturity Date for the Term Loan, at the request of the Borrower (by a signed notice to the Bank), the Bank shall have the right in its sole and absolute discretion to extend the scheduled Maturity Date for repayment of the Term Loan for an additional year by giving written notice (which may be sent by telecopy) to that effect to the Borrower.]

Section 2.03. *The Notes.* (a) The obligation of the Borrower to repay the Revolving Credit Loans, together with interest thereon, shall be evidenced by the Revolving Promissory Note issued by the Borrower to the Bank in the aggregate principal amount of \$_____ in the form of Exhibit A hereto and dated as of the date hereof.

(b) The obligation of the Borrower to repay the Term Loan, together with interest thereon, shall be evidenced by the Term Promissory Note issued by the Borrower to the Bank in the aggregate principal amount of \$_____ in the form of Exhibit B hereto and dated as of the date hereof.

Section 2.04. *Interest; Optional Fixed Rates; Additional Interest.* (a) Except as otherwise provided in this Section, the Loans shall bear interest (computed on the basis of the actual number of days elapsed and a year of 360 days) on the unpaid principal balance of those Loans outstanding from time to time, from and including the date of advance until [OR: following the date of Advance through and including the date] such principal balance of such Loans is repaid in full (including, without limitation, any and all interest, fees and other amounts accrued, accruing or otherwise applicable during the pendency of any Bankruptcy Proceeding, irrespective of whether such interest, fees and other amounts are allowed or allowable as claims in any such proceeding), at a fluctuating annual rate that shall be equal to the sum of (i) the Alternate Base Rate per annum *plus* (ii) the Applicable Base Spread per annum, which fluctuating rate shall change from time to time simultaneously with each corresponding change in the Alternate Base Rate or Applicable Base

Spread. Interest on those Loans shall be payable by the Borrower in arrears: (x) prior to the Maturity Date, on the [first] Business Day of each calendar month; (y) in full on the Maturity Date; and (z) on demand after the Maturity Date.

(b) The Borrower from time to time may request that a portion of the Loans outstanding bear interest at the Adjusted LIBO Rate for an Interest Period of one, three or six months [or (subject to availability) nine or twelve months] (or such other Interest Periods as the Bank may offer in its sole and absolute discretion), which portion must be in an integral multiple of \$_____ in an amount that is not less than \$_____. In addition, the Bank from time to time in its sole and absolute discretion may offer to the Borrower other Fixed Rates and Interest Periods specified by the Bank with respect to portions of the Loans outstanding, which portion must be in such minimum amount and integral multiples as the Bank may stipulate, and which offer may be conditioned upon such supplements and variances to the terms and conditions of this Agreement as the Bank may stipulate. Any portion or portions of the Loans for which a Fixed Rate is in effect shall bear interest for the applicable Interest Period (computed on the basis of the actual number of days elapsed and a year of 360 days) at an annual rate equal to the corresponding Fixed Rate(s). Interest on the Fixed Rate Loans shall be payable by the Borrower in arrears: (i) prior to the relevant Maturity Date, on the last Business Day of each calendar month and on the last Business Day of the applicable Interest Period, unless the Borrower and Bank shall otherwise agree in connection with a particular Fixed Rate Loan; (ii) in full on the relevant Maturity Date; and (iii) on demand after the [relevant] Maturity Date.

(c) The Borrower may elect to have a Fixed Rate available or offered under subsection (b) of this Section apply by giving the Bank a signed notice of its election, or by giving the Bank notice of its election [both] by telephone [and] [or] teletype of a signed notice and promptly confirming its election by delivery of an original copy of the signed notice to the Bank (but the Bank in its sole and absolute discretion, and without any inquiry or liability, may act in accordance with the oral or standing instructions of the Borrower or custom and usage prior to or without ever receiving such request or confirmation). The notice electing a Fixed Rate (i) may be combined with a request under Section 2.01(b) hereof for an Advance, (ii) shall be delivered to the Bank [three] Business Days prior to commencement of interest at the Adjusted LIBO Rate or any other Fixed Rate (unless the Bank permits a shorter notice period in its sole and absolute discretion), (iii) shall be deemed to have been delivered on the following Business Day unless actually received by the Bank prior to [11:00 A.M.] (New York City time) on a Business Day, (iv) shall be irrevocable once given, and (v) shall specify the requested Fixed Rate, date of commencement, duration of Interest Period and portion of the Loans to which the Fixed Rate is to apply. The election by the Borrower of a Fixed Rate is conditioned upon each of the following:

(A) no more than five (5) Interest Periods shall be in effect at any one time unless the Bank in its sole and absolute discretion shall consent otherwise;

(B) the portion(s) of the Loans subject to a Fixed Rate(s) shall not exceed an amount equal to (X) the principal balance of the Loans outstanding on the date such Fixed Rate(s) would commence (including any concurrent Advance) less (Y) those portions thereof that are scheduled to be paid as set forth in Section 2.05 hereof within the requested Interest Period(s);

(C) no Event of Default or Default shall have occurred and be then continuing; and

(D) no adverse determination shall have been made by the Bank pursuant to subsection (e) of this Section.

From and after the last day of any Interest Period, interest shall accrue at the rate based upon the Alternate Base Rate (as provided in subsection (a) of this Section) until that portion of the principal balance is repaid or a new Fixed Rate with respect thereto is adopted hereunder [; *provided, however, that* if the Borrower fails to timely elect the application of a new Fixed Rate or give other applicable instructions with respect to the portion of the Loans for which an existing Fixed Rate is expiring, the Bank in its sole and absolute discretion may apply a new Fixed Rate thereto for an Interest Period of one month (or 30 days, as applicable) as if such rate and period had been duly elected by the Borrower, but the Bank shall have no liability and the rate based on the Alternate Base Rate shall apply if a new Fixed Rate is not so effected.] [If the Borrower has elected a Fixed Rate by notice but fails to specify the requested Interest

Period, then the Interest Period shall be one month (or 30 days, as applicable) unless the Bank shall stipulate otherwise in quoting a particular Fixed Rate.] If any Interest Period ends on a day other than a Business Day, such Interest Period shall be extended to the next succeeding day that is a Business Day [unless (in the case of a Loan bearing interest at the Adjusted LIBO Rate) such succeeding day would fall in the next calendar month, in which event such Interest Period shall end on the immediately preceding Business Day.

(d) In addition to the payment of principal, interest and fees as stated in this Article, there shall be any increase in the direct or indirect costs to the Bank of lending, funding or maintaining any Fixed Rate Loan, or any reduction in any amount received or to be received by the Bank hereunder, due to:

(i) the introduction of or any change in any Applicable Law or the interpretation or administration thereof, including (without limitation) the imposition, modification or application of, or increase in, (A) any reserve, capital adequacy, special deposit, assessment or similar requirements, (B) any requirement to withhold or deduct from any amount payable to the Bank any taxes, levies, imposts, duties, fees, deductions, withholdings or charges of a similar nature (other than federal, state and local income and franchise taxes imposed upon the Bank), or any interest thereon or any penalties with respect thereto, imposed, levied, collected, assessed, withheld or deducted by any Authority, including subdivisions and taxing authorities thereof, or (C) any other restriction or condition affecting a Fixed Rate or this Agreement;

(ii) the compliance by the Bank with any regulation, guideline or request or change therein from any central bank or other Authority (whether or not having the force of law);

(iii) the failure by the Borrower to take or accept any requested Advance for which it also requested a Fixed Rate, or the failure of the Borrower to satisfy the conditions precedent to the making of any such Advance or the establishment of any requested Fixed Rate;

(iv) the repayment, prepayment or other reduction, in whole or in part, of any Fixed Rate Loan prior to the natural expiration of the applicable Interest Period, whether as a result of miscalculation, change in circumstance, consent of the Bank, acceleration of the Obligations or otherwise; or

(v) the failure by the Borrower to pay the accrued and unpaid interest on or repay the outstanding principal balance of any Fixed Rate Loan, or any portion thereof, when required by the terms and provisions of this Agreement;

then the Borrower from time to time, upon demand by the Bank, shall pay to the Bank additional amounts sufficient to indemnify the Bank against and reimburse it for such increased costs and reduced receipts (but only to the extent such increased cost or reduced receipt has not already been included in the calculation of any interest rate or fee or otherwise reimbursed under any other subsection of this Section), including (without limitation) amounts sufficient to compensate the Bank for any breakage or other costs and any decrease in margin or other return incurred in connection with the repayment, prepayment or other reduction of any Fixed Rate Loan and the liquidation or redeployment of the affected deposits or other funding arrangements[, and including (without duplication) the liquidated damages, if any, specified in subsection (h) of this Section with respect to the repayment, prepayment or other reduction in any Fixed Rate Loan]. A certificate as to the amount of such increased costs and reduced receipts submitted to the Borrower by the Bank shall be conclusive as to the existence and amount thereof absent manifest error. If the Bank has not received payment for such amounts within five (5) Business Days of the date of such certificate, the Bank may apply all or a portion of the next succeeding payment or prepayment made by the Borrower, whether intended by the Borrower to be interest, principal or otherwise, first to the reduction of the amounts of such increased costs and reduced receipts.

(e) If, on or before the date of commencement of any Interest Period, the Bank shall have determined (which determination shall be final, conclusive and binding on the Borrower) that (i) it is impermissible for the Bank to make any Fixed Rate Loan due to any of the circumstances described in clauses (i) and (ii) of subsection (d) of this Section, (ii) deposits in United States Dollars in amounts equal to the portion of the Loans to be subject to a Fixed Rate for that

Interest Period are not being offered to the Bank in the applicable market, (iii) by reason of changes affecting the applicable market, the Fixed Rate to be in effect for that period will not adequately and fairly reflect the cost to the Bank of maintaining for that period the portion of the Loans for which the Fixed Rate was requested, or (iv) the Fixed Rate or requested Interest Period is otherwise unavailable, then the portion of the Loans so affected shall continue to bear interest based upon the Alternate Base Rate as provided in subsection (a) of this Section. Furthermore, if the Bank shall have determined (which determination shall be final, conclusive and binding upon the Borrower) that it is impermissible for the Bank to continue any Fixed Rate Loan during the relevant Interest Period due to any of the circumstances described in clauses (i) and (ii) of subsection (d) of this Section, then (A) that Interest Period shall be deemed to have been terminated as of the date specified in that determination, (B) the Borrower shall indemnify the Bank against and reimburse the Bank for any increased costs or reduced receipts relating to that termination as provided in subsections (d) and (e) of this Section as if there had been a voluntary prepayment of that Fixed Rate Loan by the Borrower, and (C) after the date specified in that determination the portion of the Loans so affected shall bear interest based upon the Alternate Base Rate as provided in subsection (a) of this Section. The Bank shall notify the Borrower in the event the Bank makes such a determination; *provided, however, that* the failure to give such notice shall not affect the validity of that determination or the continued accrual of interest based upon the Alternate Base Rate on the applicable portion of the Loans.

(f) In addition to the payment of interest or fees under this Agreement, if the Bank or any of its affiliates determines or has determined that (i) compliance with any existing or future Applicable Law, including (without limitation) any regulation, guideline or request from any central bank or other Authority (whether or not having the force of law), or any change therein or in the interpretation or administration thereof, affects or would affect the amount of capital required or expected to be maintained by the Bank or its affiliate (taking into account its policies with respect to capital adequacy and desired rate of return on capital), and (ii) the amount of such capital is increased by or based upon any commitment or funding to the Borrower or any other obligation of the Bank or its affiliates under or related to this Agreement or any other Loan Instrument (using such averaging, attribution and allocation methods as the Bank may reasonably deem appropriate), then the Borrower from time to time, upon demand by the Bank, shall pay to the Bank or its affiliate additional amounts sufficient to compensate it for those circumstances (without, however, duplicating any amount paid by the Borrower pursuant to subsection (d) of this Section). A certificate as to the amount of such compensation submitted to the Borrower by the Bank shall be conclusive as to the existence and amount thereof absent manifest error. If the Bank has not received payment for such amounts within five (5) Business Days of the date of such certificate, the Bank may apply all or a portion of the next succeeding payment or prepayment made by the Borrower, whether intended by the Borrower to be interest, principal or otherwise, first to the reduction of such billed amount.

(g) Any payment of principal, interest or other amount that is not paid when due under this Agreement or any other Loan Instrument, and all of the Loans [after notice from the Bank] during the continuance of any Event of Default, shall, to the extent permitted by Applicable Law, bear interest (computed on the basis of the actual number of days elapsed and a year of 360 days), until the overdue amount is paid in full (with interest) or such Event of Default is no longer continuing, as applicable, at a fluctuating annual rate equal to the sum of (i) the higher of (A) the sum of (1) the Alternate Base Rate per annum *plus* (2) the Applicable Base Spread per annum, or (B) the applicable Fixed Rate (if any) (including the Applicable Spread) per annum, *plus* (ii) four percent (4.00%) per annum (which fluctuating annual rate under this subsection shall change from time to time simultaneously with each change in the Alternate Base Rate, Fixed Rate or Applicable Spread), which interest rate shall be payable by the Borrower with respect to such amount(s) instead of the rate (if any) established by subsection (b) of this Section with respect thereto, and which interest amount(s) shall be payable upon demand, subject, however, to the maximum rate permitted by Applicable Law as provided in Section [2.11] hereof.

(h) [Alternate D: In the event of the repayment, prepayment or other reduction, in whole or in part, of any Fixed Rate Loan prior to the natural expiration of the applicable Interest Period, whether with the consent of the Bank as and if required, because of acceleration or otherwise, the Borrower shall pay a fee to the Bank as liquidated damages with respect to interest shortfalls (and not as a penalty), payable five (5) Business Days after the Fee Determination Date (as

defined below), equal to the present value of the monthly revenue shortfalls, if any [each monthly revenue shortfall to be determined, for each Fixed Rate Loan, by subtracting the Liquidation Rate (as defined below) from the Fixed Rate Loan Rate (as defined below) and multiplying such difference, if positive, by the Principal Liquidation Amount (as defined below)], over the term of each Fixed Rate Loan, such present value ("PV") to be determined at the Liquidation Rate and calculated, for the months from the Fee Determination Date to the natural expiration of the applicable Interest Period, in accordance with the following formula:

$$PV = [P \text{ [Left normal factor semidirect product] } (R - T)] \text{ [Left normal factor semidirect product] } [(1 - (1 + T)^{-n})/T]$$

.....where

R = the Fixed Rate Loan Rate;

T = the Liquidation Rate;

n = the number of months from the Fee Determination Date to the natural expiration of the applicable Interest Period; and

P = the Principal Liquidation Amount of such Fixed Rate Loan.

In the case of a partial payment of the Loans, the calculation of the fee described above shall be made only with respect to each Fixed Rate Loan that has been repaid in whole or in part (repayments being applied to the Fixed Rate Loans in inverse order of the natural expiration of their applicable Interest Periods). In the event portions of a Fixed Rate Loan mature in installments, the foregoing calculation shall be made with respect to each such installment as if it were a separate Fixed Rate Loan, with the amount and maturity of the applicable installment being considered the Principal Liquidation Amount and the natural expiration of the Interest Period, respectively. For the purposes hereof: "*Liquidation Rate*" means one-twelfth of the interest rate per annum equal to the latest three-week moving average of the yields to maturity of U.S. Treasury notes trading closest to par value and maturing on, or within three months of, the natural expiration of the applicable Interest Period, such three-week moving average to be determined by the Bank as of the Fee Determination Date on the basis of yields of such U.S. Treasury notes published by The Wall Street Journal for each of the fifteen Business Days preceding the Fee Determination Date, or if such publication shall be suspended or terminated or such yields shall otherwise not be so published for any such Business Day, on the basis of such yields reported by dealers of U.S. Treasury notes and published by the Federal Reserve Bank of New York or, if such publication shall be suspended or terminated, on the basis of quotations of such yields received by the Bank from three New York dealers of U.S. Treasury notes of recognized standing selected by the Bank; "*Fixed Rate Loan Rate*" means one-twelfth of [(A)] the applicable Fixed Rate [minus (B) [SPREAD]]; "*Fee Determination Date*" means the date on which the Fixed Rate Loans, in whole or in part, are so repaid; and "*Principal Liquidation Amount*" means that amount of the principal of the Fixed Rate Loan(s) that was prepaid.

Section 2.05. *Voluntary and Mandatory Payments.* (a) The Borrower may voluntarily elect to prepay the Loans in full at any time, or in part from time to time in integral multiples of \$10,000 in an amount that is not less than \$100,000, in either case without premium or penalty or reduction of the Commitment, by giving the Bank a signed notice of its election, or by giving the Bank notice of its election [both] by telephone [and] [or] telecopy of a signed notice and promptly confirming its election by delivery of an original copy of the signed notice to the Bank; *provided, however, that* [the Borrower may not prepay any portion of the Term Loan prior to _____, unless the Borrower concurrently pays a prepayment penalty to the Bank of _____% of the amount prepaid; and *provided further that*] the Borrower shall not in any event prepay any portion of any Fixed Rate Loan [unless the Borrower concurrently repays such Fixed Rate Loan in full and concurrently pays all amounts (if any) required under Section 2.04(d) hereof]. [However, the preceding

_____ % prepayment penalty will not apply to any scheduled payment or mandatory prepayment of the Term Loan made as scheduled.] Notice of such prepayment election (i) shall be delivered to the Bank at least three Business Days prior to the requested prepayment date (unless the Bank permits a shorter notice period in its sole and absolute discretion), [and] (ii) shall be deemed to have been delivered on the following Business Day unless actually received by the Bank prior to [11:00 A.M.] (New York City time) on a Business Day[, and (iii) shall be irrevocable once given]. The Borrower shall repay the Loans on the date and in the amount specified in such notice of prepayment election. [Each voluntary or mandatory prepayment of the Loans [OR: Any prepayment of the Term Loan] [in full] shall be accompanied by payment in full of all interest accrued to the date of prepayment and related fees and expenses.] Each voluntary [and mandatory] prepayment made on the Term Loan shall be applied to reduce the installment (if any) and final payments due under subsection (d) of this Section in the inverse order of their respective due dates.

(b) The Borrower shall repay the Revolving Credit Loans immediately at any time and from time to time in an amount by which the outstanding principal balance of the Revolving Credit Loans [plus the Letter of Credit Amount together] exceeds the lesser of (i) the Commitment or (ii) the Borrowing Base[; *provided that* the Borrower instead may cure any such Borrowing Base deficiency through the delivery of additional Collateral as provided in Section 5.10 hereof]. [In the event the Letter of Credit Amount alone exceeds the lesser of the Commitment or the Borrowing Base, then the Borrower immediately shall repay the Revolving Credit Loans in full and deposit cash collateral with the Bank in an amount equal to the remaining deficiency (which collateral shall be deposited and administered in the manner contemplated in Section 8.02(d) hereof)[; *provided that* the Borrower instead may cure any such Borrowing Base deficiency through the delivery of additional Collateral as provided in Section 5.10 hereof].]

(c) The Borrower shall repay the principal balance then outstanding under the Revolving Credit Loans in full on _____, _____ (or such later date, if any, to which it may be extended as provided in Section 2.01(d) hereof [or converted into a loan on a term basis as provided in Section 2.01(e) hereof]). [If the Revolving Credit Loans are converted into a loan on a term basis pursuant to Section 2.01(e) hereof, the Borrower shall repay the converted Revolving Credit Loans in [quarterly] installments on the [first] Business Day of each calendar [quarter] in the amounts listed below during the referenced period, commencing with the first [quarter] ending after the end of the Revolving Credit Period:

Year	Amount of Each [Quarterly] Install- ment	Year	Amount of Each [Quarterly] Install- ment
One	\$ _____	Three	\$ _____
Two	\$ _____	Four	\$ _____

(Year one is the calendar year in which the Revolving Credit Period ends, year two is the next calendar year, etc.) The Borrower shall repay the principal balance then outstanding under the converted Revolving Credit Loans in full on _____ 20 _____]

(d) The Borrower shall repay the Term Loan in [quarterly] installments on the [first] Business Day of each calendar [quarter] in the amounts listed below during the referenced period, commencing with the [quarter] ending _____, 20 _____:

Year	Amount of Each [Quarterly] Install- ment	Year	Amount of Each [Quarterly] Install- ment
_____	\$ _____	_____	\$ _____
_____	_____	_____	_____

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_____	\$ _____	_____	\$ _____
_____	_____	_____	_____
_____	\$ _____	_____	\$ _____
_____	_____	_____	_____
_____	\$ _____	_____	\$ _____
_____	_____	_____	_____

The Borrower shall repay the principal balance then outstanding under the Term Loan in full on

20_____

(e) [The Borrower shall make a mandatory prepayment of the Loans promptly, but in any event within three Business Days, following each receipt of net cash proceeds by the Borrower [or any Corporate Guarantor] in an amount equal to the net cash proceeds received in connection with (1) any voluntary sale, lease, transfer, assignment, liquidation or other disposition of (A) any equity interest in the Borrower [or any Corporate Guarantor] [or other subsidiary of the Borrower] or (B) any Collateral other than Inventory as expressly permitted by Section 7.03(a) hereof or (2) any involuntary transfer, assignment, discontinuation, liquidation, condemnation, destruction or other disposition of any Collateral, *in each case* other than any Excluded Disposition (as defined below); *provided, however, that* the first \$_____ in the aggregate of net cash proceeds received by the Borrower in connection with any such asset disposition (other than any Excluded Disposition) within any fiscal year shall be excluded for the purpose of determining such Mandatory Prepayments. To the extent applicable and not already reflected, the Borrower may in determining such net cash proceeds deduct reasonable and usual costs of voluntary disposition (other than payments to affiliates), and real estate and transfer taxes paid or currently payable in respect to the transaction, as well as the principal amount of any permitted purchase money indebtedness repaid from the proceeds of any disposition of the underlying collateral. The Borrower shall give the Bank prompt notice of any occurrence that could result or has resulted in any of the events described above involving net cash proceeds in excess of \$_____, which notice shall specify the material terms thereof, and upon the request of the Bank the Borrower shall give the Bank copies of all related documentation as it becomes available to the Borrower. "*Excluded Disposition*" shall mean any sale or other voluntary or involuntary disposition of any asset or property specified in Section 7.03(b) hereof if the conditions of that subsection are satisfied and the repair, rebuilding, replacement or acquisition contemplated by that subsection are completed within [90] days or such additional period of time in the case of involuntary dispositions as may be reasonably necessary for completion. This subsection is not intended, and shall not be deemed or construed, to authorize or permit any sale or other disposition of any securities or Collateral, irrespective of whether any payment is made as required hereunder.]

(f) Notwithstanding anything to the contrary contained in this Agreement or any other Loan Instrument, the Borrower acknowledges and agrees that any reimbursable amount or expense or other advance that is not described elsewhere in this Section and for which no due date or time period for payment is specified in this Agreement or any other Loan Instrument, together with interest thereon as provided in Section 2.04, shall be due and payable on demand, and that the representations, warranties, covenants and other terms and provisions of this Agreement and the other Loan Instruments set forth herein and therein are not intended and shall not be deemed or construed to limit the demand nature of the obligations of the Borrower in respect of such other amount, expense or advance hereunder and thereunder, without, however, in any way limiting the applicability of the terms and provisions of this Agreement and the other Loan Instruments in respect of any collateral or any of the other Loans or other Obligations of the Borrower.

(g) Nothing contained in this Section shall be deemed or construed to be a waiver of any term or provision of this Agreement respecting the reimbursement of any increased costs or reduced receipts of the Bank in the event of any prepayment or repayment (whether mandatory or otherwise) of any portion of any of the Fixed Rate Loans.

(h) The Obligations then outstanding shall be due and payable in full on the Maturity Date, (whether as scheduled, through acceleration or otherwise), and to the extent arising thereafter shall be due and payable on demand, *in each case*

notwithstanding anything in this Article to the contrary.

Section 2.06. *Commitment Fee.* During the Revolving Credit Period, the Borrower shall pay to the Bank on the first Business Day of January, April, July and October of each year, and on the last day of the Revolving Credit Period, in arrears, commencing on the first such date following the Effective Date, a fee respecting the availability of the Commitment (the "*Commitment Fee*") equal to _____ percent (%) per annum (computed on the basis of the actual number of days elapsed and a year of 360 days) of the average daily unadvanced portion of the Commitment during the then most recently concluded calendar quarter or portion thereof (with the Letter of Credit Amount being considered an advance under the Commitment).

Section 2.07. *Letters of Credit.* (a) Upon the terms and provisions and subject to the conditions contained in this Agreement, in lieu of a cash advance under the Commitment the Bank in its sole and absolute discretion may issue or cause the issuance of Letters of Credit from time to time upon the request of the Borrower [up to a cumulative maximum face amount (whether or not advanced) not to exceed \$ _____] in order to secure the debts or obligations of the Borrower or any Surety; *provided that* the Bank's agreement to consider the issuance of Letters of Credit shall terminate on the first to occur of the Maturity Date and the expiration of the Revolving Credit Period; and *provided further that* the Bank may not consider the issuance of any Letter of Credit if the face amount of the Letter of Credit to be issued plus the sum of the Letter of Credit Amount and the principal balance outstanding under the Revolving Credit Loans together would exceed the lesser of the Commitment or the Borrowing Base.

(b) The Borrower may request that a Letter of Credit be issued pursuant to subsection (a) of this Section by giving the Bank a signed notice of its request, or by giving the Bank notice of its request [both] by telephone [and] [or] teletype of a signed notice and promptly confirming its request by delivery of the original copy of the signed notice to the Bank. The notice requesting a Letter of Credit (i) shall be delivered to the Bank at least five Business Days prior to the requested Letter of Credit Issuance Date (unless the Bank permits a shorter notice period in its sole and absolute discretion), (ii) shall be deemed to have been delivered on the following Business Day unless actually received by the Bank prior to [11:00 A.M.] (New York City time) on a Business Day, [and] (iii) [shall be irrevocable once given, and (iv)] shall specify (A) the requested Letter of Credit Issuance Date, face amount and expiration date of the desired Letter of Credit, (B) the beneficiary to whom it is to be issued (each a "*Letter of Credit Beneficiary*"), and (C) the purpose for which the Letter of Credit is being requested. On or before the requested Letter of Credit Issuance Date, the Borrower also must complete and deliver to the Bank an application for each requested Letter of Credit in form and substance acceptable to the Bank [and issuer] and pay the issuer's normal application and issuance fees for each requested Letter of Credit. Each requested Letter of Credit shall be in a face amount of not less than \$10,000 and shall terminate no later than the first anniversary of the Letter of Credit Issuance Date or the scheduled expiration of the Revolving Credit Period, whichever occurs first. The issuance of each Letter of Credit is subject to compliance on the Letter of Credit Issuance Date with the conditions precedent to obtaining an Advance under this Agreement and subject always to the sole and absolute discretion of the Bank. Each Letter of Credit will be issued on a standard form of the issuing bank then in effect [(the Bank's current form of standby Letter of Credit is annexed hereto as [Exhibit G] hereto)]. Each Letter of Credit shall be governed by and construed in accordance with: (a) the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600, as adopted, supplemented, revised and restated from time to time (the "*UCP*"); and (b) to the extent the UCP is not dispositive, the Applicable Law pertaining in the State of _____ (including the UCC). The requested Letter of Credit may be delivered by the Bank to the Letter of Credit Beneficiary, to the Borrower or to such other person as the Borrower reasonably may request. The Letters of Credit may not be transferred or assigned without (x) the prior written consent of the Bank [and issuer], (y) submission to the Bank of a notice of transfer in the form annexed to the Letter of Credit, and (z) the payment of the issuer's normal transfer fee.

(c) Each of the Letters of Credit may be drawn upon by presentment to the Bank, at its office (or such other office as may be specified therein), of the original Letter of Credit, duly endorsed by the Letter of Credit Beneficiary (which presentment may be waived by the Bank with respect to Letters of Credit permitting multiple drawings), together with a sight draft payable to the Letter of Credit Beneficiary or its order and the Letter of Credit Beneficiary's certificate that it

is entitled to the amount of the sight draft as a result of nonpayment of the obligations thereby secured, each substantially in the form annexed to the relevant Letter of Credit. The promissory note or other instrument evidencing the obligation thereby secured, duly endorsed to the Bank, also shall be presented with the Letter of Credit if that obligation will be paid in full as a result of the payment in accordance with the Letter of Credit. If the relevant note or other instrument will not be so paid in full, the Bank (in its sole and absolute discretion) may require that the person presenting the Letter of Credit present it to the Bank for copying and return. The Bank [or issuer] may accept any draft, certificate or other document reasonably conforming in form and substance to the requirements described in the Letter of Credit and the forms annexed thereto, and may afford the Letter of Credit Beneficiary notice of and an opportunity to correct non-conforming items capable of cure, each in the sole and absolute discretion of the Bank or issuer and without any notice to or assent from the Borrower. The Bank, any other issuer and their respective Representatives may in good faith (without inquiry) with respect to a particular Letter of Credit: (i) act in reliance upon any written, telegraphic, facsimile, electronic, telephonic, oral or other request, notice or communication believed to be from, by, on behalf of or authorized by the Borrower, the Letter of Credit Beneficiary or their respective Representatives, successors or assigns, whether or not from or signed by an authorized person; (ii) accept or pay as complying with the terms of the relevant Letter of Credit any drafts or other documents that appear on their face (A) to be reasonably conforming to the required forms or (B) to be issued or signed by the Letter of Credit Beneficiary or other proper party or their respective Representatives, successors or assigns (including, without limitation, any bankruptcy trustee or similar official); (iii) reject any presentment, draft or other document that it determines (in its sole and absolute discretion) to not conform to the requirements of the Letter of Credit or this Agreement; or (iv) act or refrain from acting in reliance upon or in accordance with the UCP, Applicable Law (including, without limitation, statutes, orders, regulations, decisions or directives) or customs in effect in the place of issuance, confirmation, presentment, negotiation or payment of the Letter of Credit.

(d) Each amount paid by the Bank or its designee pursuant to a Letter of Credit or otherwise in respect of the obligation thereby secured (a "*Letter of Credit Advance*") shall be repaid by the Borrower to the Bank on the same day payment is made by the Bank or its designee. If a Letter of Credit Advance is not so repaid (without, however, in any way consenting to such non-payment), (i) such Letter of Credit Advance shall be deemed to be an Advance of a Revolving Credit Loan and shall be repayable ON DEMAND, together with interest thereon at the rate specified in this Article for overdue payments of the Loans, pursuant to the terms and provisions of this Agreement notwithstanding any term or provision contained in any Letter of Credit application to the contrary, and (ii) the resulting default shall not be deemed or construed to have been cured until payment has been duly made. Nothing in this subsection, however, is intended to limit the ability of the Borrower to request an Advance prior to an anticipated Letter of Credit payment date or (assuming satisfaction of the requisite conditions) to apply the proceeds thereof to the payment of a Letter of Credit Advance.

(e) The Borrower shall pay to the Bank on each of the quarterly anniversaries of the issuance of each outstanding Letter of Credit, in advance, a fee respecting each Letter of Credit (the "*Letter of Credit Fee*") for the quarter commencing with that date (computed on the basis of the actual number of days in such quarter and a year of 360 days) equal to [two percent (2%)] per annum of the unadvanced face amount thereof, with such amount being determined as of the Business Day immediately preceding the quarterly payment date; *provided that* the Borrower shall pay that fee on the Letter of Credit Issuance Date, in advance, for the forthcoming quarter; and *provided further that* the minimum fee for any Letter of Credit shall be the greater of (i) [one-half percent (0.50%)] of the face amount or (ii) [\$1000], irrespective of any smaller face amount or shorter expiry. The Borrower also shall pay to the Bank any and all customary fees (without duplication of the Letter of Credit Fee), commissions and/or charges of the Bank for any increase, extension, renewal, amendment or transfer of the Letter of Credit. The Borrower also shall pay to the Bank any fees or other charges of any other issuer or any participant, correspondent, confirming bank, custodian or designee of the Bank or other issuer involved with the Letter of Credit.

(f) In addition to the payments of principal, interest and fees as stated above, if there shall be any increase in the direct or indirect costs to the Bank of issuing, causing the issuance of or maintaining a Letter of Credit, or any reduction

in any amount received or to be received with respect to a Letter of Credit by the Bank hereunder, due to:

(i) the introduction of or any change in any Applicable Law or the interpretation or administration thereof, including (without limitation) the imposition, modification or application of (A) any reserve, capital adequacy, special deposit, assessment or similar requirement respecting Letters of Credit issued by, assets held by, or deposits in or for the account of the Bank or other issuer of a Letter of Credit, (B) any requirement to withhold or deduct from any amount payable to the Bank hereunder, or payable directly or indirectly to the issuer of a Letter of Credit, any taxes, levies, imposts, duties, fees, deductions, withholdings or charges of a similar nature (other than federal, state and local income and franchise taxes imposed upon the Bank), or any interest thereon or any penalties with respect thereto, imposed, levied, collected, assessed, withheld or deducted by any governmental Authority, including subdivisions and taxing authorities thereof, or (C) any other restriction or condition affecting a Letter of Credit or this Agreement; or

(ii) the compliance by the Bank or other issuer of a Letter of Credit with any regulation, guideline or request from any central bank or other Authority (whether or not having the force of law);

then the Borrower from time to time, upon demand by the Bank, shall pay to the Bank additional amounts sufficient to indemnify the Bank or other issuer against and reimburse the Bank or other issuer for such increased costs and reduced receipts. A certificate as to the amount of such increased costs and reduced receipts submitted to the Borrower by the Bank shall be conclusive as to the existence and amount thereof absent manifest error. If the Bank has not received payment for such amounts by the time it receives from the Borrower the next succeeding payment or prepayment of a portion of the Obligations, whether intended by the Borrower to be interest, principal or otherwise, the Bank may apply such payment or prepayment first to the reduction of the amounts of such costs and receipts.

(g) The Obligations shall not otherwise be deemed to have been fully paid or satisfied until all of the Letters of Credit have been paid (and the corresponding Letter of Credit Advance repaid by the Borrower) or have been surrendered to the Bank for return to and cancellation by the issuer(s) thereof; *provided that* any Letter of Credit that has not been presented for payment shall be deemed for this purpose to have been canceled on the forty-fifth day following the stated expiry date, without, however, relieving the Borrower of any of the Obligations with respect to any such Letter of Credit that is in the process of payment.

(h) In addition to the payment of fees and other amounts as stated above, [after notice from the Bank] during the continuance of any Event of Default prior to maturity, and at all times on and after the Maturity Date, the Borrower shall pay to the Bank a fee respecting the Letters of Credit outstanding from time to time during such period(s) equal to four percent (4.00%) per annum of the outstanding face amount thereof (computed on the basis of the actual number of days elapsed and a year of 360 days), which amounts shall be payable by the Borrower at the same times as the regular interest payments on the Loans required by Section 2.04 of this Agreement, subject, however, to the maximum rate permitted by Applicable Law as provided in Section 2.11, hereof.

(i) Each of the payment obligations, covenants and other obligations and agreements of the Borrower contained in this Agreement and the other Loan Instruments shall be paid and satisfied by the Borrower strictly in accordance with their terms *in each case* without regard to, none of the Bank, any other issuer and their respective Representative shall have any liability or responsibility for, and the Borrower hereby expressly waives any claim or defense against or in respect of each such person with respect to: (i) any payment or other action or inaction under or with respect to any Letter of Credit in accordance with the terms and provisions of the relevant Letter of Credit, this Agreement or any other Loan Instrument; (ii) any payment against presentation of any required draft or other document that does not reference, or incompletely or incorrectly references, the existence, amount, date, number or other aspect of the relevant Letter of Credit; (ii) any presentment or payment under or with respect to any Letter of Credit after the expiry thereof in reliance upon or in accordance with the UCP, Applicable Law (including, without limitation, statutes, orders, regulations, decisions or directives) or customs in effect in the place of issuance, confirmation, presentment, negotiation or payment of the Letter of Credit; (iv) the form, validity, sufficiency, completeness, accuracy, genuineness or legal effect of (A) any Letter of Credit, (B) any draft or other document required or permitted under the relevant Letter of

Credit, this Agreement or any other Loan Instrument, or (C) any instrument or document transferring or assigning the Letter of Credit, any rights or benefits thereunder or any proceeds thereof (in whole or in part), or purporting to do so, even if any of them should in fact prove to be in any or all respects invalid, insufficient, ineffective, incomplete, inaccurate, fraudulent or forged; (v) the failure of any person to surrender, obtain, forward or otherwise deal with the Letter of Credit or any other document other than the surrender and obtaining of any drafts or other documents specifically required by the terms of the Letter of Credit; (vi) any failure to note the amount of any draft on the reverse of the Letter of Credit; (vii) any and all errors, omissions, interruptions or delays in transmission or delivery of any notice, request, demand or other communication permitted or required to be given under this Agreement or any other Loan Instrument, whether by mail, cable, telegraph, telex, telecopy or otherwise, whether or not an error in processing, cipher, translation or otherwise or an error in interpretation (of technical terms or otherwise); (viii) any loss or delay in the delivery of any draft, document or proceeds; (ix) the existence, character, quality, quantity, condition, packing, value, or delivery of any goods or other property relating to any Letter of Credit, the time, place, manner or order in which shipment may have been made, the existence, form, validity, sufficiency or legal effect of any insurance covering or purporting or required to cover any such goods, or any act or omission of any insurer, shipper, warehouseman, carrier, correspondent or other person; or (x) without limiting the foregoing, any consequences arising from causes beyond the control of the Bank, any other issuer or any of their respective Representatives or any act or omission by any of them not done or omitted in bad faith (each of which provision, if contained in the Letter of Credit itself, may be waived by the Bank or other issuer in its sole and absolute discretion). If the Letter of Credit provides that payment is to be made by a designated Representative of the Bank or other issuer, none of the Bank, any other issuer or any of their respective Representatives (other than such designated Representative) shall be responsible or otherwise liable for the failure of any document specified in the Letter of Credit to come into the hands of the Bank or other issuer or for any delay in connection therewith, and the obligation of the Borrower to reimburse the Bank or any other issuer for payments made or obligations incurred shall not be affected by such failure or delay in the receipt by the Bank or any other issuer of any or all of such documents whether sent to the Bank or any other issuer in one or multiple mailings. In any event, neither the Bank nor any other issuer shall be responsible for any error, neglect, suspension or insolvency of any of the Representatives of the Bank or other issuer designated to confirm or pay with respect to any Letter of Credit. The Borrower acknowledges and agrees that this Agreement has been entered into and all Letters of Credit have been obtained by the Borrower for commercial purposes. The Borrower agrees that it will not raise (as a defense or otherwise), and hereby expressly waives, any immunity or exemption from liability, jurisdiction, forum or service that may now or hereafter be accorded to the Borrower, its Representatives or their respective assets and properties. The preceding agreements and waivers are not intended (and shall not be deemed or construed) to in any way qualify, condition, diminish, restrict, limit or otherwise affect any (and is in addition to each) other release, waiver, consent, waiver, exculpation, indemnification, permitted action or other similar term or provision of this Agreement or any other Loan Instrument.

Section 2.08. *Payments and Applications.* (a) All payments of principal, interest, fees and other amounts due the Bank pursuant to this Agreement and the other Loan Instruments shall be made in U.S. Dollars in immediately available funds by 12:30 P.M. (New York City time) on the date payment is due to the Bank at its offices at _____, _____ [city], _____ [state], or as otherwise instructed by the Bank. All advances and payments made pursuant to this Agreement and the other Loan Instruments may be recorded by the Bank on its books and records, and such books and records shall be conclusive as to the existence and amounts thereof absent manifest error.

(b) The parties intend that payments of the Obligations will be made through the [wire transfer of immediately available funds to the Bank to the account specified in Exhibit _____ hereto, or such other account as the Bank from time to time may direct by written notice to the Borrower, as and when such Obligations become due.] [deposit of sufficient amounts by the Borrower into a specified account maintained with the Bank or a designated affiliate, as and when such Obligations become due, and the debiting of such account by or at the direction of the Bank. Accordingly, the Borrower hereby authorizes the Bank (or such affiliate) from time to time to apply or direct the application of all or any portion of the funds in any such account to the payment of principal and interest on Loans and

to all other Obligations at each time such payment becomes due and payable. In debiting such account,] the Obligations shall be deemed to have been paid or repaid only to the extent of the immediately available funds actually [received from the Borrower] [available in and debited from that account] and applied to the Obligations notwithstanding any internal procedure of the Bank (or such debiting affiliate) to the contrary.

(c) Should any payment become due and payable on other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and, in the case of any payment of principal, interest shall be payable thereon at the rate per annum specified in this Agreement during such extension.

(d) Except as otherwise provided in this Agreement, so long as no Event of Default [or Default] is then continuing, any funds received by the Bank from or on behalf of the Borrower (whether pursuant to any of the terms and provisions of this Agreement or any other Loan Instrument) shall be applied to the following items in the manner and order reasonably designated by the Borrower to the extent permitted by Applicable Law; *provided, however, that* absent such designation or during the continuance of any such Event of Default [or Default], those funds (including the net cash proceeds from any Collateral) instead may [shall] be applied by the Bank to the following items [in the following order and manner] [in such order and manner as may be determined by the Bank in its sole and absolute discretion] to the extent permitted by Applicable Law:

- (i) the payment of due and unpaid principal on the Loans;
- (ii) the payment of accrued and unpaid interest on the Loans;
- (iii) the payment to or reimbursement of the Bank for any fees and expenses for which it is entitled to be paid or reimbursed pursuant to any of the provisions of this Agreement and the other Loan Instruments;
- (iv) the establishment or maintenance of any cash collateral required or permitted under any Loan Instrument; and
- (v) the payment in full of all other Obligations under this Agreement and the other Loan Instruments.

Section 2.09. *Taxes.* Any and all payments made by the Borrower under this Agreement or any other Loan Instrument shall be made free and clear of and without any reduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and any and all liabilities and obligations with respect thereto, excluding, however, such taxes as are imposed on the Bank by the jurisdiction of its organization or its lending office engaged in the Loans (or any political subdivision thereof) with respect to the income or franchise of the Bank (all such non-excluded taxes, levies, imposts, deductions, charges or withholdings being hereinafter collectively referred to as the "Taxes"). In addition, the Borrower shall pay, as and when due, any and all present or future stamp or documentary taxes or other excise or property taxes, charges or similar levies that may arise from any execution, delivery, performance, existence or registration of this Agreement or any other Loan Instrument or any payment made hereunder or thereunder (collectively, "*Other Taxes*"). If the Borrower shall be required by Applicable Law to deduct any Taxes or Other Taxes from or in respect of any sum payable to the Bank under this Agreement or any other Loan Instrument, (i) the sum payable shall be increased as may be necessary so that, after making all required deductions, the Bank shall receive an amount equal to the sum the Bank would have received if no such deductions had been made, (ii) the Borrower shall make such deductions, and (iii) the Borrower shall pay the full amount deducted to the relevant taxation Authority or other Authority in accordance with Applicable Law. Within 30 days after the date of any payment of Taxes or Other Taxes by the Borrower, the Borrower will furnish to the Bank the original or a certified copy of a receipt evidencing payment or other documentation reasonably satisfactory to the Bank evidencing payment. The Borrower will furnish to the Bank, upon the Bank's request from time to time, an officer's certificate stating that, to the knowledge of the signer, all Taxes and Other Taxes that are or have become due have been paid. The Borrower shall indemnify and reimburse the Bank on demand (payable within 30 days of written demand) for the full amount of Taxes or Other Taxes

paid by the Bank (as the case may be) and any and all claims, liabilities, losses and expenses (including, without limitation, penalties, interest, and attorneys and other professional fees, disbursements and expenses) of the Bank arising therefrom or related directly or indirectly thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. [The Bank agrees to cooperate in good faith with the Borrower through reasonable actions by the Bank (at the sole cost and expense of the Borrower) in any attempt by the Borrower to seek any refund of Taxes or Other Taxes that the Borrower reasonably believes were incorrectly asserted. If the Bank shall receive such a tax refund of any amount for which it was previously indemnified under this Section by the Borrower, the Bank shall promptly remit such amount to the Borrower (net of the Bank's costs and expenses, if any, of obtaining such refund).]

Section 2.10. *Lost or Damaged Notes.* In the event of the loss, theft or destruction of a Note, the Borrower shall execute and deliver an identical new Note to the Bank in substitution therefor upon the receipt by the Borrower of (i) notice from the Bank confirming such event and (ii) if requested by the Borrower, an indemnity agreement from the Bank in such form and substance as may be acceptable to the Bank. In the event of the mutilation of or other damage to a Note, the Borrower shall execute and deliver an identical new Note to the Bank in substitution therefor, following which the Bank will return the mutilated or damaged Note to the Borrower.

Section 2.11. *Maximum Interest Rate.* It is the intention of the Bank and the Borrower that the interest (as defined under Applicable Law) on the Loans that may be charged to, collected from or received from the Borrower shall not exceed the maximum rate permissible under Applicable Law. Accordingly, anything in this Agreement, any Note or any other Loan Instrument to the contrary notwithstanding, in the event any interest (as so defined) is charged to, collected from or received from the Borrower by the Bank pursuant hereto or thereto in excess of such maximum lawful rate, then the excess of such payment over that maximum shall be applied to the reduction of the outstanding principal balance of the Loans and the other Obligations (without any prepayment premium or penalty), and any portion of such excess payment remaining after payment and satisfaction in full of the Obligations shall be returned by the Bank to the Borrower.

Section 2.12. *Bankruptcy; Reinstatement.* In the event any payment of or any application of any amount, asset or property to any of the Obligations or any Surety's Obligations, or any part thereof, at any time is rescinded or must otherwise be restored or returned by the Bank upon the insolvency, bankruptcy or reorganization of the Borrower, any Surety or any other person, whether by order of any court, by any settlement approved by any court, or otherwise, then the terms and provisions of this Agreement and the other Loan Instruments shall continue to apply, or shall be reinstated if not then in effect, as the case may be, with respect to the Obligations or any Surety's Obligations so rescinded, restored or returned, all as though such payment or application had never been made.

Section 2.13. *Continuing Agreement, Payment in Accordance with Terms, Etc.* The Borrower covenants and agrees that: (a) its undertaking of the Obligations is a continuing agreement to make the full and timely payment, performance and satisfaction of all Obligations as and when due, and not monetary payment or collectibility only, in each case whether the Obligations are now or hereafter acquired, created or otherwise existing, and irrespective of the fact that from time to time under the terms and provisions of the Loan Instruments monies may be advanced, repaid and readvanced and the outstanding balance of the Loans may be zero; (b) the Borrower's Obligations may not be revoked or terminated by the Borrower until such time as the Obligations shall have been fully paid and satisfied; (c) none of the Obligations shall be deemed to have been otherwise fully paid and satisfied so long as any Loan Instrument shall have any continuing force or effect; and (d) the Obligations will be paid and satisfied in full in accordance with the terms and provisions of the Loan Instruments without regard to any Applicable Law now or hereafter in effect in any jurisdiction, including (without limitation) any Applicable Law that might in any manner affect any of those terms and provisions or any of the rights, powers, privileges, remedies and interests of the Bank with respect thereto, or that might cause or permit to be invoked any alteration by the Borrower, any Surety or any other person (other than the Bank) in the time, amount or manner of payment of any of their respective Obligations to the Bank under the Loan Instruments.

Section 2.14. *Sums Accruing During Bankruptcy.* Notwithstanding anything to the contrary herein, the Borrower shall be liable for all Obligations, as well as additional interest fees, and other amounts due under this Agreement and

any other Loan Instrument which accrue or are otherwise applicable during the pendency of any Bankruptcy Proceeding (irrespective of whether such sums are allowed or allowable as claims in any such proceeding).

ARTICLE III

Representations and Warranties

To induce the Bank to enter into this Agreement and the other Loan Instruments to which it is a party and to make and continue the Loans to the Borrower, the Borrower represents and warrants to the Bank as follows in each Section of this Article, as of the date hereof and as of the date of each Loan, Advance [or Letter of Credit issuance] or other advance or any readvance, renewal or extension thereof:

Section 3.01. *Organization, Powers, Etc.* The Borrower: (a) is duly organized, validly existing and in good standing under the laws of its state of incorporation; (b) has the power and authority to carry on its business as now conducted and to own or hold under lease the assets and properties it purports to own or hold under lease; (c) is duly qualified, licensed or registered to transact its business and in good standing in every jurisdiction in which failure to be so qualified, licensed or registered could have or has had a Material Adverse Effect, and Schedule 3.01(c) hereto contains a complete and accurate list of all jurisdictions in which the Borrower is so qualified, licensed or registered; (d) has the power and authority to execute and deliver this Agreement and each of the other Loan Instruments to which it is or will be a party and to perform all of its obligations hereunder and thereunder; (e) conducts its business exclusively under the name set forth in the Introduction, and has done so [for at least the past six years] [since its organization]; and (f) has its executive office and principal place of business at the address set forth in the Introduction, which has been so [for at least the past six years] [since its organization].

Section 3.02. *Authorization, Conflicts and Validity.* [Except as set forth in Schedule 3.02 hereto,] The execution and delivery by the Borrower of this Agreement and each of the other Loan Instruments to which it is or will be a party and the performance by the Borrower of all of its obligations hereunder and thereunder: (a) have been duly authorized by all requisite corporate action; (b) will not violate or be in conflict with any term or provision of (i) any Applicable Law (including, without limitation, any applicable usury or similar law), (ii) any judgment, order, writ, injunction, decree or consent of any court or other judicial Authority, or (iii) any Corporate Document; (c) will not violate, be in conflict with, result in a breach of or constitute a default (with or without the giving of notice or the passage of time or both) under any term or provision of any Material Document; and (d) except as specifically contemplated by this Agreement or any other Loan Instrument, will not result in the creation or imposition of any Lien of any nature upon any of its assets and properties. This Agreement and each Note are, and the other Loan Instruments to which the Borrower is or will be a party when executed and delivered will be, legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms and provisions.

Section 3.03. *Consents, Etc.* Except as already obtained and listed on Schedule 3.03 hereto, no consent, approval or authorization of, or registration, declaration or filing with, any Authority or other person (including, without limitation, the shareholders of the Borrower) is required as a condition precedent, concurrent or subsequent to or in connection with the due and valid execution, delivery and performance by the Borrower of this Agreement or any other Loan Instrument to which the Borrower is or will be a party or the legality, validity, binding effect or enforceability of any of their respective representations, warranties, covenants and other terms and provisions. Each franchise, license, certificate, authorization, approval or consent from any Authority material to the present conduct of the business and operations of the Borrower, or required for the acquisition, ownership, improvement, operation or maintenance by the Borrower of any material portion of the assets and properties it now owns, operates or maintains, has been obtained and validly granted, is in full force and effect and constitutes valid and sufficient authorization therefor.

Section 3.04. *Litigation.* Except as set forth in Schedule 3.04 hereto, there are no actions, suits, investigations or proceedings (whether or not purportedly on behalf of the Borrower or any Surety) pending or, to the best knowledge of the Borrower, threatened or contemplated at law, in equity, in arbitration or by or before any other Authority involving

or affecting: (a) the Borrower [or any Surety] that, if adversely determined, could have a Material Adverse Effect [or Guarantor's Adverse Effect]; (b) any alleged criminal act or activity [(other than a misdemeanor)] on the part of the Borrower or any of its representatives; (c) any Material Document (other than Collateral) [that, if adversely determined, could have a Material Adverse Effect [or Guarantor's Adverse Effect]]; (d) any [material] Environmental Claim respecting the Borrower or any part of the Collateral [or any [material] part of any other assets and properties of the Borrower]; (e) any Corporate Document; (f) the Obligations; (g) any part of the Collateral [or any [material] part of any other assets and properties of the Borrower]; or (h) any of the transactions contemplated in this Agreement and the other Loan Instruments; nor, to the best knowledge of the Borrower, is there any [reasonable] basis for the institution of any such action, suit, investigation or proceeding. The Borrower is not [OR Neither the Borrower nor any Surety is] in default with respect to any judgment, order, writ, injunction, decree or consent of any court or other judicial Authority, which default could have or has had a Material Adverse Effect [or Guarantor's Adverse Effect].

Section 3.05. *Legal and Enforceable Agreements.* This Agreement and each Note are, and each of the other Loan Instruments to which the Borrower is or will be a party when executed and delivered will be, legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms and provisions[, except as enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization and other laws affecting the rights or remedies of creditors generally and (b) rules of equity affecting the enforcement of obligations generally (whether at law or in equity)]

Section 3.06. *Financial Statements, Etc.* (a) The Borrower heretofore has provided to the Bank the [consolidated and consolidating] balance sheet of the Borrower [and its subsidiaries] as at _____, and the related [consolidated and consolidating] statements of earnings, shareholders' equity, and cash flow for the fiscal year ended on that date, audited and reported upon by _____, independent certified public accountants. Those financial statements and reports and the related notes and schedules, as well as those related to later periods (whenever delivered), (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) are complete, accurate and a fair presentation of the financial condition of the Borrower [and its subsidiaries] as of the date thereof and the results of its operations for the period covered thereby (subject in the case of interim statements to normal year-end audit adjustments). Since _____, no event or events have occurred that individually or in the aggregate could have or has had a Material Adverse Effect.

(b) After giving effect to the direct and indirect Indebtedness and other liabilities and obligations of the Borrower arising under this Agreement and the other Loan Instruments, whether absolute or contingent (treating all guaranties, pledges and other contingent credit support and all unused availability under lines of credit and commitments as fully funded indebtedness in the maximum amount thereof), the Borrower (taking into account its contribution, subrogation, reimbursement and similar rights, if any): (i) is not insolvent, as "insolvent" is used and defined in the United States Bankruptcy Code and the Uniform Fraudulent Transfer Act; (ii) does not have unreasonably small capital or is engaged or about to engage in a business or a transaction for which any remaining capital or other assets of such Borrower are unreasonably small; (iii) is not unable to pay its debts as they mature; and (iv) does not intend to or believe it will incur debts beyond its ability to pay them as they mature, and does not intend to hinder, delay or defraud either its present or future creditors, whether by executing, delivering or performing its obligations and agreements under any of its Loan Instruments or Material Documents, by taking any action thereunder or with respect thereto or otherwise.

(c) The Borrower is not and has not ever been the subject of any Bankruptcy Proceeding, the Borrower is not currently considering or planning to commence any Bankruptcy Proceeding, the Borrower has not ever commenced, considered commencing or planned to commence any Bankruptcy Proceeding, and the Borrower is not currently taking or considering or planning to take, and has not ever taken or considered or planned to take, any action under any Bankruptcy Law or any of the other actions specified in Section [8.01(h)] hereof, and to the knowledge of the Borrower no other person is currently considering or planning, or has ever considered or planned, to take any of those actions against or in respect of the Borrower.

Section 3.07. *Document Delivery; Absence of Defaults and Certain Agreements.* (a) The Borrower has delivered to the Bank and its counsel true, complete and correct copies of each Corporate Document, Material Document and Subordinated Intercompany Debt Document [OTHERS], together with all supplements, modifications and amendments thereto and restatements and replacements thereof.

(b) Except as set forth in Schedule 3.07 hereto, no act or event has occurred and is continuing that violates, is in conflict with, results in a breach of or constitutes a default (with or without the giving of notice or the passage of time or both) under any term or provision of (i) this Agreement or any other Loan Instrument, (ii) any other Material Document, or (iii) any Corporate Document. The Borrower is not [OR Neither the Borrower nor any Surety is] a party to any instrument, indenture, agreement, document, arrangement or other obligation, or subject to any charter or other restriction, that could have or has had a Material Adverse Effect [or Guarantor's Adverse Effect].

Section 3.08. *Compliance with Applicable Law.* The Borrower is in compliance with and conforms to all [Environmental Laws and other] Applicable Law, other than to the extent the noncompliance therewith or violation thereof has not had and could not have a Material Adverse Effect, and has so complied and conformed [for at least the past six years] [since its organization].

Section 3.09. *Payment of Debts and Taxes.* (a) The Borrower: (i) has filed all required tax returns with the appropriate taxing authorities respecting its operations, assets and properties; and (ii) has paid or caused to be paid all taxes shown on those returns to the extent due; except in either case to the extent that (A) extensions of time to make such filing have been duly granted by the appropriate taxing authorities and those extensions have not expired, or (B) payment is not yet required pursuant to Section 5.06 hereof.

(b) The Borrower is current in its payment of debts and performance of obligations (other than taxes) except to the extent payment or performance is not yet required pursuant to Section 5.06 hereof.

Section 3.10. *Indebtedness, Guaranties, ERISA Plans, Etc.* (a) Schedule 3.10(a) hereto (as and if updated pursuant to Section 5.02 hereof) contains a complete and accurate list of all direct and indirect Indebtedness of the Borrower (whether individual, joint, several or otherwise), including commitments, lines of credit and other credit availabilities, identifying with respect to each the respective parties, amounts and maturities, excluding, however, [(i)] the Loans [and (ii) all loans and advances from any Surety]. [All such Indebtedness owed to any Surety or other direct or indirect affiliate of the Borrower or any Surety has been duly and fully subordinated to the Obligations pursuant to this Agreement, a Guaranty or an Intercreditor Agreement.]

(a) Schedule 3.10(b) hereto (as and if updated pursuant to Section 5.02 hereof) contains a complete and accurate list of all guaranties and other Credit Support by the Borrower (whether individual, joint, several or otherwise), identifying with respect to each the respective parties to such Credit Support and parties, amounts and maturities of the underlying obligations.

(b) Schedule 3.10(c) contains a complete and accurate list of all "employee pension benefit plans" (as defined in ERISA) established, funded or maintained by the Borrower or any ERISA Affiliate, whether currently or [within the past six years] [since its organization], or to which the Borrower or any ERISA Affiliate is required to contribute (as each may be supplemented, modified, amended, restated or replaced from time to time pursuant to ERISA or the Code, as applicable, a "Plan," and collectively, the "Plans"). Except as set forth in that schedule: (i) each Plan is in full force and effect and has been (or is expected to be) determined to be duly qualified under ERISA and the Code, as applicable; (ii) no ERISA Event is currently continuing, and none has occurred [within the past six years] [since its organization], in any material respect; (iii) each [material] report, statement or other document has been timely prepared and delivered in accordance with, and conforms in form and substance to the requirements of, ERISA and the Code; (iv) each Plan complies with ERISA, the Code and all other Applicable Law in all other [material] respects; (v) the present value of all accrued benefits under each Plan subject to Title IV of ERISA does not, and did not as of the last annual valuation date, exceed the value of the assets of such Plan allocable to such accrued benefits (which benefit value shall be determined

either on an ongoing basis, using the Plan's reasonable actuarial assumptions, or on a termination basis, using the assumptions employed by the Pension Benefit Guaranty Corporation in connection with plan terminations, as applicable); (vi) there are no actions, suits, investigations or proceedings (whether or not purportedly on behalf of any fiduciary, sponsor, participant or beneficiary) pending, or to the best knowledge of the Borrower, threatened or contemplated at law, in equity, in arbitration or by or before any Authority involving or affecting any Plan or any assets and properties of a Plan that, if adversely determined, could have an ERISA Effect; [and] (vii) [to the best knowledge of the Borrower,] there are no facts or circumstances that might give rise to any liability of or claim against the Borrower[, any Surety] or the Collateral under Title IV of ERISA; and (viii) none of the Plans is, and neither the Borrower nor any ERISA Affiliate in the past established, funded, maintained, contributed or was required to contribute to, any "multiemployer plan" (as defined in ERISA)) [; *provided, however, that the provisions of this sentence shall be to the best knowledge of the Borrower with respect to any multiemployer plan administered by a person other than the Borrower or any ERISA Affiliate*]. The present value of all accrued post-retirement benefits under each "employee welfare benefit plan" (as defined in ERISA) to which one or more of the Borrower and its ERISA Affiliates is required to contribute does not in the aggregate exceed the assets of such plan allocable to such benefits [by more than \$_____] (determined using the actuarial and other assumptions required under FAS106).

(c) After giving effect to the direct and indirect Indebtedness and other liabilities and obligations of the Borrower arising under this Agreement and the other Loan Instruments, whether absolute or contingent, the Borrower: (i) is solvent (*i.e.*, the aggregate fair value of its assets exceeds the sum of its liabilities); (ii) has adequate working capital; and (iii) is able to pay its debts as they mature. The Borrower is not currently considering or planning, and has not ever considered or planned, to take any of the actions specified in Section [8.01(g)] hereof, and to the knowledge of the Borrower no other person is currently considering or planning, or has ever considered or planned, to take any of the actions specified in Section [8.01(h)] hereof.

Section 3.11. *Assets and Collateral*. (a) The Borrower is the holder and legal and beneficial owner of, and has good title to, (i) the Collateral and (ii) all of the other [OR: title to the Collateral, which constitutes all of the] assets and properties of the Borrower (x) reflected on the most recent report or financial statement furnished to the Bank or (y) subsequently acquired; excluding, however, such [other] assets and properties as may have been sold or otherwise disposed of (1) in the ordinary course of business prior to the date of this Agreement or (2) as permitted by this Agreement after the date hereof. The Borrower has full corporate power and authority and the unconditional right to grant to the Bank the mortgages and other security interests respecting the Collateral contemplated in this Agreement and the other Loan Instruments. The Bank has received legal, valid, binding, enforceable and perfected security interests in and to the Collateral pursuant to this Agreement and the other Loan Instruments. No part of the Collateral [and such other assets and properties] is subject to any Lien or any adverse claim of any kind whatsoever, except (A) those in favor of the Bank, (B) those permitted by Section 6.04 hereof (if any) and (C) those described in Schedule 3.11(a) annexed hereto.

(b) There are no claims of third parties that would prevent any assignee or purchaser of all or any portion of the Collateral from receiving any payments, distributions and proceeds with respect thereto, if any, without any defense, counterclaim, setoff, right of recoupment, abatement or other claim or determination whatsoever.

(c) All of the Collateral [and the other [material] assets and properties of the Borrower] have been and currently are operated, maintained and insured as respectively required by Sections 5.05, 5.07(a) and 5.07(b) hereof. The Borrower currently is, and since the Effective Date has been, insured as required by Section 5.07(b) hereof, and was insured in a comparable manner [for at least the past six years] [since its organization]. No fact, circumstance or other event currently exists or has occurred that (i) could violate or has violated any term or provision of any insurance policy, (ii) could permit or has permitted any insurer to cancel or refuse to renew (upon similar terms) any such insurance policy, or (iii) could prevent or has prevented the Borrower from obtaining a similar insurance policy on similar terms.

(d) The Borrower has full possession and control of the Collateral [and its other assets and properties], and all of the Collateral is [and its other assets and properties are] located (or in the case of accounts and general intangibles are

deemed to be located) at the address of the Borrower set forth in the Introduction, except (i) that certain items may be physically located at the other locations listed in Schedule 3.11(d) hereto, which schedule contains a complete and accurate description of each other location and the items located there, and (ii) for items physically held by the Bank or its designee[, and (iii) for items physically held for the benefit and at the direction of the Borrower by the persons identified in that schedule].

(e) Each account receivable of the Borrower arose in the ordinary course of business in a bona fide arm's-length transaction, has been reflected on its books and records in accordance with GAAP consistently applied, and is represented by a written invoice or other written document that: (i) was duly executed and delivered and to the best knowledge of the Borrower contains no forgeries or unauthorized signatures; (ii) is legal, valid, binding and enforceable against the customer in accordance with its terms and provisions; (iii) does not violate or conflict with any provision of Applicable Law; (iv) has not been amended or modified in any material respect; (v) contains the customer's express waiver of all rights of setoff, recoupment, counterclaim, abatement and reduction as against assignees; (vi) [except as set forth in Schedule 3.11(e) hereto,] fully reflects all agreements and understandings with the customer with respect thereto; (vii) is assignable, and has been duly assigned to the Bank in accordance with the terms and provisions hereof and thereof; and (viii) is maintained at the chief executive office of the Borrower (or at such other office as may have been specified in a notice to the Bank) in a file and location that would be readily identifiable by anyone examining the Accounts Receivable of the Borrower. The reserves for uncollectible accounts established by the Borrower are adequate in the judgment of the Borrower to fully cover current and future uncollectible Accounts Receivable.

(f) Schedule 3.11(f) hereto contains a complete and accurate list of all [Pledged Securities] [securities and other rights described in Section 7.01(e) hereof and] currently owned of record and/or beneficially by the Borrower (whether individually, jointly or otherwise), identifying with respect to each the issuer, certificate or other identifying number(s), type and amount(s) [and, if held by a clearing corporation, custodian or other financial intermediary, the account number(s), account holder(s) and name(s) and address(s) of the relevant office(s)]. [Those [Pledged Securities] [pledged securities] include all capital stock issued by each [direct] subsidiary of the Borrower, there are no other outstanding securities issued by any such subsidiary, and there are no outstanding warrants, options or other rights to acquire any securities issued by any such subsidiary, whether from the issuer or anyone else.] [Except as otherwise set forth in that schedule,] Each of those [Pledged Securities] [pledged securities] is owned beneficially and of record by the Borrower, is assignable, and has been duly assigned and transferred as collateral to the Bank. Each of those [Pledged Securities] [pledged securities] was acquired [from the issuer] in a transaction in compliance with and [registered under] [or] [exempt from registration under] the Securities Act and other Applicable Law[, and has been held for at least one year following full payment therefor]. Except [as otherwise contained in the Organizational Documents or Custody Documents and waived in the Collateral Acknowledgments, and except] for the normal restrictions on public offerings and the like under the Securities Act, none of those [Pledged Securities] [pledged securities]: (i) is subject to any warrant, option, put, call or other right to acquire, redeem, sell, transfer or encumber it (other than such call and redemption rights as may be intrinsic to such securities where issued by a person not affiliated with the Borrower); (ii) is governed by or otherwise subject to any shareholders agreement, voting trust or similar agreement or arrangement; and (iii) is limited or otherwise restricted in any way respecting assignability, transferability or any voting, dividend, distribution or other ownership right (whether or not reflected on the face of the certificate, in any Corporate Document, [in any instruction or other communication to or agreement or arrangement with any transfer agent, clearing corporation, custodial bank or other financial intermediary,] or otherwise). [Except as otherwise set forth in Schedule 3.11(1) hereto,] To the best knowledge of the Borrower, each of those [Pledged Securities] [pledged securities] was duly authorized and validly issued, is fully paid and non-assessable, and is not and will not be subject to any preemptive or similar right or restriction. [The Borrower has delivered stock certificates to the Bank representing all of the outstanding securities issued by the [_____], together with stock powers duly endorsed in blank representing those certificates.]

(g) Each [of the _____ and each other] [material] note, stock certificate, instrument, agreement, account, document or intangible of the Borrower [included in the Collateral]: (i) was duly executed and delivered in a

written instrument or document and to the best knowledge of the Borrower contains no forgeries or unauthorized signatures; (ii) is legal, valid, binding and enforceable against the signer in accordance with its terms and provisions; (iii) does not violate or conflict with any provision of Applicable Law; (iv) has not been amended or modified in any material respect [or prepaid]; (v) [except as set forth in Schedule 3.11(g) hereto,] fully reflects all agreements and understandings with the signer with respect thereto; (vi) is assignable, and has been duly assigned to the Bank in accordance with the terms and provisions hereof and thereof; and (vii) is maintained at the chief executive office of the Borrower (or at such other office as may have been specified in a notice to the Bank) in a file and location that would be readily identifiable by anyone examining the books and records of the Borrower, except (A) that certain items may be physically located at the other locations listed in Schedule 3.11(d) hereto, which schedule contains a complete and accurate description of each other location and the items located there, and (B) for items physically held by the Bank or its designee[, and (C) for items physically held for the benefit and at the direction of the Borrower by the person identified in that schedule].

(h) [Except as set forth in Schedule 3.11(h) hereto,] the machinery, equipment and other fixed assets owned or leased by the Borrower are in good working order and condition (ordinary wear and tear and retirement excepted), all of the machinery, equipment and other fixed assets owned or leased by the Borrower are used or usable in the current conduct of its business, and the Borrower has all of the machinery, equipment and other fixed assets necessary for the current conduct of its business. Schedule 3.11(h) contains a complete and accurate list of all items of machinery, equipment and other fixed assets owned [or leased] by the Borrower having individual book values in excess of \$_____ as of the date hereof.

(i) [To the best knowledge of the Borrower,] the procurement, storage, containment, presence, manufacture, distribution, removal and disposition of all [Inventory and] Environmental Substances by or on behalf of the Borrower and the use and operation of all assets and properties owned, leased or used by or on behalf of the Borrower (including, without limitation, machinery, equipment, real estate and improvements), as now or previously existing (whenever created), as conducted by or for the Borrower, or as contemplated, are in full compliance with and conform to all Environmental Laws [and other Applicable Law] [in all material respects]. Without limiting the generality of the foregoing[, to the best knowledge of the Borrower]: (i) all [material] permits, licenses, authorizations, consents or approvals of authorities necessary or desirable for such activities have been obtained and they are in full force and effect; (ii) no part of those activities [or][,] the Collateral [or any other assets and properties of the Borrower] is in violation [in any material respect] of any Environmental Law [or other Applicable Law]; and (iii) [except as set forth in Schedule [3.11(i)] [3.08] hereto,] no notice has been served upon the Borrower (other than a notice subsequently withdrawn or with regard to a violation subsequently cured) from any governmental Authority or other person claiming, nor does there currently exist, any violation of any Environmental Law [or other Applicable Law] in connection with any of those activities, [or][,] the Collateral [or any other assets and properties of the Borrower].

(j) To the best knowledge of the Borrower, there is no existing, proposed or contemplated plan, study or effort by any governmental Authority or other person that in any way affects or could affect the continued authorization of the present or contemplated ownership, financing, construction, use or operation of any part of the Collateral [or the other [material] assets and properties of the Borrower], or that could result or has resulted in any tax or other charge being levied or assessed against, or in the creation of any Lien upon, any part of the Collateral [or the other [material] assets and properties of the Borrower].

Section 3.12. *[The Borrower's Independent Investment Decision, Etc.]* The Borrower hereby acknowledges and agrees that: (a) the Borrower (i) is a sophisticated and knowledgeable investor, both generally and with respect to each item of Collateral, (ii) has received directly from each holder or issuer of Collateral (which for the purpose of this Section shall be deemed not to include the Bank), reviewed, and evaluated all financial and other information necessary or prudent to make the Borrower's investment decision, and will continue to do so, (iii) has made, and will continue to make, independent investment selections and decisions respecting the Collateral without reliance upon or regard to any evaluation or investigation by the Bank of any Collateral or any holder or issuer of any Collateral, [and (iv) does not directly or indirectly control, and is not an officer, director, employee, general partner or trustee of, any holder or issuer

of any Collateral]; (b) neither the Bank nor any of its Representatives has, and none of them shall be deemed or construed to have, (i) made any representation, warranty or guaranty, (ii) offered or furnished any recommendation, advice, analysis or information, or (iii) undertaken or assumed any liability, responsibility or other obligation whatsoever respecting any Collateral or any holder or issuer of any Collateral, whether oral or otherwise, and whether express or implied, including (without limitation) anything with respect to any existing or future (A) existence, enforceability, genuineness, value or condition of any Collateral or (B) assets, business, financial condition, investments, prospects, reputation, or strategies of any holder or issuer of Collateral or any other person; (c) neither the Bank nor any of its Representatives shall have any liability, obligation or responsibility whatsoever for any acts or omissions of any issuer or holder of Collateral or any other person or any failure by anyone to perform any of its obligations under or with respect to any of the Collateral; and (d) neither the Bank nor any of its representatives has, or shall be deemed or construed to have, any agreement, duty or obligation to inform the Borrower of any matter relating to any of the Collateral or any holder or issuer of any of the Collateral or to furnish to the Borrower any information pertaining thereto.]

Section 3.13. *Subsidiaries, Other Ventures, Loans and Other Investments.* Schedule [3.13] hereto contains a complete and accurate list of:

(a) all of the subsidiaries of the Borrower or any of its subsidiaries, including with respect to each subsidiary (i) its state of incorporation, (ii) all jurisdictions (if any) in which the subsidiary is qualified to do business as a foreign corporation, (iii) the name of the owner and the number of shares of capital stock of the subsidiary owned, specifying whether owned beneficially and/or of record, and if that is less than all of the outstanding shares issued by the subsidiary, stating the total outstandings, and (iv) all obligations of the Borrower and/or any other subsidiary of the Borrower to contribute capital or other funds to such subsidiary; (b) all partnerships and other ventures in which the Borrower or any of its subsidiaries is a member or venturer, including with respect to each such partnership or venture (i) its jurisdiction of organization and any other jurisdiction in which it is qualified to do business as a foreign entity, (ii) the name of the owner and the percentage and type of interest in such partnership or venture owned, specifying whether owned beneficially and/or of record, (iii) all obligations of the Borrower and/or any subsidiary of the Borrower to contribute capital or other funds to such venture, and (iv) the names and addresses of the other members or venturers [other than limited partners with less than ____% interests]; (c) any and all loans or advances from the Borrower to any Surety or to any of the affiliate of the Borrower, identifying with respect to each the respective parties, amounts and maturities; and (d) all other Investments of the Borrower [other than Permitted Investments].

Section 3.14. *Relationship of the Borrower and Guarantor.* The Borrower and the [Guarantors] [Sureties] are engaged as an integrated group in the business of owning, developing, operating and selling _____ and of providing the required services and other facilities for those integrated operations. The Borrower and the [Guarantors] [Sureties] are seeking the Loans and Letters of Credit for the purpose of funding the _____ and certain other approved working capital requirements of the Borrower [and the [Guarantors] [Sureties]], and securing certain of the obligations of the Borrower [and the [Guarantors] [Sureties]] through the Letters of Credit. Each of the Borrower and the [Guarantors] [Sureties] expects to derive financial and other benefit, directly or indirectly, in return for undertaking their respective obligations under this Agreement, the [Guaranty] [Guaranties] and the other Loan Instruments, both individually and as a member of the integrated group.

Section 3.15. *Securities, Etc.* The Borrower is authorized to issue _____ shares of common stock with a par value of \$_____ per share, of which _____ shares are currently issued and outstanding. Schedule [3.15] hereto contains a complete and accurate list of all record and [(to the best knowledge of the Borrower)] beneficial owners of the securities issued by the Borrower, and of all warrants, options or other rights to acquire securities of its issue from the Borrower, identifying with respect to each the certificate or other identifying number(s), type, amount(s) and names[, states of incorporation] and addresses of each owner. Those shares [The shares of common stock pledged by the _____ under the _____] represent all of the issued and outstanding common stock and other capital stock of the Borrower. There are no other outstanding securities issued by the Borrower or any warrant, option or other right to acquire from the Borrower any securities issued by it. Except

for the normal restrictions on public offerings and the like under the Securities Act, [and except as otherwise set forth in Schedule 3.15 hereto,] to the best knowledge of the Borrower, none of those outstanding securities: (i) is subject to any warrant, option, put, call or other right to acquire, redeem, sell, transfer or encumber it; (ii) is governed by or otherwise subject to any shareholders agreement, voting trust or similar agreement or arrangement; and (iii) is limited or otherwise restricted in any way respecting assignability, transferability or any voting, dividend, distribution or other ownership right (whether or not reflected on the face of the certificate, in any Corporate Document, [in any instruction or other communication to or agreement or arrangement with any transfer agent, clearing corporation, custodial bank or other financial intermediary,] or otherwise). [Except as otherwise set forth in Schedule 3.15 hereto,] Each of those outstanding securities was duly authorized and validly issued, is fully paid and non-assessable, and is not and will not be subject to any preemptive or similar right or restriction. Each of those outstanding securities was acquired from the issuer in a transaction in compliance with and [registered under] [or] [exempt from registration under] the Securities Act of 1933, as amended, and other Applicable Law.

Section 3.16. *Federal Reserve Regulations, No Restriction on Borrowing, Etc.* (a) Except as expressly permitted by Section 6.09 hereof, no part of the proceeds of the Loans will be used to purchase or carry any Margin Stock, to extend credit to any other person for the purpose of purchasing or carrying any Margin Stock or in any way or for any purpose that otherwise violates or is inconsistent with any applicable Margin Stock Regulations. The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

(b) The Borrower is not an "investment company," an "affiliated person," "promoter" or "principal underwriter" of an "investment company" or "controlled" by an "investment company" (as such terms are defined in the Investment Company Act. None of the transactions contemplated by this Agreement and the other Loan Instruments (including the making of the Loans and the permitted use of the proceeds thereof) will violate any provision of the Investment Company Act.

(c) The Borrower is not a "holding company" or an "affiliate" or a "subsidiary company" of a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, [or any corresponding provisions of any Applicable Law in any foreign jurisdiction,] and as the same may be supplemented, modified, amended or restated from time to time, and the rules and regulations promulgated thereunder, or any corresponding or succeeding provisions of Applicable Law.

(d) The Borrower is not an "employee benefit plan" governed by (and as defined in) ERISA, and none of the assets or properties of the Borrower constitutes or will constitute "plan assets" governed by (and as defined in) ERISA.

(e) The Borrower is not a "foreign person" under (and as defined in) § 1455(f)(3) of the Code or any successor provision.

(f) The Borrower is not regulated by or otherwise subject to any Applicable Law that directly or indirectly limits or otherwise restricts its ability to incur, continue or repay Indebtedness, to provide Credit Support or to grant security interests or other Liens in or to any of its assets and properties as security for the Indebtedness of itself or others or its Credit Support for others.

Section 3.17. *No Misrepresentation by the Borrower.* No representation or warranty of the Borrower made or contained in this Agreement or any other Loan Instrument (whether with respect to the Borrower or otherwise) and no report, statement, certificate, schedule or other document or information furnished or to be furnished by or on behalf of the Borrower in connection with the transactions contemplated by this Agreement and the other Loan Instruments (whether with respect to the Borrower or otherwise) contains or will contain a misstatement of a material fact or omits or will omit to state a material fact required to be stated therein in order to make it, in the light of the circumstances under which made, not misleading.

Section 3.18. *No Misrepresentation by any Surety.* No representation or warranty of any Surety made or contained in the Guaranty or any other Loan Instrument (whether with respect to any Surety or otherwise) and no report, statement, certificate, schedule or other document or information furnished or to be furnished by or on behalf of any Surety in connection with the transactions contemplated by this Agreement, the Guaranty and the other Loan Instruments (whether with respect to any Surety or otherwise) contains or will contain a misstatement of a material fact or omits or will omit to state a material fact required to be stated therein in order to make it, in the light of the circumstances under which made, not misleading.

ARTICLE IV

Conditions to Lending

The obligation of the Bank to make any Loan [and consider the issuance of any requested Letter of Credit] hereunder is subject to the satisfaction in full of all of the conditions precedent set forth in and the other terms and provisions of each of the Sections of this Article, unless the Bank (in its sole and absolute discretion) shall consent otherwise in writing (as provided in Section 9.15 hereof):

Section 4.01. *Representations and Warranties.* (a) On the Effective Date, both prior to and after giving effect to any requested Advance[, Term Loan advance] [or Letter of Credit issuance], each of the representations and warranties, acknowledgements and certifications of each of the Borrower and the Sureties set forth in this Agreement and the other Loan Instruments shall be true and correct in all [material] respects on and as of that date with the same effect as though those representations and warranties had been made on and as of the first Advance Date.

(b) On each Advance Date [and Letter of Credit Issuance Date] after the first Advance Date, both prior to and after giving effect (whether through any Pro Forma Effect or otherwise) to any requested Advance[, Term Loan advance] [or Letter of Credit issuance], each of the representations and warranties, acknowledgements and certifications of each of the Borrower and the Sureties set forth in this Agreement and the other Loan Instruments shall be true and correct in all material respects on and as of that Advance Date [or Letter of Credit Issuance Date] with the same effect as though those representations and warranties had been made on and as of that date[, subject, however, in the case of the representations and warranties set forth in Sections [3.04,] 3.06(b), 3.06(c), 3.07, 3.09(a) and 3.09(b) hereof, to any updated information respecting any event(s) occurring [or discovered] after the first Advance Date respectively affecting any of the representations in such Sections and specifically disclosed in any signed notice or bringdown[, Indebtedness or Credit Support] certificate [required hereunderand] delivered to and accepted by the Bank on or prior to such Advance Date [or Letter of Credit Issuance Date] (which notice or certificate may be telecopied to the Bank if promptly confirmed by delivery of the signed original), *provided that* neither such delivery nor such acceptance shall constitute a waiver of or consent to any event so disclosed].

Section 4.02. *No Default.* On the Effective Date, and on each Advance Date [and Letter of Credit Issuance Date] after the Effective Date, both prior to and after giving effect (whether through any Pro Forma Effect or otherwise) to any requested Advance[, Term Loan advance] [or Letter of Credit issuance], no Event of Default or Default shall have occurred and be continuing.

Section 4.03. *No Material Adverse Effect.* On the Effective Date, and on each Advance Date [and Letter of Credit Issuance Date] after the Effective Date, both prior to and after giving effect (whether through any Pro Forma Effect or otherwise) to any requested Advance[, Term Loan advance] [or Letter of Credit issuance], no event or events have occurred that individually or in the aggregate could have, or since the date of this Agreement has had, a Material Adverse Effect.

Section 4.04. *Borrower's Bringdown Certificate.* On the first Advance Date [and on or immediately before each other Advance Date] [and Letter of Credit Issuance Date], the Borrower shall have delivered to the Bank a bringdown certificate [substantially] in the form of [Exhibit D] hereto, dated that date and signed by an executive officer of the

Borrower[, and by each request for an Advance[, Term Loan advance] [or Letter of Credit issuance], the Borrower shall be deemed to have delivered to the Bank such a certificate dated the Advance Date] [or Letter of Credit Issuance Date]. The Bank in its sole and absolute discretion may accept the certificate of the officer of the Borrower delivered [(or deemed to be delivered)] pursuant to this Section as evidence of the satisfaction of the conditions precedent specified in Sections 4.01 and 4.02 hereof without in any way waiving or limiting any of the Bank's rights, powers, privileges, remedies and interests under any term or provision of this Agreement or any other Loan Instrument.

Section 4.05. *Delivery of the Loan Instruments and Collateral.* (a) On or before the Effective Date, the Bank or its designee shall have received delivery of: (i) the Notes provided for in Section [2.03] hereof, duly executed by the Borrower; (ii) the Guaranty, duly executed by the Guarantors; (iii) payment of the balance of the structuring fee of \$_____ (of which \$_____ was paid upon acceptance of the Bank's Commitment); and (iv) payment of the disbursements, fees and expenses of _____, counsel to the Bank.

(b) On or before the first Advance Date, the Bank or its designee shall have received delivery of: (i) the insurance policies and endorsements required by Section 5.07(b) hereof; and (ii) the other instruments and documents required by this Agreement or any other Loan Instrument or listed in the final version of the Checklist of Closing Documents delivered to the Borrower on or before the [Effective] Date, which instruments and documents shall have been duly executed by the appropriate parties.

(c) Each of the foregoing instruments and documents shall be in such form and substance as may be acceptable to the Bank.

Section 4.06. *Opinion of Counsel to the Borrower, Etc.* [(a)] On the [Effective] Date, the Bank shall have received the favorable written opinion of counsel for the Borrower, dated such date, addressed to the Bank and in such form and substance as may be acceptable to the Bank relating to such matters as the Bank may deem necessary or appropriate, which also shall provide that it may be relied upon by the Bank's successors, assigns and participants and by counsel to the Bank in rendering any opinion or advice requested from them.

[(b) On or before the [Effective] Date, the Bank shall have received the favorable written opinion of an independent valuation advisor acceptable to the Bank respecting the solvency, capital adequacy and ability to pay debts of the Borrower and such other matters as the Bank may deem necessary or appropriate, which shall be dated such date, addressed to the Bank and in such form and substance as may be acceptable to the Bank, and which also shall provide that it may be relied upon by the Bank's successors, assigns and participants and by counsel to the Bank in rendering any opinion or advice requested from them.]

Section 4.07. *Supporting Documents.* On or before the [Effective] Date, the Borrower shall have furnished to the Bank the following certificates and other documents with respect to the Borrower: (a) a copy of its certificate of incorporation and all modifications, amendments and restatements thereof, certified as of a recent date by the Secretary of State of its state of incorporation; (b) a copy of its by-laws, together with all modifications, amendments and restatements thereof, certified as of a recent date by its Secretary; (c) a certificate of the Secretary of State of its state of incorporation, dated as of a recent date, as to its existence and good standing; (d) a certificate of its Secretary or an Assistant Secretary, dated the Effective Date, as to the due authorization of the negotiation, execution, delivery and performance by it of this Agreement and each of the other Loan Instruments to which it is or becomes a party (with the appropriate resolutions attached) and the incumbency and signatures of its officers and directors who are authorized to execute any instrument, agreement or other document in connection with the transactions contemplated by this Agreement and the other Loan Instruments; (e) copies of all agreements and trusts respecting securities of its issue or related rights, together with all modifications, amendments and restatements thereof, certified as of a recent date by its Secretary; and (f) such additional supporting documents and other information with respect to the Collateral[, any other assets or properties of the Borrower] or the organization, operations and affairs of the Borrower and those of its subsidiaries, partnerships and other ventures as the Bank may request.

Section 4.08. *Acceptable Documents*. All certificates and other documents provided to the Bank pursuant to this Article shall be in such form and substance as may be acceptable to the Bank and its counsel.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees that it will comply in all respects on a timely basis (except as otherwise expressly provided) and at its own expense with each, and will not cause, suffer or permit any violation of any, of the terms and provisions of each Section in this Article, from the date hereof and until the Obligations have been fully paid and satisfied, unless the Bank (in its sole and absolute discretion) shall consent otherwise in writing (as provided in Section 9.15 hereof):

Section 5.01. *Required Notices*. The Borrower shall give, or cause to be given, immediate written notice to the Bank of:

(a) any change in the name, name(s) of controlling equity owner(s), the state or other jurisdiction of incorporation or other organization or the location of the chief executive office or principal place of business, in all cases of the Borrower or any Surety;

(b) the institution or, to the best knowledge of the Borrower, the threat or contemplation of, or any [material] adverse determination or change in, any action, suit, investigation or proceeding (whether or not purportedly on behalf of the Borrower or any Surety) at law, in equity, in arbitration or by or before any other Authority involving or affecting (i) the Borrower [or any Surety] that, if adversely determined, could have a Material Adverse Effect [or Guarantor's Adverse Effect], (ii) any alleged criminal act or activity [(other than a misdemeanor)] on the part of the Borrower or any of its representatives, (iii) any Material Document (other than Collateral), (iv) any Corporate Document, (v) any [material] Environmental Claim respecting the Borrower or any part of the Collateral [or any [material] part of any other assets and properties of the Borrower], (vi) any Plan or any assets and properties of a Plan that, if adversely determined, could have an ERISA Effect, (vii) any Corporate Document, (viii) any part of the Collateral [or any [material] part of the other assets or properties of the Borrower], (ix) any of the Obligations, or (x) any of the transactions contemplated in this Agreement and the other Loan Instruments;

(c) the occurrence of any [material] ERISA Event;

(d) the occurrence of any act or event that violates, is in conflict with, results in a breach of or constitutes a default (with or without the giving of notice or the passage of time or both) under any term or provision of (i) any [Organizational Document or other] Material Document, or (ii) any Corporate Document;

(e) any [material] labor dispute to which the Borrower [or its subsidiaries] may become a party, any strikes or walkouts relating to any of its offices, plants or other facilities, or the expiration of any labor contract;

(f) any change in location or material change in the status of the Collateral other than as expressly permitted in Section 7.03 or 7.09 hereof;

(g) any attachment, confiscation, detention, levy, requisition, seizure or other taking of any [material] part of the Collateral [or any [material] part of the other assets and properties of the Borrower], whether through process of law or otherwise, the filing or other imposition of any Lien [known to the Borrower] against any [material] part of the Collateral [or any [material] part of any other assets and properties of the Borrower] (other than as expressly permitted by Section 6.04 hereof), or any destruction or other loss of or any material damage to any [material] part of the Collateral [or any [material] part of any other assets or properties of the Borrower]; or

(h) any notice under or with respect to any insurance required hereunder (i) proposing or purporting to cancel, not

renew or change the terms of the required insurance then in effect, whether immediately or at renewal, or (ii) alleging any violation of any conditions or requirements thereof; or

(i) to the extent not otherwise enumerated in this Section, the occurrence of any other act or event that (i) has resulted or could result in any Default or Event of Default, or (ii) has had or could have a Material Adverse Effect [or a Guarantor's Adverse Effect].

Section 5.02. *Accounts and Reports.* The Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied, and the Borrower shall provide to the Bank the following:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, commencing with the fiscal year ended _____, a [consolidated and consolidating] balance sheet of the Borrower [and its subsidiaries] as at the end of that fiscal year and the related [consolidated and consolidating] statements of earnings, shareholders' equity and cash flow for such fiscal year, all with accompanying notes, in reasonable detail and stating in comparative form the figures as at the end of and for the previous fiscal year, prepared in accordance with GAAP consistently applied, and audited and reported upon by _____, or other independent certified public accountants of recognized standing regularly retained by the Borrower to audit its books;

(b) concurrently with the delivery of the financial statements described in subsection (a) above, the annual auditor's report prepared by those independent certified public accountants and a letter to the Bank signed by those accountants to the effect that, having read this Agreement, nothing came to their attention during the course of their regular examination that caused them to believe any Event of Default or Default had occurred and had not theretofore been reported and remedied, or if any such Event of Default or Default had occurred and was continuing or was not previously reported, specifying the facts with respect thereto;

(c) as soon as available, and in any event within 45 days after the end of each quarter (including the fourth quarter) of each fiscal year of the Borrower (commencing with the quarter ending _____), a [consolidated and consolidating] balance sheet of the Borrower [and its subsidiaries] as at the end of such quarter and the related consolidated and consolidating statements of earnings, shareholders' equity and cash flow for the period from the beginning of such fiscal year to the end of such quarter, unaudited but certified by the chief executive officer and chief financial officer of the Borrower (i) to have been prepared in accordance with GAAP consistently applied, and (ii) as complete, accurate and a fair presentation of the financial condition of the Borrower [and its subsidiaries] as of such date and the results of operations for the period covered thereby, subject to normal year-end audit adjustments;

(d) concurrently with the delivery of the documents described in subsections (a) and (c), above, (i) a certificate [substantially] in the form of [Exhibit E] hereto setting forth the calculations of and establishing compliance with (among other things) the financial covenants set forth in Section 6.01[, 6.02, 6.03 and 6.08] of this Agreement [for the Computation Period just ended], [as well as the calculation of any prepayment required under Section 2.05() hereof,] [IF FINANCIALS WILL BE DELIVERED AFTER THE DATE HEREOF FOR A COMPUTATION PERIOD ENDED PRIOR TO THE DATE HEREOF: which for the Computation Period ended _____, 20_____, shall be calculated as if such covenants were then in effect,] and (ii) a certificate listing any changes in Indebtedness, Credit Support and corresponding information for the Borrower of the types required to be scheduled under any of Sections 3.10(a) and 3.10(b) hereof since the delivery of Schedules 3.10(a) and 3.10(b) (as and if previously modified by all supplements thereto delivered to the Bank under this clause) in substantially the same form as Schedules 3.10(a) and 3.10(b) hereto, with each such certificate being dated as of the last day of the relevant reporting period and signed by the chief executive officer [and] [or] chief financial officer of the Borrower (who shall have read this Agreement and made an examination sufficient in the opinion of the signer(s) to make informed statements therein);

(e) as soon as available, and in any event within 30 days prior to the commencement of each fiscal year, an [consolidated and consolidating] annual budget and projections for the Borrower [and its subsidiaries] for the forthcoming fiscal year (commencing with respect to the fiscal year beginning _____) certified by the chief executive officer [and] [or] chief financial officer of the Borrower;

(f) as soon as available, and in any event within ten (10) days after the end of each calendar month, (i) an operating statement for the month just ended, compared to budget, [and receivables aging summary with respect to the month just ended,] (ii) a Borrowing Base Certificate [substantially] in the form of Exhibit [F] hereto setting forth the Borrowing Base as at the end of such month[, *provided that* the Borrowing Base Certificate may be requested as frequently as weekly,] [and (iii) a bringdown certificate [substantially] in the form of [Exhibit D] hereto, dated no earlier than the last day of the preceding month, with each of the foregoing being certified by the chief executive officer or chief financial officer of the Borrower];

(g) as soon as available, a copy of any annual management letter issued by any accountant or auditor to the Borrower;

(h) on or before each anniversary of the date of this Agreement, an independent insurance broker's certificate stating (i) that the insurance required by this Agreement is in full force and effect, (ii) that all premiums under those policies have been paid to the extent due through the date of the certificate, and (iii) the amounts and due dates of premiums due within the following 12-month period; and, as soon as received, copies of all insurance policies, endorsements and certificates received from time to time by the Borrower;

(i) promptly following execution, copies of all loan, security and other instruments, agreements and documents respecting Indebtedness of the Borrower in excess of \$100,000, including commitments, lines of credit and other credit availabilities, and of all guaranties and other Credit Support by the Borrower respecting any Indebtedness or other obligation of any other person in excess of \$50,000, except those to which the Bank also is a party;

(j) as soon as available, a copy of any notice or other communication alleging any nonpayment or other material breach or default, or any foreclosure or other action respecting any material part of its assets and properties, received respecting any of the Indebtedness of the Borrower (other than the Obligations), or any demand or other request for payment under any guaranty or other Credit Support by the Borrower [respecting any Indebtedness or other obligation of any otherperson], including any received from any person acting on behalf of the holder or beneficiary thereof, *provided that* the Borrower shall not wait for such copies to become available to give any notice required under the circumstances by Section 5.01 hereof;

(k) as soon as available, and in any event not more than five Business Days after receipt, a copy of any summons or complaint, or any other notice of any action, suit, investigation or proceeding, involving or affecting the Borrower where the damages sought exceed, or if unspecified reasonably could exceed, \$[100,000];

(l) as soon as available, a copy of any notice or other communication alleging the invalidity, non-binding effect or unenforceability of, any material error or other defect in, any material omission from, or any nonpayment or other material breach or default under any [or other] [Material Document] [material] note, stock certificate, instrument, agreement, account, document or intangible of the Borrower [included in the Collateral], *provided that* the Borrower shall not wait for such copies to become available to give any notice required under the circumstances by Section 5.01 hereof;

(m) as soon as available, and in any event not less than 15 days prior to adoption, copies of each proposed modification, waiver, amendment or termination of any of the terms and provisions of any [____ or other] [Material Document] [material] note, stock certificate, instrument, agreement, account, document or intangible of the Borrower [included in the Collateral] that would be reasonably likely to conflict with or prejudice the continued perfection of any security interest of the Bank or materially diminish any of the rights, powers, privileges, remedies or interests of the

Borrower in any such item; and promptly following execution, copies of each of the foregoing certified as to the accuracy thereof by the Secretary of the Borrower;

(n) as soon as available, and in any event not less than 30 days prior to adoption, copies of each proposed modification, waiver, amendment or termination of any of the terms and provisions of any Corporate Document respecting the Borrower or any agreement between the shareholders of the Borrower; promptly following adoption, copies of each of the foregoing certified as to the accuracy thereof by the Secretary of State or the Secretary of the Borrower, as applicable; and promptly following request, such other supporting documents of the kind specified in Section 4.06 hereof as the Bank from time to time may request;

(o) as soon as possible, [if and to the extent requested by the Bank,] copies of all tax returns, informational statements and reports filed by the Borrower with the Internal Revenue Service of the United States of America;

(p) promptly upon the request of the Bank, copies of each notice, report, statement or other document or communication, whether periodic or otherwise, concerning the occurrence, existence or correction of any ERISA Event [in any material respect], any responsive communication on the part of the Borrower or any of its ERISA Affiliates, or any preliminary or final determination of any Authority in respect thereof, *provided that* the Borrower shall not wait for such request or copies to become available to give any notice required under the circumstances by Section 5.01 hereof; and

(q) contemporaneously with each submission or filing, a copy of any report, registration statement, proxy statement, financial statement, notice or other document, whether periodic or otherwise: (i) submitted to the shareholders of the Borrower in their capacities as shareholders; or (ii) submitted to or filed by the Borrower with any governmental or self-regulatory Authority involving or affecting (A) any [securities] registration of the Borrower or its securities, (B) the Borrower that could have or has had a Material Adverse Effect, (C) the Obligations, (D) any part of the Collateral or any of the other [material] assets and properties of the Borrower or (E) any of the transactions contemplated in this Agreement or the other Loan Instruments, *provided that* the Borrower shall not wait for such copies to become available to give any notice required under the circumstances by any other subsection of this Section or Section 5.01 hereof;

together with such supplements to the aforementioned documents and additional accounts, reports, certificates, statements, documents and information as the Bank from time to time may request, each in such form and substance as may be acceptable to the Bank.

Section 5.03. *Access to Premises, Records and Collateral.* At all reasonable times and as often as the Bank reasonably may request, the Borrower shall permit representatives designated by the Bank to (a) have complete and unrestricted access to the premises of the Borrower, the books and records of the Borrower and the Collateral, [*provided that* so long as no Default or Event of Default is then continuing, the Bank shall give the Borrower at least one Business Day's prior notice (which may be given by telephone) prior to any such visit,] (b) make copies of, or excerpts from, those books and records, and (c) discuss the Collateral or the accounts, assets, business, operations, properties or condition, financial or otherwise, of the Borrower with its officers, directors, employees, accountants[, attorneys] and agents.

Section 5.04. *Existence, [Corporate Documents,] Powers, Etc.* (a) The Borrower shall do, or cause to be done, all things, or proceed with due diligence with any actions or courses of action, that may be necessary (i) to maintain its due organization, valid existence and good standing under the laws of its state of incorporation, and (ii) to preserve and keep in full force and effect all qualifications, licenses and registrations in those jurisdictions in which the failure to do so could have a Material Adverse Effect; [(b) the Borrower shall not cause, suffer or permit any supplement, modification or amendment to[, or any waiver of any term or provision of,] any of its Corporate Documents;] and (c) the Borrower shall not, and shall not cause, suffer or permit anyone else to, take or fail to take any action (with respect to itself or otherwise), or offer, commit or enter into to any agreement or arrangement, that would, or could, in any way restrict,

limit, make subject to third-party approval or otherwise impair its right, power or authority (A) to carry on its business as now conducted or (B) to execute or deliver this Agreement or any other Loan Instrument to which it is or becomes a party or any supplement, modification or amendment thereto or restatement or replacement thereof from time to time in the manner provided therein, or (C) to perform any of its obligations hereunder or thereunder; and (c) the Borrower shall at all times: (i) do business exclusively under its own name(s) and employer and taxpayer identification numbers, hold itself out to the public as a legal entity separate and distinct from any other person (and not as a department or division of someone else), and correct any misunderstandings known to it regarding the separate identity of the Borrower; (ii) use its own separate stationery, invoices and checks; (iii) use its own logos and trademarks and not share any common logo or trademark with any other person; (iv) observe all corporate or equivalent formalities for maintaining its status as a valid separate entity; (v) maintain its records, books of account, bank accounts and other assets and properties separate and apart from those of any other person and not commingle any of them with those of any other person; (vi) promptly correct any other person's misunderstanding as to (A) the identity of the Borrower or any affiliate with whom such other person is transacting business, or (B) the Borrower's alleged responsibility for the Indebtedness or other obligations of any other person; (vii) allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate or vice versa; and (viii) maintain a sufficient number of employees or independent contractors in light of its contemplated business operations.

Section 5.05. *Compliance with Applicable Law; Operations.* The Borrower shall promptly and fully comply with, conform to and obey any and all Applicable Law now or hereafter in effect, other than to the extent the noncompliance therewith or violation thereof could not have a Material Adverse Effect. In any event, the Borrower shall procure, store, contain, manufacture, distribute, remove and dispose of all [Inventory and] Environmental Substances and use and operate all assets and properties (including, without limitation, machinery, equipment, real estate and improvements) in full compliance with and conformity to all Environmental Laws [and other Applicable Law] [in all material respects], including (without limitation) all applicable permits, licenses, and other authorizations, consents or approvals of authorities.

Section 5.06. *Payment of Debts, Taxes, Etc.* The Borrower shall (a) pay, or cause to be paid, all of its Indebtedness and other liabilities and lawful claims (whether for services, labor, materials, supplies or otherwise) as and when due, (b) perform, or cause to be performed, all of its obligations promptly and in accordance with the respective terms and provisions thereof, and (c) promptly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges and levies imposed upon the Borrower, upon its income or receipts or upon any of its assets and properties on or before the last day on which the same may be paid without penalty; *provided, however, that* it shall not constitute a breach of this Section if the Borrower fails to perform any such obligation or to pay any such Indebtedness or other liability (except for the Obligations), tax, assessment, or governmental or other charge, levy or claim (i) that [(A) is being delayed, in the case of trade payables (but not other obligations), in accordance with the normal payment practices of the Borrower, but not beyond any demand in payment therefor, or (B)] is being contested in good faith and by proper proceedings diligently pursued, (ii) if the effect of such failure to pay or perform will not (A) cause or permit the acceleration of the maturity of any other Indebtedness or obligation of the Borrower (*i.e.*, other than the one being contested) or (B) subject any part of the assets and properties of the Borrower to attachment, levy or forfeiture, (iii) for which the Borrower has obtained a bond or insurance, or established a reserve, in an amount that in the judgment of the Bank is adequate and satisfactory, and (iv) so long as the aggregate amount of such unpaid overdue items for the Borrower [under this Section and for the Guarantors under Section _____ of the Guaranties] does not at any time exceed \$_____.

Section 5.07. *Maintenance and Insurance.* (a) The Borrower shall maintain or cause to be maintained all of its assets and properties in good working order and condition (ordinary wear and tear and retirement excepted), making all necessary repairs thereto and renewals and replacements thereof. [The Borrower shall perform all servicing, repairs, overhauls, replacements, modifications, improvements and tests, or shall cause them to be performed, (i) with personnel duly qualified for the applicable task, (ii) in accordance and compliance with the manuals and service bulletins of the

applicable manufacturer(s) and (iii) with suitable replacement, substitute or additional parts or components (A) in good operating condition, (B) of equivalent or better performance, durability, utility and value than the item replaced, (C) owned solely by the Borrower, and (D) free of any Lien [other than any Permitted Lien].]

(b) The Borrower shall maintain or cause to be maintained insurance in form, substance and amounts (including deductibles) acceptable to the Bank (i) adequate to insure all assets and properties of the Borrower, which assets and properties are of a character usually insured by persons engaged in the same or similar business, against loss or damage resulting from fire, flood, hurricanes or other risks included in an extended coverage policy, (ii) against public liability and other tort claims that may be incurred by or asserted against the Borrower, (iii) as may be required by the other Loan Instruments or Applicable Law and (iv) as may be reasonably requested by the Bank, all with adequate, financially sound and reputable insurers, and all naming the Bank as an additional insured and loss payee under a standard mortgagee's endorsement as the Bank's interest may appear. In the event the Bank receives any insurance proceeds respecting any loss, damage or destruction of any insured Collateral, [(A) if such proceeds are subject to and to be applied in accordance with Section 7.03(b) hereof, the Bank shall hold and disburse such proceeds (or a portion thereof) in accordance with that Section, and (B) if other proceeds,] the Bank at its option may (1) hold and disburse the proceeds (or a portion thereof) to fund the costs of such repair, rebuilding or replacement as the Borrower may elect (subject to such conditions as the Bank may establish), or (2) apply the proceeds (or any remaining balance) to reduce the Loans (which shall be treated as a mandatory prepayment of the Loans). [In the event an insured loss has occurred, no Event of Default or Default is then continuing or would result from such loss, and the aggregate insurance proceeds with respect to such loss does not exceed \$_____, the Borrower may receive (from the insurer or the Bank) and retain such insurance proceeds [to fund the costs of such repair, rebuilding or replacement as the Borrower may elect in accordance with Section [7.03(b)] hereof].] In the event the Borrower receives any insurance proceeds (other than [as provided in the preceding sentence or] disbursements from the Bank), the Borrower shall accept and hold those funds in trust for the benefit of the Bank and shall promptly pay or deliver those proceeds to the Bank for application as provided above.

Section 5.08. *Preservation and Defense of Collateral, Etc.* The Borrower shall maintain, enforce, preserve and defend [in all material respects]: (a) any and all of the rights, powers, privileges, remedies and interests of the Borrower and the Bank under or with respect to each [material] note, stock certificate, instrument, agreement, account, document or intangible of the Borrower [included in the Collateral]; and (b) all of the right, title and interest of the Borrower and the Bank in and to each and every part of the Collateral against all manner of claims and demands; *in each case* on a timely basis to the full extent permitted by Applicable Law. In the event any of the Collateral [or any [material] part of any other assets or properties of the Borrower] is attached or levied or any Lien is imposed on any of the Collateral [or any [material] part of any other assets or properties of the Borrower] (other than a Permitted Lien), then (without limiting the generality of the preceding sentence) the Borrower shall pay, discharge or bond the underlying obligation and cause the release of such Collateral [or such other assets or properties] therefrom within five days of any attachment or levy or thirty days of the imposition of any Lien, but in any case before the claimant may defeat the Borrower's right to bond, contest or redeem.

Section 5.09. *Margin Stock Regulation Compliance.* (a) From time to time at the request of the Bank, and in any event prior to (i) using any proceeds of any of the Loans, [Letter of Credit Amount,] Commitment and other credit from the Bank directly or indirectly secured by any Margin Stock to directly or indirectly purchase or carry any Margin Stock, or (ii) making any permitted substitution or withdrawal of Collateral if before or after such substitution or withdrawal any such loan or other credit is or would be directly or indirectly secured by any Margin Stock, in each case as determined by the Bank (in its sole and absolute discretion), the Borrower will provide to the Bank duly completed and executed statements on Federal Reserve Form U-1 and any other statement that the Bank may deem to be necessary or desirable under any applicable Margin Stock Regulations.

(b) If at any time the Bank determines (in its sole and absolute discretion) that (i) any of the Loans or other Obligations or other credit extended by the Bank (A) are being or have been directly or indirectly used to purchase or carry any Margin Stock and (B) are directly or indirectly secured by any Margin Stock, and (ii) the aggregate value of

the Margin Stock and other assets and properties directly and indirectly securing them (computed and discounted in accordance with applicable [Borrowing Base criteria,] Margin Stock Regulations and policies of the Bank then in effect) is insufficient to fully cover the outstanding Loans, [Letter of Credit Amount,] Commitment and other included credit from the Bank, *then* [immediately] [promptly (but in any event within three Business Days)] after receipt of notice from the Bank the Borrower shall [(1) grant and deliver to the Bank or its designee additional Collateral consisting of such assets or properties as may be acceptable to the Bank (in its sole and absolute discretion) and having an aggregate current fair market value sufficient (when included in the calculation of collateral coverage) to eliminate any such deficiency, or (2)] repay the Loans [and prepay any Letters of Credit] [(or both)] in such amount(s) as the Bank may have requested in such notice in order to comply with any applicable Margin Stock Regulations. This Section imposes a continuing test, and the Bank at any time and from time to time may demand such payment and delivery whenever such a deficiency is determined by the Bank (in its sole and absolute discretion). [All additional Collateral pledged to the Bank or its designee pursuant to this subsection shall be documented, delivered and perfected in the manner required by this Agreement and Applicable Law before any deficiency may be deemed to have been reduced or extinguished by such Collateral.]

Section 5.10. *Maintenance of Borrowing Base.* The Borrower shall maintain, or cause to be maintained, a Borrowing Base at all times that is equal to or exceeds [the sum of (i)] the principal balance outstanding under the Loans [and (ii) the Letter of Credit Amount]. If at any time the Borrowing Base is less than that minimum (whether through (i) any change in or redetermination of value, (ii) any loss, destruction, termination, foreclosure or other impairment, deterioration or diminution, (iii) any new or newly discovered security interest or other encumbrance, adverse claim or title defect, or (iv) exclusion from the Borrowing Base for any untrue representation, or otherwise), which events and resulting effects and amounts may be determined at any time and from time to time by the Bank (in its sole and absolute discretion), *then* the Borrower shall [immediately] [promptly (but in any event within three Business Days)] after receipt of notice from the Bank [(a) grant and deliver to the Bank or its designee additional Collateral consisting of such assets or properties as may be acceptable to the Bank (in its sole and absolute discretion) and having an aggregate current fair market value sufficient (when included in the calculation of the Borrowing Base) to eliminate the Borrowing Base deficiency, or (b)] repay the Revolving Credit Loans and deposit cash collateral with the Bank (in the manner contemplated in Section 2.05(b) hereof) [(or both)] in such amount(s) as the Bank may have requested in such notice to eliminate the Borrowing Base deficiency. This Section imposes a continuing test, and the Bank at any time and from time to time may demand such payment and delivery whenever such a deficiency is determined by the Bank (in its sole and absolute discretion). [All additional Collateral pledged to the Bank or its designee pursuant to this subsection shall be documented, delivered and perfected in the manner required by this Agreement and Applicable Law before that deficiency may be deemed to have been reduced or extinguished by such Collateral.]

Section 5.11. *Interest Rate Protection.* The Borrower shall maintain or cause to be maintained an interest ceiling rate agreement or similar interest rate hedge or protection, in such form and substance and from the Bank or such other financial institution as may be selected by the Borrower and acceptable to the Bank, protecting the Borrower against increases in the Alternate Base Rate or equivalent prime rate above _____%, which shall cover not less than \$ _____ in Loans for a period of at least one year commencing on the Effective Date[; *provided that* the Borrower may elect to satisfy the preceding requirement in whole or in part through the election of one or more equivalent Fixed Rates offered by the Bank, with the amount of the Loans bearing equivalent Fixed Rate(s) reducing that requirement during the applicable Interest Periods].

Section 5.12. *Additional Subsidiary [Borrower] [Guarantor].* As soon as practicable, and in any event within thirty days following formation or acquisition, the Borrower shall cause each newly formed or acquired corporation, venture or other person meeting the definition of "subsidiary" of the Borrower to execute and deliver to the Bank an agreement, in form and substance acceptable to the Bank, in which such person agrees to become, and assumes all of the [Guarantor's[s']] Obligations of, a [[Corporate] Guarantor under the [Corporate] Guaranty] [Borrower under this Agreement] and the other Loan Instruments.]

ARTICLE VI**Negative Covenants**

The Borrower covenants and agrees that it will comply in all respects with each, and will not cause, suffer or permit any violation of any, of the terms and provisions of each Section in this Article, from the date hereof until the Obligations have been fully paid and satisfied, unless the Bank (in its sole and absolute discretion) shall consent otherwise in writing (as provided in Section 9.15 hereof):

Section 6.01. *Certain Financial Requirements.* The financial measurements used in the following covenants: (i) shall be determined in accordance with GAAP (as of the date of calculation) consistently applied except to the extent otherwise specified by a particular definition or covenant; (ii) shall be computed for the Borrower and all of its subsidiaries (if any) on a consolidated basis in accordance with GAAP except to the extent otherwise specified in a particular definition or provision; and (iii) shall refer to the corresponding items in the financial statements of the Borrower and its subsidiaries (if any) for the relevant periods except to the extent otherwise specified or defined herein. [(The Borrower and the Bank covenant and agree to reset in good faith the financial covenants set forth in this Section, as well as the corresponding provisions of the financial covenants compliance certificate required by Section 5.02(d) hereof, from time to time with each material change in GAAP so as to maintain the integrity and intent of such covenants.)]

(i) The Adjusted Net Worth of the Borrower [and its subsidiaries] shall not be less than: (i) \$_____ at the Effective Date, or at any time thereafter through _____, _____ [DAY BEFORE QUARTER'S END]; (ii) \$_____ at _____, _____ [DAY OF QUARTER'S END], or at any time thereafter through _____, _____ [DAY BEFORE QUARTER'S END]; and (iii) \$_____ at _____, _____ [DAY OF QUARTER'S END], or at any time thereafter.

[AUTOMATIC RATCHET UP: and (iii) the Minimum Adjusted Net Worth (as hereinafter defined) at the end of each fiscal quarter thereafter, or at any time thereafter through the day preceding the end of the next succeeding fiscal quarter. "*Minimum Adjusted New Worth*" shall mean for any fiscal quarter the sum of the Adjusted Net Worth of the Borrower [and its subsidiaries] as at the end of the immediately preceding fiscal year plus \$_____ for each quarter elapsed in the current fiscal year (for example, at June 30, 1998, or at any time thereafter through June 29, 1999, the sum of the Adjusted Net Worth as at June 30, 1997, plus \$_____).]

(ii) The Adjusted EBITDA of the Borrower [and its subsidiaries] shall not less than: (i) \$_____ for the Computation Period ended _____, _____ [DAY OF QUARTER'S END]; (ii) \$_____ for the Computation Period ended _____, _____ [DAY OF QUARTER'S END]; and (iii) \$_____ for the Computation Period ended _____, _____ [DAY OF QUARTER'S END], or for any Computation Period ending with any fiscal quarter thereafter.

(iii) The Adjusted Net Current Assets of the Borrower [and its subsidiaries] shall not be at any time less than: (i) \$_____ at the Effective Date, or at any time thereafter through _____, _____ [DAY BEFORE QUARTER'S END]; (ii) \$_____ at _____, _____ [DAY OF QUARTER'S END], or at any time thereafter through _____, _____ [DAY BEFORE QUARTER'S END]; and (iii) \$_____ at _____, _____ [DAY OF QUARTER'S END], or at any time thereafter.

(iv) The Adjusted Quick Ratio of the Borrower [and its subsidiaries] shall not be less than: (i)

_____:1.00 at _____, _____ [DAY OF QUARTER'S END]; (ii) _____:1.00 at _____, _____ [DAY OF QUARTER'S END]; and (iii) _____:1.00 at _____, _____ [DAY OF QUARTER'S END], or at the end of any fiscal quarter thereafter.

(v) The Adjusted Debt Service Ratio of the Borrower [and its subsidiaries] shall not be less than: (i) _____:1.00 at _____, _____ [DAY OF QUARTER'S END]; (ii) _____:1.00 at _____, _____ [DAY OF QUARTER'S END]; and (iii) _____:1.00 at _____, _____ [DAY OF QUARTER'S END], or at the end of any fiscal quarter thereafter.

(vi) The Adjusted Debt to Equity Ratio of the Borrower [and its subsidiaries] shall not exceed: (i) _____:1.00 at _____, _____ [DAY OF QUARTER'S END]; (ii) _____:1.00 at _____, _____ [DAY OF QUARTER'S END]; and (iii) _____:1.00 at _____, _____ [DAY OF QUARTER'S END], or at the end of any fiscal quarter thereafter.

(vi) The Adjusted Leverage Ratio of the Borrower [and its subsidiaries] shall not exceed: (i) _____:1.00 at the Effective Date, or at any time thereafter through _____, _____ [DAY BEFORE QUARTER'S END]; (ii) _____:1.00 at _____, _____ [DAY OF QUARTER'S END], or at any time thereafter through _____, _____ [DAY BEFORE QUARTER'S END]; and (iii) _____:1.00 at _____, _____ [DAY OF QUARTER'S END], or at any time thereafter.

(vii) The Adjusted Capital Expenditures of the Borrower [and its subsidiaries] shall exceed: (i) \$_____ at the Effective Date, or at any time thereafter through _____, _____ [DAY BEFORE QUARTER'S END]; (ii) \$_____ at _____, _____ [DAY OF QUARTER'S END], or at any time thereafter through _____, _____ [DAY BEFORE QUARTER'S END]; and (iii) \$_____ at _____, _____ [DAY OF QUARTER'S END], or at any time thereafter.

(ix) The Borrower shall not cause or permit any change of its fiscal year from _____ of each year without the prior written consent of the Bank[, which will not be withheld unreasonably].

Section 6.02. *Indebtedness.* (a) The Borrower shall not directly or indirectly create, incur, assume, permit to exist, increase, renew or extend any Indebtedness on its part, including commitments, lines of credit and other credit availabilities, or apply for or offer, commit or agree to do any of the foregoing, *excluding, however:*

1. Indebtedness owed to the Bank under any of the Loan Instruments;

2. purchase money Indebtedness incurred in the purchase of equipment in the ordinary course of business so long as each is secured only by the equipment purchased, and obligations constituting Indebtedness under generally accepted accounting principles arising under capitalized leases entered into in the ordinary course of business, *in each case* so long as (A) the aggregate amount of all such purchase

money Indebtedness and capitalized lease amounts does not exceed \$_____ at any time [(including all purchase money Indebtedness and capital lease amounts incurred by the [Corporate] Guarantors under the [Corporate] Guaranty)], and (B) no Event of Default or Default then exists or could result therefrom (whether through any Pro Forma Effect or otherwise), *provided that* the Borrower may continue such purchase money Indebtedness and capital lease obligations within those limits, but without any increase[, renewal or extension], once incurred as so permitted;

3. [any Subordinated Intercompany Debt so long as no Event of Default or Default then exists or could result therefrom (whether through any Pro Forma Effect or otherwise), *provided that* the Borrower may continue such Indebtedness, but without any increase[, renewal or extension], once incurred as so permitted;] and *in each case* so long as (A) the aggregate amount of all such purchase money Indebtedness and capitalized lease amounts does not exceed \$_____ at any time [(including all purchase money Indebtedness and capital lease amounts incurred by the [Corporate] Guarantors under the [Corporate] Guaranty)], and (B) no Event of Default or Default then exists or could result therefrom

4. the continuation of the Indebtedness listed in Schedule 3.10(a) hereto, excluding, however, any increase therein [or renewal or extension thereof] or the continuation of any Indebtedness being retired with the proceeds of the Loans.

(b) The Borrower shall not prepay, acquire or otherwise satisfy, in whole or in part, any of its Indebtedness prior to when due, except (i) for Indebtedness owed to the Bank under any of the Loan Instruments, [(ii) for Subordinated Intercompany Debt (which is restricted under subsection (c) of this Section),] [(iii) for Indebtedness permitted under Section 6.02(a) (ii) hereof so long as no Event of Default or Default then exists or could result therefrom (whether through any Pro Forma Effect or otherwise), or (iv) as permitted by agreement or consent of the Bank.

(c) [The Borrower shall not pay, repay, prepay, acquire or otherwise satisfy, in whole or in part, any of its Subordinated Intercompany Debt except to the extent (i) such prepayment is expressly permitted by the subordination provisions of the applicable Loan Instrument with the lender of such Subordinated Intercompany Debt, and (ii) no Event of Default or Default then exists or could result therefrom (whether through any Pro Forma Effect or otherwise).]

Section 6.03. *Guaranties and other Credit Support.* The Borrower shall not directly or indirectly make, create, incur, assume, permit to exist, increase, renew or extend any guaranty or other Credit Support on its part of any Indebtedness or other obligation of any other person, or offer, commit or agree to do so, *excluding, however:* (a) any guaranty of or other Credit Support for Indebtedness or other obligations owed to the Bank [or any of its affiliates]; [(b) any guaranty of any obligation of any Corporate Guarantor if the Corporate Guarantor [(A) is included in the consolidated financial statements of the Borrower provided to the Bank hereunder and (B)] is not prohibited under the Corporate Guaranty from incurring or undertaking such obligation; and (c)] and (b) the continuation of those guaranties and other Credit Support listed in Schedule 3.10(b) hereto, excluding, however, any increase therein [or renewal or extension thereof].

Section 6.04. *Liens and Encumbrances.* The Borrower shall not directly or indirectly make, create, incur, assume or permit to exist any Lien of any nature in, to or against any part of the Collateral [or any other asset or property of the Borrower], or offer, commit or agree to or cause or assist the inception or continuation of any of such Lien; *excluding, however,* any Permitted Lien to the extent otherwise not prohibited by this Agreement.

Section 6.05. *Sale or Disposition of Collateral, Etc.* The Borrower shall not directly or indirectly: (a) sell, lease, sublease, transfer, exchange, abandon or otherwise dispose of, surrender management, physical possession or control of, physically alter or relocate all or any portion of the Collateral [or the other [material] assets or properties of the Borrower], other than as expressly permitted by Section [7.03] hereof; [or] (b) cause, suffer or permit any supplement, modification or amendment to, or any waiver of any term or provision or any termination of, any

[_____ or other] [material] note, stock certificate, instrument, agreement, account, document or intangible of the Borrower [included in the Collateral], [, other than as expressly permitted by Section [7.03] hereof]; (c) sell, lease, sublease, transfer, exchange or otherwise dispose of any [material] part of its other assets and properties (individually or in a series of transactions), excluding, however, the sale of any assets and properties (other than Collateral) if (i) the aggregate consideration for (A) any such permitted sale does not exceed \$[_____], and (B) all such permitted sales in any year does not exceed \$[_____], (ii) the consideration for each such permitted sale is not less than fair market value, (iii) at least 90% of the consideration for any such permitted sale is paid in cash, (iv) no Event of Default or Default then exists or could result therefrom (whether through any Pro Forma Effect or otherwise), [and (v) the Borrower pays any amount required by Section [2.05(e)] hereof]; or (d) offer, commit or agree to or cause or assist the inception or continuation of any of the foregoing.

Section 6.06. *Investments, Loans, Advances, Etc.* The Borrower shall not directly or indirectly purchase or otherwise acquire or hold any Investment or make any Investment in or for the benefit of any other person, or offer, commit or agree to do so, except for: (a) securities received in connection with past contributions to or Investments in the subsidiaries and ventures listed in Schedule 3.13 hereto; (b) the continuation of the existing Investments listed on Schedule 3.13 hereto; (c) the Permitted Investments[, *provided that* the aggregate deposits and other Investments with any bank or other financial institution other than the Bank shall not exceed \$_____ at any time]; (d) any guaranty or other Credit Support permitted under Section 6.03 hereof; (e) any collateral account established under this Agreement or any other Loan Instrument; (f) any loans or advances of salary to any officer or employee of the Borrower or any of its subsidiaries in the ordinary course of its business that in the aggregate do not at any time exceed (i) _____% of that person's regular annual salary, [excluding any loan made or commercial loan guaranty given in the ordinary course of business to finance the relocation of an employee from a different geographical area,] and (ii) \$_____ for all such officers and employees; [(g) loans and advances by the Borrower to any [Guarantor] [Surety] so long as (A) such loans and advances are pledged to the Bank hereunder, [(B) such loans and advances constitute Subordinated Intercompany Debt under (and as defined in) the Corporate Guaranty of the borrower of loans or advances,] and (C) no Event of Default or Default then exists or could result therefrom (whether through any Pro Forma Effect or otherwise), which shall be valued at zero to the extent not otherwise offset in consolidation, *provided that* the Borrower may continue such loans and advances, but without any increase[, renewal or extension], once made as so permitted;] and (h) other Investments not exceeding \$ in the aggregate at any one time in persons not affiliated with the Borrower or any Surety.

Section 6.07. *Certain Fundamental Changes.* The Borrower shall not directly or indirectly effect, enter into or offer, commit or agree to: (a) any issuance, sale, transfer, pledge or other disposition or encumbrance of any capital stock, partnership or membership interests or other [equity] securities issued by the Borrower [or any of its subsidiaries], or the issuance of any option, warrant or other right to acquire any such securities; (b) any capital reorganization or reclassification of the capital stock, partnership or membership interests or other [equity] securities issued by the Borrower [or any of its subsidiaries]; (c) any transaction in which the capital stock, partnership or membership interests or other [equity] securities issued by the Borrower [or any of its subsidiaries] prior to the transaction would be changed into or exchanged for different securities, whether of that or any other person, or for any other assets or properties; (d) any sale, lease, assignment, conveyance, spin-off or other transfer or disposition of all or any material part of the business or assets and properties of the Borrower [or any of its subsidiaries]; (e) any merger, consolidation, dissolution, liquidation or winding up of the Borrower [or any of its subsidiaries]; (f) the acquisition or establishment of any new subsidiary or joint venture by the Borrower [or any of its subsidiaries]; (g) the acquisition by the Borrower [or any of its subsidiaries] of all or substantially all of the assets and properties of any other person or any discrete division or other business unit thereof; or (h) any material change in the character of the business of the Borrower [or any of its subsidiaries] as conducted on the date of this Agreement or any adverse change in the method by which that business is conducted.

Section 6.08. *Distributions to Shareholders.* The Borrower shall not directly or indirectly: (a) declare or make any dividend, payment or other distribution of cash, assets or property with respect to any [equity] securities issued by the

Borrower, whether now or hereafter outstanding; (b) redeem, purchase or otherwise acquire any securities issued by the Borrower or any option or other right to acquire any such securities; (c) covenant or otherwise arrange with any person (other than the Bank in any Loan Instrument) to directly or indirectly limit or otherwise restrict any dividend, advance or other payment or distribution (whether of cash or otherwise) [to or for the benefit of _____]; or (d) offer, commit or agree to do any of the foregoing; *provided, however, that* so long as no Event of Default or Default then exists or could result therefrom (whether through any Pro Forma Effect or otherwise), the Borrower may declare or make any dividend, payment or other distribution of cash to its shareholders from its net income for the preceding fiscal year [necessary to pay the taxes of such shareholders attributable to the taxable income of the Borrower]] [; and *provided further that* the Borrower may make any payment or repayment or enter into any refinancing, renewal or extension of any Subordinated Intercompany Debt expressly permitted by 6.02 hereof].

Section 6.09. *Use of Loans.* (a) The Borrower shall not directly or indirectly use any portion of the Loans, or cause, assist, suffer or permit the use of any portion of the Loans, in whole or in part, other than use of the Term Loan for the funding of _____ and use of the Revolving Credit Loans for the funding of the working capital needs of the Borrower.

(b) No part of the proceeds of the Loans shall be used directly or indirectly [(i) to finance any hostile acquisition or (ii)] to pay or repay any portion of the Obligations [respecting the Term Loan].

(c) No part of the proceeds of the Loans or other credit from the Bank shall be used at any time directly or indirectly [to purchase or carry any Margin Stock or otherwise] in any way or for any purpose that violates or is inconsistent with any applicable Margin Stock Regulations.

Section 6.10. *ERISA Plans.* [(a) Except for the Plans, the Borrower shall not, and shall not cause, suffer or permit any of its ERISA Affiliates to, directly or indirectly establish, maintain, participate in, contribute to or permit to exist any "employee pension benefit plan" (as defined in ERISA) for any employees of the Borrower or any ERISA Affiliate; *provided, however, that* the Borrower or any ERISA Affiliate from time to time may establish any such plan in accordance with Applicable Law (including ERISA and the Code) with the prior written consent of the Bank [OR: with reasonable prior notice to the Bank, but if any such Plan could impose any material funding obligation or other liability upon any one or more of the Borrower or any ERISA Affiliate (individually or in the aggregate), the consent of the Bank shall be required to establish such new Plan] (which consent will not be unreasonably withheld). The Borrower shall use its best efforts to obtain or continue the qualification of each Plan under ERISA and the Code, as applicable, shall prepare and deliver each material report, statement or other document required by ERISA and the Code within the periods specified therein and conforming in form and substance to the provisions thereof, and shall administer each Plan in all material respects in accordance with ERISA, the Code and all other Applicable Law, as applicable; and shall use its best efforts to cause its ERISA Affiliates to do each of the foregoing. In any event, the Borrower shall not, and shall not cause, suffer or permit any of its ERISA Affiliates to: (i) incur, continue or fail to correct [in any material respect] any ERISA Event; (ii) fail to file with the appropriate Authority any required notice or report respecting any Plan as and when due; (iii) fail to respond in a timely fashion to any notice or other communication respecting any Plan from any Authority; (iv) materially increase or materially and adversely modify [any funding obligation or other liability of any one or more of the Borrower or any ERISA Affiliate (individually or in the aggregate) under] any Plan (whether through amendment or termination) without the prior written consent of the Bank (which will not be withheld unreasonably); (v) permit the present value of all accrued benefits under each Plan subject to Title IV of ERISA to exceed the value of the assets of such Plan allocable to such accrued benefits (which benefit value shall be determined either on an ongoing basis, using the Plan's reasonable actuarial assumptions, or on a termination basis, using the assumptions employed by the Pension Benefit Guaranty Corporation in connection with plan terminations, as applicable); or (vi) permit the present value of all accrued post-retirement benefits under each "employee welfare benefit plan" (as defined in ERISA) to which one or more of the Borrower and its ERISA Affiliates is required to contribute in the aggregate to exceed the assets of such plan allocable to such benefits [by more than \$_____] (determined by using the actuarial and other assumptions required by FAS106).

(b) The Borrower shall not[, and the Borrower shall not cause, suffer or permit any of its subsidiaries to,] directly or indirectly contribute to or for the benefit of the Plans or its participants thereunder more than _____ in the aggregate in any fiscal year.

Section 6.11. *Transactions with Affiliates.* The Borrower shall not directly or indirectly enter into any transaction with, or use any [material] asset or property of, any affiliate of the Borrower [other than any Corporate Guarantor [consolidated in the financial statements of the Borrower furnished to the Bank hereunder]] (including, without limitation, the lease, purchase, sale or exchange of any asset or property, any advance or loan, the provision of any services, or any allocation of administrative salaries, expenses and other general overhead), other than in the ordinary course and pursuant to the reasonable requirements of the business of the Borrower and upon fair and reasonable terms and provisions no less favorable to the Borrower than it would have been reasonably likely to have obtained in a comparable arm's-length transaction with a person who is not an affiliate of the Borrower[; *provided that* the foregoing restriction shall not apply to (i) the payment of reasonable and customary regular fees to directors of the Borrower [or its subsidiaries] who are not employees of the Borrower, (ii) loans and advances to officers of the Borrower [or its subsidiaries] approved by the Board of Directors of the Borrower and permitted by Section 6.06 hereof, (iii) reasonable employment arrangements and benefit programs for the employees of the Borrower approved by the Board of Directors of the Borrower, (iv) the grant of reasonable stock options or similar rights to employees and directors of the Borrower [or its subsidiaries] pursuant to plans approved by the Board of Directors of the Borrower, [(v) any loans or advances to or from any [subsidiary or other affiliate of the Borrower] [Guarantor] expressly permitted under this Agreement,] (vi) any transfer of assets to any [subsidiary or other affiliate of the Borrower] [Guarantor] expressly permitted by Section 6.05 or 6.07 hereof, and (vii) any merger, consolidation or liquidation expressly permitted by Section 6.07 hereof].

Section 6.12. *Execution and Modification of the Subordinated Intercompany Debt Documents, Etc.* The Borrower shall not enter into any new Subordinated Intercompany Debt Document, enter into or cause, suffer or permit any supplement to or any waiver (of its rights), modification, amendment or restatement of any Subordinated Intercompany Debt Document existing on the date hereof or hereafter approved by the Bank, or commit or agree to do any of the foregoing, without the prior written consent of the Bank. The inclusion of supplements, modifications, restatements and the like in the various definitions of the Subordinated Intercompany Debt Documents is not intended, and shall not be deemed or construed, to be permission for or acceptance of any of the foregoing by the Bank.

ARTICLE VII

Collateral

Section 7.01. *Grant of Security Interest.* The Borrower hereby pledges, assigns, conveys, mortgages, transfers and delivers to the Bank, and grants to the Bank a continuing security interest in and to, [all of the assets and properties of the Borrower, including (without limitation)] each of the following, in each case whether now or hereafter acquired, created or otherwise existing (including, without limitation, during the pendency of any Bankruptcy Proceeding) and wherever located:

(A) any and all Accounts Receivable of the Borrower;

(B) any and all _____ Inventory, Equipment and other goods of the Borrower, wherever located, including (without limitation) any and all (i) raw materials, work-in-progress and finished goods, (ii) documents, warehouse receipts, bills of lading and other documents of title now or hereafter covering any such goods, and (iii) accessions, accessories, additions, attachments, equipment, fixtures, furnishings, goods, machinery, materials, parts, replacements, supplies, tools and vehicles, whether or not located upon or affixed to any of the foregoing;

(C) any and all Intellectual Property of the Borrower;

(D) any and all of the _____ and other real estate of the Borrower

[described in the relevant mortgages], any and all fixtures and improvements thereto, and any and all interests therein, wherever located, including (without limitation) any and all of the Property;

(E) any and all [Pledged Securities of the Borrower] [(i) Investments of the Borrower [, including (without limitation) any Investment(s)] in or to or issued by any [Corporate Guarantor or other] subsidiary or affiliate of the Borrower, (ii) any and all dividends, interest and distributions on, under or related to any of the foregoing items (whether cash, stock or otherwise) and splits and reclassifications thereof, (iii) any and all options, warrants and other rights to acquire any such Investments, and (iv) any and all security entitlements and other rights, powers, privileges, remedies and interests of the referenced person in, to and under any and all the foregoing and any and all [O]rganizational [D]ocuments and [C]ustody [D]ocuments pertaining thereto];

(F) any and all (i) advances, loans, and other Indebtedness and amounts (including interest) directly or indirectly owed to the Borrower by any Surety, (ii) subrogation, contribution and other similar rights of the Borrower against or in respect of any Surety, or any of its assets and properties, whether resulting from any payment made by the Borrower or otherwise, and (iii) Liens or Credit Support and other supporting obligations (as such term is defined in the UCC) for any such advances, loans, Indebtedness, amounts or rights, and (iv) security entitlements and other rights, powers, privileges, remedies and interests of the Borrower in, to or under any of the foregoing and any other note, overdraft facility agreement, letter of credit application, guaranty, security agreement, hypothecation, assignment, mortgage or other instrument, agreement or document with or issued or given to the Borrower creating, evidencing, governing, supporting, securing, perfecting or respecting (in whole or in part) any such advances, loans, Indebtedness, amounts or rights;

(G) any and all [Accounts Receivable of the Borrower, any and all other] accounts, instruments, chattel paper, documents of title and trust receipts (and the goods covered thereby, wherever located), financial assets, investment property, security entitlements, contract rights, warranties, casualty and other insurance policies and rights, litigation claims and rights, commercial tort claims, tradenames, farm products, payment intangibles and other general intangibles of the Borrower, and any and all computer programming data and other books and records of the Borrower[, *in each case* arising from or with respect to all or any part of any of the items in the foregoing subsections]; and

(H) any and all deposit accounts and other deposits of the Borrower (whether general or special, time or demand, provisional or final, or individual or joint) maintained with the Bank or any of its affiliates, custodians, participants or designees; any and all Indebtedness and other amounts and obligations at any time owing by the Bank or any of its affiliates or participants to or for the credit, account or benefit of the Borrower; and any and all assets and properties of the Borrower in the possession, custody or control of the Bank, or any of the Bank's affiliates, custodians, participants or designees, including (without limitation) other monies, certificates of deposit, securities, instruments of debt or credit, documents of title and trust receipts (and the goods covered thereby, wherever located), and other instruments and documents;

in each case whether now or hereafter acquired or created, whether owned beneficially or of record and whether owned individually, jointly or otherwise, together with the products and proceeds thereof, all collections, payments and other distributions and realizations with respect thereto, any and all other rights, powers, privileges, remedies and interests of the Borrower therein, thereto or thereunder, and any and all renewals, substitutions, modifications and extensions of any and all of the items in the foregoing subsections (the foregoing items will be referred to collectively as the "Collateral"), as security for the timely and full payment and satisfaction of the Obligations as and when due. [MORTGAGE MODIFICATION: *provided, however, that* the _____ Mortgage by its terms serves as Collateral for only those Obligations arising under the Term Note. (The Borrower acknowledges that the reference to all real estate in subsection (____) above serves as a covenant to deliver future mortgages pursuant to Section 7.02(a) hereof on additional real estate of the Borrower as and if acquired.))] However, items released in writing by the Bank from time to time from the lien of this Agreement and the other Loan Instruments shall no longer be considered to be "Collateral" hereunder.

Section 7.02. *Collateral Documentation.* (a) The Borrower shall deliver to the Bank on or before the Effective Date and thereafter concurrently with each item becoming Collateral [any and all stock certificates and other instruments evidencing or respecting the Collateral, which shall be delivered with this Agreement if currently existing or shall be delivered promptly as hereafter received, acquired or created. Stock certificates shall be delivered with corresponding stock powers, duly endorsed in blank, and other instruments shall be duly endorsed to the order of the Bank in such manner as the Bank may specify. Each certificate shall be delivered free and clear of any and all restrictive legends. If any of the Collateral is held by a broker, investment adviser, trader, financial intermediary, custodian, holder, clearing corporation or other person (other than the Bank), has been issued by any partnership, limited liability company, trust or other non-corporate person, or has been issued in uncertificated form, the Borrower shall execute and deliver such Collateral Notices to, and obtain such Collateral Acknowledgments from, each such person respecting any Collateral (and the rights, powers, privileges, remedies and interests of the Bank in and to the Collateral) as the Bank from time to time may request, including (without limitation) those rights, powers, privileges, remedies and interests pertaining to the "control" over such securities required under the UCC for perfection by the Bank of its security interest in such Collateral. From time to time upon request of the Bank, the Borrower shall, or shall cause the holder or issuer of any Collateral to, deliver to the Bank such Organizational Documents and Custody Documents as the Bank may request. The Bank in its sole and absolute discretion may at any time transfer or register any of the Collateral into the name of the Bank or its nominee(s) without any notice to the Borrower. In addition to the foregoing, the Borrower] shall deliver to the Bank or its designee such acknowledgments, appraisals, assignments, attornments, bailments, consents, control or custody agreements, deeds, estoppels, financing statements, legal opinions, mortgages, pledges, recognitions, subordinations, waivers, and other instruments, agreements and other instruments, documents and agreements as the Bank from time to time may request to further evidence, confirm, effect or perfect any mortgage or other security interest granted or required to be granted under this Agreement or any other Loan Instrument or any access or control of any Collateral or the practical realization thereof, each in such form and substance as may be requested by and acceptable to the Bank.

(b) Without in any way limiting the right, power or authority of the Bank under the UCC or other Applicable Law, the Borrower hereby irrevocably authorizes the Bank in its sole and absolute discretion, at any time and from time to time: (i) to file without the review, approval or signature of the Borrower any and all financing statements, modifications and continuations in respect of the Collateral and the Borrower, any other or additional debtor or the transactions contemplated by this Agreement or any other Loan Instruments in such jurisdictions as the Bank deems necessary or desirable; (ii) to sign any such statement, modification or continuation on behalf of the Borrower if the Bank deems such signature necessary or desirable under Applicable Law; and (iii) to file a carbon, photographic or other reproduction of any financing statement or modification if the Bank deems such filing necessary or desirable under Applicable Law. The Borrower shall promptly reimburse the Bank for all costs and expenses incurred in connection with the preparation and filing of any such document. Without in any way limiting the foregoing, the Borrower hereby acknowledges and agrees that, prior to the execution of this Agreement, the Borrower reviewed the initial UCC financing statements respecting the Collateral prepared by the Bank and authorized the Bank to file them (*i.e.*, "prefile") in such jurisdictions as the Bank deemed necessary or desirable, and the Borrower hereby confirms and ratifies the authority of the Bank to make each such filing. The Bank shall endeavor to send a copy of any such filing to the Borrower; *provided, however, that* the failure to send that copy shall not affect the validity or enforceability of any such filing. The Bank shall not be liable for any mistake in or failure to file any financing statement, modification, continuation or other perfection document.

(c) The Bank from time to time may request that [material] items of Collateral be legended or otherwise marked from time to time to reflect the Bank's security interests therein, and the Borrower shall promptly mark each requested item in a prominent location with such legend as the Bank may direct, which may be affixed directly or on a permanently attached plaque of customary size. The Borrower shall not, and shall not cause, suffer or permit anyone else to, alter, cover, deface or remove any such legend without the prior written consent of the Bank, except that such legend may be removed from items released by the Bank in writing from time to time from the security interests created under this Agreement and the other Loan Instruments as provided herein or therein.

Section 7.03. *Rights of the Borrower to the Collateral.* Subject to the terms and provisions of this Agreement and the other Loan Instruments and until such time as the Bank shall give notice to the Borrower to the contrary during the continuance of any Event of Default [or Default], without regard to whether any other action has been taken by the Bank under this Agreement or any other Loan Instrument, the Borrower shall have the right to do the things expressly permitted by any subsection of this Section notwithstanding the restrictions contained in Section [6.05] hereof (but shall not have such right after such notice has been given to the extent specified in such notice):

(a) The Borrower shall have the full power and authority in the ordinary course of business (i) to use in its business any item of Collateral (other than instruments, securities and other general intangibles in the possession of the Bank) [or any other asset or property of the Borrower], (ii) to sell or lease any Inventory, [(iii) to relocate finished goods Inventory to one or more public warehouses from which the Borrower has obtained recognition and access agreements [reasonably] acceptable to the Bank,] (iv) to maintain, repair, replace and retire equipment [in accordance with Section [5.07(a)] hereof] [(subject to the provisions of Section [2.05(e)] hereof and subsection (b) of this Section)], [(v) to sell or otherwise voluntarily dispose of any unused equipment or other goods (subject to the provisions of Section [2.05(e)] hereof and subsection (b) of this Section) if the sale or other disposition will not materially and adversely affect the business or operations of the Borrower or the value of the Collateral and the Borrower determines in good faith that it is in its best interest to do so (which sale or other disposition need not be repetitive to be in the normal course),] [(vi) to modify or amend or reduce any payment or otherwise settle any dispute under any Account Receivable, note, stock certificate, instrument, agreement, account, document or intangible [(other than any _____], Pledged Security, Organizational Document or Custody Document)] included in the Collateral if such action will not materially and adversely affect the business or operations of the Borrower or the value of the Collateral and the Borrower determines in good faith that it is in its best interest to do so, (vii) to diligently service and collect the proceeds of any Accounts Receivable[, which may include such discounts and reductions as may be usual and customary], (viii) to use in its business the cash proceeds from such Inventory and Accounts Receivable, and (ix) to deposit, withdraw and use in its business funds and other cash equivalents constituting Collateral under Section [7.01(h)] hereof [NOTE ANY EXCEPTIONS]; *provided, however, that* such power shall not be exercised to the extent (A) such exercise could conflict with or prejudice the continued perfection of any security interest in any item of the Collateral (other than through such sales, use of cash proceeds or withdrawals or use of funds) or (B) any Event of Default or Default could result therefrom (whether through any Pro Forma Effect or otherwise).

[(b) In the event of any sale or other voluntary disposition of any tangible asset or property (other than Inventory in the ordinary course of business) of the Borrower in any transaction permitted by subsection (a) of this Section or any other provision of this Agreement or other Loan Instrument, or in the event of any damage, destruction or other loss of any insured Collateral or other asset or property or any condemnation of any Collateral or other asset or property or other involuntary disposition so long as it does not constitute a default under Section [8.01(j)] hereof, *in each case* whether in whole or in part, the Borrower shall have the right to apply the amounts received therefrom (whether payments, proceeds or otherwise) to the repair, rebuilding or replacement of those assets or the acquisition of additional assets if, and only if the Borrower: (i) in its discretion has elected to repair, rebuild or replace those assets or acquire additional assets of at least equivalent value and business utility; (ii) has sufficient additional funds with which to do so (if the amounts received and to be received are not sufficient to do so); and (iii) does so, (A) those assets would constitute (or continue to constitute) Collateral (unless repairing, rebuilding or replacing any asset or property not constituting Collateral), (B) the Borrowers' representations and warranties pertaining to that Collateral or other asset or property in this Agreement and the other Loan Instruments would (upon completion) be true and correct, and (C) no Event of Default or Default could result therefrom (whether through any Pro Forma Effect or otherwise). If those amounts are to be applied to such repair, rebuilding, replacement or acquisition and are received by the Bank, then the Bank shall promptly remit those amounts to the Borrower for such use [(which nevertheless will be subject to the mandatory prepayment provisions of Section [2.05(d)] hereof if the assets are not actually repaired, rebuilt, replaced or acquired within the period required by that subsection)]; *provided that* if such amounts exceed \$_____, the Bank (in its sole and absolute discretion) shall hold such proceeds as received and disburse them to the Borrower for such purposes upon delivery to the Bank of satisfactory evidence of (x) full payment

to the requisite third parties, (y) good title and the absence of competing security interests and other encumbrances and adverse claims, and (z) the satisfaction of such other conditions as may be required by the Loan Instruments or requested by the Bank. In the event the Borrower receives any such payments or proceeds (other than disbursements or remittances from the Bank) the Borrower shall accept and hold those funds in trust for the benefit of the Bank and shall promptly pay or deliver those proceeds to the Bank for application as provided above.]

(c) In instances not involving a permitted sale or disposition, the Borrower shall have the full power and authority to relocate any item of Collateral, except for Collateral held by the Bank or its designee, so long as (i) the new location is within the continental United States, (ii) the relocation will be made at the sole cost and expense of the Borrower, which shall bear all risk of loss and any and all other liabilities related thereto, (iii) the Borrower gives the Bank at least thirty (30) days' prior written notice of any proposed relocation, (iv) prior to relocation the Borrower executes and delivers to the Bank such financing statements and other instruments and documents as the Bank or its counsel may deem necessary or desirable, (v) prior to relocation the Borrower provides evidence satisfactory to the Bank that all insurance will be applicable in the new location to the extent required by this Agreement and the other Loan Instruments, and (vi) immediately following the relocation as proposed, the representations and warranties set forth in this Agreement (as and if updated by way of supplements to the schedules, statements, reports, certificates or notices required hereunder and previously delivered to and accepted by the Bank) shall be true and correct in all material respects on and as of that date with the same effect as though those representations and warranties had been made on and as of that date; *provided, however, that* the Borrower will not make any relocation to which the Bank gives notice of its objection.

(d) The Borrower shall be entitled to exercise in good faith any and all voting, waiver or consensual rights and powers relating or pertaining to the Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement; *provided, however, that* the Borrower shall not be permitted to exercise or refrain from exercising any such right or power if [the Bank gives express written notice to the Borrower that] such exercise or non-exercise could (A) have a material and adverse effect on the value of the Collateral or any part thereof [in the judgment of the Bank] or (B) result in any Default or Event of Default; and *provided further that* the Borrower shall give the Bank at least five (5) Business Days' prior written notice of the manner in which the Borrower intends to exercise or not exercise any such right or power that could have such an effect, together with any reasons therefor, except that notice need not be given with respect to any re-election of directors].

(e) The Borrower shall be entitled to receive and retain any and all dividends, other distributions of profit and interest payable in cash on the securities constituting part of the Collateral. However, any and all stock or liquidating dividends, returns of capital or other distributions of cash or other assets or properties made on, in respect of, upon, in redemption of, in exchange for or in payment of principal of any such Collateral (whether resulting from a subdivision, combination or reclassification of the outstanding capital stock of any issuer thereof, any merger, consolidation, acquisition or other exchange of assets or securities to which any such issuer may be a party, any conversion, call or redemption, or otherwise) shall be and become part of the Collateral pledged under this Agreement (whether or not any Default or Event of Default is then continuing), and, if received by the Borrower, shall be delivered immediately to the Bank or its designee (accompanied by the documentation required under this Agreement) to be held as Collateral pursuant to this Agreement.

Section 7.04. *Borrower's Continuing Liability for Obligations Related to Collateral, Etc.* Notwithstanding anything herein to the contrary: (a) the Borrower shall remain fully and solely liable to observe, perform and satisfy (as and when due and in accordance with their respective terms and provisions) all of the obligations, duties, agreements and other terms and provisions to be observed, performed and satisfied by the Borrower under each and every note, instrument, agreement, account, document or similar general intangible or other item of Collateral in which the Borrower has granted to the Bank a security interest or other Lien under this Agreement or any other Loan Instrument; (b) the Bank shall not have any duty, obligation or liability whatsoever to, in any way or under any circumstance, (i) make any payment owed by the Borrower under any such Collateral, (ii) perform or satisfy any obligation, duty or agreement of the Borrower or other party under or other term or provision of such Collateral, (iii) make any inquiry as to the nature or

the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any such Collateral, (iv) make any demand, present or file any claim or take any other action to collect any payment or otherwise preserve, exercise or enforce performance of any obligation under any such Collateral, or (v) otherwise preserve, exercise or enforce any right, power, privilege, remedy or interest the Borrower may have against any other person or in respect of any Collateral; (c) no such duty, obligation or liability on the part of the Bank shall be deemed or construed to have been intended, imposed or created because or arising (directly or indirectly) out of (i) this Agreement or any other Loan Instrument, (ii) any of the security interests and other Liens granted in any such Collateral hereunder and thereunder, or (iii) the receipt by the Bank or any of its affiliates or designees of any payment, distribution or other proceeds from or relating to any such Collateral; (d) and the Borrower hereby absolutely, unconditionally, irrevocably and expressly waives and releases forever any and all related claims and actions against the Bank and each and every other Bank Indemnitee.

Section 7.05. *Performance by the Bank.* In the event the Borrower fails to pay or otherwise perform or satisfy any of its obligations to others or under or in respect of any of the Collateral [or any other [material] asset or property of the Borrower] as required by this Agreement or any other Loan Instrument, the Bank shall have the right in its sole and absolute discretion (but shall be under no duty or obligation) to make any such payment or cause the performance or satisfaction of any other such obligation, including (without limitation) the payment of any tax, claim or insurance premium, the maintenance or defense of any part of the Collateral [or any other [material] part of any other assets or properties of the Borrower] or the purchase or discharge of any Lien on any part of the Collateral [or any other [material] part of any other assets or properties of the Borrower]. The Bank will endeavor to give the Borrower prior notice (which may be by telephone or telecopy) of any such payment or action; *provided, however, that* the failure to give such notice shall not affect the validity of the payment or action or the reimbursement obligations of the Borrower with respect thereto. The Borrower shall pay or reimburse on demand any and all amounts advanced or expenses incurred by the Bank or its designee under this subsection, which shall constitute additional Loans under (and secured by) this Agreement and shall bear interest at the rate applicable to the Loans. No payment made or action taken by the Bank or its designee shall be deemed or construed to be a waiver, cure or satisfaction of the underlying default, which default shall be deemed to be continuing until such time (if ever) as the Borrower has, prior to the Maturity Date, (i) resumed the payment, performance and satisfaction required by this Agreement and the other Loan Instruments and (ii) repaid all Loans advanced for such payments and actions, together with interest thereon, and paid all others to whom the Bank has requested direct payment respecting such payments and actions.

Section 7.06. *Litigation Respecting Collateral.* (a) In the event that any action, suit or other proceeding (whether or not purportedly on behalf of the Borrower) at law, in equity, in arbitration or before any other Authority involving or affecting the Collateral (a "*Proceeding*") is contemplated by the Borrower or is otherwise commenced by or against any party hereto, the Borrower shall give the Bank immediate notice thereof. Within twenty Business Days after its receipt of such notice, the Bank shall notify the Borrower that either (i) the Bank will join in the Proceeding, (ii) a specified designee of the Bank will join in the Proceeding, or (iii) the Borrower may prosecute the Proceeding without the participation of the Bank or its designee, which Proceeding in any event shall be conducted in accordance with the provisions of subsection (b) of this Section. In the event the Bank fails to respond to such notice of the Proceeding within that period, the Bank shall be deemed to have elected alternative (iii) above, without, however, waiving any other right, power, privilege, remedy or interest of the Bank under this Agreement, the other Loan Instruments and Applicable Law.

(b) If the Borrower elects to commence a Proceeding or a Proceeding has otherwise commenced by or against any party hereto, the Borrower shall cause the same to be prosecuted (A) in such a manner that all the rights of the Bank are preserved and protected to the fullest extent reasonably possible and (B) with counsel to the Borrower that is acceptable to and represents both the Borrower and the Bank. Subject to compliance by the Borrower with the foregoing, (x) the Bank (if named as a party by someone other than the Borrower or any Surety) shall join in the Proceeding and take any other action reasonably requested by counsel to the Borrower to facilitate the prosecution thereof, all at the sole cost and expense of the Borrower, and (y) the Proceeding may be prosecuted by the Borrower in such manner as the Borrower

and its counsel reasonably deem appropriate. In any event, if the Bank determines at any time during the pendency of a Proceeding (after consultation with counsel to the Bank) that the interests of the Bank are at variance with the interests of the Borrower, the Bank may appoint its own counsel (at the expense of the Borrower) to represent the Bank in the Proceeding, and the Borrower and its counsel shall cooperate with the Bank and its counsel to the fullest extent possible in that Proceeding.

Section 7.07. *Power of Attorney.* With respect to the various assets and properties included or required to be included in the Collateral hereunder, the Borrower hereby irrevocably makes, constitutes and appoints the Bank and the Bank's executive officers (Vice President or above), and each of them, with full power of substitution, as the true and lawful attorney-in-fact of the Borrower, with full power and authority from time to time in the name, place and stead of the Borrower to: (a) take possession of and execute or endorse (to the Bank or otherwise) any one or more contracts, mortgages, deeds, pledges, assignments, instruments and other documents, and any one or more notes, checks, drafts, bills of exchange, money orders or other documents received in payment for or on account of those assets and properties; (b) receive, open and dispose of all mail and other deliveries to the Borrower respecting the Collateral and request postal authorities and others to change the delivery address(es) for the Borrower to such address(es) as the Bank may deem necessary or desirable; (c) demand, collect and receive any monies due on account of those assets and properties and give receipts and acquittances in connection therewith; (d) negotiate and compromise any claim, and commence, prosecute, defend, settle or withdraw any claims, suits or proceedings, pertaining to or arising out of those assets and properties; (e) pay any Indebtedness or other liability or perform any other obligation required to be paid or performed under this Agreement or any other Loan Instrument by the Borrower, any Surety or any other person (other than the Bank); (f) prepare and execute on behalf of the Borrower any mortgage, financing statement or other evidence of a security interest contemplated by this Agreement, or any modification, refinancing, continuation or extension thereof; (g) take any other action contemplated by this Agreement or any other Loan Instrument; and (h) sign, execute, acknowledge, swear to, verify, deliver, file, record and publish any one or more of the foregoing; *provided, however, that* the above-named attorneys-in-fact may exercise the powers set forth in subsections (a), (b), (c), (d), (e) and (g) of this Section only following the Bank's written notice pursuant to Section 7.07(a) of this Agreement and during the continuance of the subject Event of Default, whether or not any reference to this Power of Attorney is made in that notice, and without regard to whether any other action has been taken by the Bank under this Agreement or any other Loan Instrument. This Power of Attorney is hereby declared to be irrevocable, with full power of substitution and coupled with an interest. This Power of Attorney shall survive the dissolution, reorganization or bankruptcy of the Borrower and shall extend to and be binding upon the successors, assigns, heirs and legal representatives of the Borrower. This Power of Attorney may be exercised (i) by any one of the above-named attorneys-in-fact, or by any substitute designated by any of those attorneys-in-fact, and (ii) by signing for the Borrower individually on any document or instrument or by listing two or more of the persons, including the Borrower, for whom any document or instrument is being signed and signing once, with a single signature by the attorney-in-fact or substitute being effective to exercise the Powers of Attorney of all persons so listed. A facsimile signature shall be effective if so affixed. The Bank shall not be liable for any failure to collect or enforce the payment of any of those assets and properties.

Section 7.08. *Rights of the Bank to the Collateral, Deficiencies, Etc.* (a) If any Event of Default shall have occurred and is then continuing, the Bank may take (and/or may cause one or more of its designees to take) any or all of the following actions, after giving the Borrower prior written notice, or in the case of clauses [(v), (vi) or (ix)] after giving the Borrower at least [three (3)] Business Days' prior written notice (which notice period the Borrower acknowledges and agrees to be adequate and reasonable), with a single such notice being sufficient to entitle the Bank from time to time thereafter to take any one or more of the actions described below:

1. prohibit the Borrower from taking any action with respect to the Collateral otherwise permitted by this Agreement and the other Loan Instruments;

2. (i) notify each of the account debtors, obligors, issuers, securities intermediaries, financial institutions, custodians, lessees or lessors, mortgagors, and other parties under or with respect to or interested in any item of the Collateral of the security interest of the Bank therein (without limiting the right of the Bank to do so at other times as

permitted by this Agreement or any other Loan Instrument) or of any action proposed to be taken with respect thereto, and direct one or more of those parties to make all payments, distributions and proceeds with respect thereto otherwise payable to the Borrower directly to the Bank or its order until notified by the Bank that all the Obligations have been fully paid and satisfied;

(ii) demand, collect, receive and retain any and all payments, distributions and proceeds of any kind with respect to any and all of the Collateral, demand and direct other performance, enforce payment or other performance by legal proceedings as permitted by law, and give receipts, releases and acquittances in connection therewith, (iii) take possession or control of, and execute or endorse (to the Bank or otherwise) and negotiate, present or otherwise collect, any item of Collateral and any one or more notes, checks, drafts, bills of exchange, money orders, invoices, freight bills, bills of lading or other instruments, agreements or documents received in payment for or under or on account of any Collateral, (iv) receive, open and dispose of all mail and other deliveries to the Borrower, take over the Borrower's post office boxes and request postal authorities and others to change the delivery address(es) for the Borrower or make other arrangements with such authorities as the Bank may deem necessary or desirable in order to receive the Borrower's mail and other deliveries, (v) negotiate, settle, adjust, compromise, discharge, release, extend or renew any account, instrument, payment intangible or other agreement, right or claim of the Borrower included in the Collateral, whether as an inducement to prompt payment or performance and whether or not meritorious, customary or in the ordinary course of business, and commence, prosecute, defend, settle, abandon or withdraw any claims, suits or proceedings pertaining to or arising out of any Collateral, (vi) prepare, file and sign the Borrower's name on any proof of claim in bankruptcy, notice of Lien, assignment or satisfaction of Lien or similar document in any action or proceeding by, against or otherwise involving any obligor under any Collateral, (vii) use or disclose in any way any of the information contained in the Borrower's Books and Records, and (viii) exercise and enforce all of the Borrower's other rights, powers, privileges, remedies and interests with respect to the Accounts Receivable, other accounts, instruments, documents of title, chattel paper, financial assets, investment property, payment intangibles and general intangibles and other assets and properties included in the Collateral, until all the Obligations have been fully paid and satisfied;

3. direct the Borrower or any other holder of Collateral to assemble and deliver such Collateral to the Bank or its designee at such time(s) and place(s) as the Bank from time to time may specify, all without any risk or expense to the Bank; and enter any premises where any item of Collateral may be located, with or without permission or process of law but without breach of the peace, and seize and remove such Collateral or remain upon such premises and use or dispose of such Collateral as contemplated under this Agreement and the other Loan Instruments;

4. request the judicial appointment of a receiver respecting the Collateral (excluding funds in the possession of the Bank and such other Collateral as the Bank may specify in its request) in any action, suit or proceeding in which claims are asserted against the Collateral by the Bank or its designee, irrespective of the solvency of the Borrower or any other person or the adequacy of any collateral, and without notice to or the approval of the Borrower, which receiver shall have the power to manufacture, operate, sell, lease or rent such items of Collateral pending the sale of all of the Collateral and to collect the rent, issues and profits therefrom, together with such other powers as may have been requested by the Bank, and shall apply the amounts received (net of all proper charges and expenses) to the Obligations as provided in this Agreement;

5. take any action with respect to the offer, sale, lease or other disposition, and delivery of the whole of, or from time to time any one or more items of, the Collateral, including, without limitation: (A) to sell, assign, lease or otherwise dispose of the whole of, or from time to time any part of, the Collateral, or offer, commit or agree to do so, in any established market or at any broker's board, private sale or public auction or sale (with or without demand on the Borrower or any advertisement or other notice of the time, place or terms of sale) for cash, credit or any other asset or property, for immediate or future delivery, and for such consideration and upon such terms and subject to such conditions as the Bank in its sole and absolute discretion may determine, and the Bank may purchase (the consideration for which may consist in whole or in part of cancellation of Indebtedness) or any other person may purchase the whole or any one or more items of the Collateral, and all items purchased shall be free and clear of any and all rights, powers, privileges, remedies and interests of the Borrower (whether individual, joint, several or otherwise), which the Borrower

has absolutely, unconditionally, irrevocably and expressly waived forever pursuant to Section 7.09 hereof; (B) to postpone or adjourn any such auction, sale or other disposition, to cause the same to be postponed or adjourned from time to time to a subsequent time and place, or to abandon or cause the abandonment of the same, all without any advertisement or other notice thereof; and (C) to carry out any agreement to sell any item or items of the Collateral in accordance with the terms and provisions of such agreement, notwithstanding that, after the Bank shall have entered into such an agreement, all the Obligations may have been paid and satisfied in full;

6. exercise any voting, consent, enforcement or other right, power, privilege, remedy or interest of the Borrower pertaining to any item of Collateral to the same extent as if the Bank were the outright owner thereof, *provided that* the Bank shall not be entitled to exercise any of the voting rights of the Borrower pertaining to any equity interest in another person unless and until the Bank has given specific written notice to the Borrower, apart from the notice first referred to in this subsection, of the Bank's election to exercise one or more, or all, such voting rights;

7. take possession of and thereafter deal with or use from time to time all or any part of the Collateral in all respects as if the Bank were the outright owner thereof, which shall include (without limitation) the right to manufacture, operate, sell, lease or rent items of Collateral, as well as to sell parts of the Collateral pending the sale of all of the Collateral, and to collect the rent, issues and profits therefrom;

8. transfer or cause the transfer of the ownership of all or any part of the Collateral to its own name or any designee and have such transfer recorded in any jurisdiction(s) and publicized in any manner deemed appropriate by the Bank; and

9. in addition to, and not by way of limitation of, any of the rights specified above, exercise or enforce any and all rights, powers, privileges, remedies and interests afforded to the Bank under this Agreement, the other Loan Instruments and any and all provisions of Applicable Law (including, without limitation, the UCC), whether as a secured party or mortgagee in possession of collateral or otherwise.

(b) The Bank shall collect the cash proceeds received from any sale or other disposition or from any other source contemplated by subsection (a) above, and, after deducting all costs and expenses incurred by the Bank and any person designated by the Bank to take any of the actions enumerated in subsection (a) above in connection with such collection and sale or disposition (including attorneys' disbursements, expenses and fees), the Bank shall apply the same in accordance with the terms and provisions of this Agreement unless the Bank shall elect (in its sole and absolute discretion) to retain the same as additional or substitute Collateral. In the event any funds remain after satisfaction in full of the Obligations, then the remainder shall be returned to the Borrower, subject, however, to any other rights or interests the Bank may have therein under any other instrument, agreement or document or Applicable Law.

(c) If the amount of all proceeds received with respect to and in liquidation of the Collateral that shall be applied to payment of the Obligations shall be insufficient to pay and satisfy all of the Obligations in full, the Borrower acknowledges and agrees that it shall remain liable for any deficiency, together with interest thereon and costs of collection thereof (including attorneys' disbursements, expenses and fees), in accordance with the terms and provisions of this Agreement and the other Loan Instruments.

Section 7.09. Certain Acknowledgments and Waivers by the Borrower. (a) The Borrower acknowledges and agrees that the rights, powers, privileges, remedies and interests granted to or conferred upon the Bank in respect of any of the Collateral by this Agreement, the other Loan Instruments and Applicable Law are purely discretionary and shall not, and shall not be deemed or construed to, impose upon the Bank any duty or other obligation (A) to sell, foreclose or otherwise realize upon any of the Collateral, (B) to protect or preserve any of the Collateral, (C) to perform or satisfy any obligation under or respecting any of the Collateral or the Borrower, (D) to mitigate or otherwise reduce any damage or other loss, or (E) to otherwise exercise or enforce any such right, power, privilege, remedy or interest. Any sale, foreclosure or other realization upon any of the Collateral, or any other exercise or enforcement of any such right, power, privilege, remedy or interest, if undertaken by the Bank in its sole and absolute discretion, may be delayed,

discontinued or otherwise not pursued or exhausted for any reason whatsoever (whether intentionally or otherwise). Without limiting the generality of the foregoing, [to the extent waiver is not limited under Applicable Law,] the Borrower hereby expressly waives each and every claim or defense, and agrees that it will not assert or pursue (by action, suit, counterclaim or otherwise) any claim or defense, respecting (i) any settlement or compromise with any obligor or other third party under any Account Receivable, account, note, instrument, agreement, document or general intangible included in the Collateral, irrespective of any reduction in the potential proceeds therefrom, (ii) the selection or order of disposition of any Collateral (which may be at random or in any order(s) the Bank may select in its sole and absolute discretion), (iii) any private sale of any Collateral [in a commercially reasonable manner], whether or not any public market exists, [or any sale, redemption or other disposition of any Collateral in accordance with the applicable Collateral Acknowledgment, Custody Document or Organizational Document,] (iv) the choice or timing of any sale date (which the Bank may select in its sole and absolute discretion), irrespective of whether greater sale proceeds would be realizable on a different sale date, (v) the adequacy of the sale price of any Collateral, (vi) any insufficiency of the proceeds to fully satisfy the Obligations, (vii) any sale of Collateral to the first person to receive an offer or make a bid, (viii) the selection of any purchaser of any Collateral, or (ix) any default by any purchaser of any Collateral. Neither the Bank nor any of its representatives shall incur any liability in connection with any sale of or other action taken respecting any Collateral in accordance with the provisions of this Agreement, any other Loan Instrument or Applicable Law.

(b) The Borrower hereby expressly waives the applicability of any and all Applicable Law [respecting collateral or its disposition] that are or may be in conflict with the terms and provisions of this Agreement and the other Loan Instruments now or at any time in the future to the extent waiver is not limited under Applicable Law, including (without limitation) those pertaining to notice (other than notices required by this Agreement or any other Loan Instrument), appraisal, valuation, stay, extension, moratorium, marshaling of assets, exemption and equity of redemption; *provided, however, that* the preceding provision is not intended to confer upon the Bank any right, power, privilege, remedy or interest not permissible under Applicable Law notwithstanding the foregoing waivers.

Section 7.10. *Waiver of Marshalling, Appraisal, Stay, Redemption, Etc.* The Borrower hereby unconditionally, irrevocably and expressly waives forever the applicability of each and every Applicable Law pertaining to notice (other than notices required by this Agreement or any other Loan Instrument), appraisal, valuation, stay, extension, moratorium, marshaling of assets, exemption and equity of redemption and similar provisions respecting collateral or its disposition that are or may be in conflict with the terms and provisions of this Agreement and the other Loan Instruments now or at any time in the future to the extent waiver is not limited under Applicable Law.

Section 7.11. *Application of Proceeds; Liability for Deficiencies.* The Bank shall collect the cash proceeds received from any sale or other disposition of Collateral, and, after deducting all costs and expenses incurred by the Bank and any person designated by the Bank to take any of the actions enumerated in this Article or under Applicable Law in connection with such collection and sale or disposition (including attorneys' disbursements, expenses and fees), the Bank shall apply the same in accordance with the terms and provisions of this Agreement unless the Bank shall elect (in its sole and absolute discretion) to retain the same as additional or substitute Collateral. In the event any funds remain after satisfaction in full of the Obligations, then the remainder shall be returned to the Borrower, subject, however, to any other rights or interests the Bank may have therein under any other instrument, agreement or document or Applicable Law.

(b) If the amount of all proceeds received with respect to and in liquidation of the Collateral that shall be applied to payment of the Obligations shall be insufficient to pay and satisfy all of the Obligations in full, the Borrower acknowledges and agrees that it shall remain liable for any deficiency (i.e., any Obligations remaining unpaid), together with interest thereon and costs of collection thereof (including attorneys' disbursements, expenses and fees), in accordance with the terms and provisions of this Agreement and the other Loan Instruments.

Section 7.12. *Partial Releases.* The Bank from time to time shall release portions of the Collateral from the liens and security interests granted under this Agreement and the other Loan Instruments qualifying for release under (and

subject to the terms and conditions of) subsection [(a), (b) or (c)] of this Section, shall execute and deliver the documentation reasonably required to effect each such release (in such form and substance as may be acceptable to the Bank), and shall return the applicable instruments and other documents to the Borrower or its designee, *in each case* subject to receipt of evidence and documentation in such form and substance as may be acceptable to the Bank that those terms and conditions have been satisfied; *provided that* no Event of Default or Default then exists or could result therefrom (whether through any Pro Forma Effect or otherwise), unless, after giving effect to the consummation of the transaction for which the release was requested and the application of the net cash proceeds thereof, if any, toward the prepayment of the Obligations, the default or other event shall cease to exist. Any and all actions under this Section shall be without any recourse to or representation or warranty by the Bank and shall be at the sole cost and expense of the Borrower.

(a) In the event of any sale or other disposition of any Collateral expressly permitted under Section [7.03(a)] hereof or any other term or provision of this Agreement or any other Loan Instrument, the Bank will release that item, subject to receipt by the Bank of any payment or prepayment from the Borrower required by this Agreement or any other Loan Instrument.

(b) In the event any debtor under any indenture, agreement, note, instrument or account receivable pledged to the Bank pursuant to this Agreement shall have paid all amounts due thereunder in full and shall have complied with all other terms and conditions thereof, the Bank will release that item and if requested return the applicable instruments and other documents to the Borrower or its designee, subject to receipt by the Bank of any payment or prepayment from the Borrower required by this Agreement or any other Loan Instrument.

(c) At the request of the Borrower, the Bank will release part of the Collateral (other than the Collateral held by the Bank or its designee) following delivery to the Bank of a security interest in substitute assets or properties of equal or better quantity, quality and value, together with the instruments and other documents evidencing the pledge (as specified in this Agreement), and perfection of such security interest under Applicable Law to the extent required under this Agreement, but only if the proposed substitute Collateral shall be (i) free and clear of all Liens, (ii) if real estate, or if otherwise reasonably requested by the Bank, appraised as of a recent date in accordance with generally accepted methods of appraising by a qualified appraiser, acceptable to the Bank, who is a member of a nationally recognized group of professional appraisers, and (iii) acceptable to the Bank in its sole and absolute discretion.

Section 7.13. *Termination of Security Interests.* The security interests granted to the Bank hereunder shall terminate when the Obligations shall have been fully paid and satisfied. Upon such complete payment and satisfaction: the Bank shall reassign, release and/or deliver to the Borrower all Collateral then held by or at the direction of the Bank under the Loan Instruments; and, if requested by the Borrower, the Bank shall execute and deliver to the Borrower for filing in each office in which any financing statement, mortgage, or lease, or assignment thereof, relating to the Collateral, or any part thereof, shall have been filed, a termination statement under the Uniform Commercial Code or an appropriate satisfaction, release, reconveyance or reassignment releasing the Bank's interest therein, and any other instrument or document that the Borrower deems reasonably necessary to evidence the termination of the Bank's security interest, each in such form and substance as may be acceptable to the Bank. Any and all actions under this Section shall be without any recourse to or representation or warranty by the Bank and shall be at the sole cost and expense of the Borrower.

ARTICLE VIII

Defaults and Remedies

Section 8.01. *Events of Default.* Each of the following events shall constitute a default under this Agreement (each an "Event of Default"):

(A) any representation or warranty made in this Agreement or any other Loan Instrument shall prove to have been

false or misleading in any material respect when made (or deemed made);

(B) any report, statement, certificate, schedule or other document or information furnished (whether prior to, on or after the Effective Date) in connection with this Agreement or any of the other Loan Instruments shall prove to have been false or misleading in any material respect when furnished (or deemed furnished);

(C) any default, whether in whole or in part, shall occur in the payment of the principal of, the interest on or any other amount respecting: (i) the Loans or any of the other Obligations; (ii) any other Indebtedness of the Borrower or any Surety to the Bank or any of its affiliates; or (iii) any guaranty or other Credit Support from the Borrower or any Surety to the Bank or any of its affiliates respecting any Indebtedness of any other person;

(D) any default, whether in whole or in part, shall occur in the due observance or performance of any covenant, term or provision to be performed under Article VI of this Agreement (other than under Section 6.10 or 6.11 hereof) [or under Section 13 of the Guaranty], and such default shall continue [for a period of five (5) days] after the earlier of notice thereof to or knowledge thereof by the Borrower; *provided, however, that* if such default is capable of being cured and if the Borrower [or any Surety] shall have commenced to cure such default within such period and shall proceed continuously in good faith and with due diligence to cure such default, then such period instead shall be fifteen (15) days;]

(E) any default, whether in whole or in part, shall occur in the due observance or performance of any other covenant, term or provision to be performed under this Agreement and the other Loan Instruments by the Borrower, any Surety or any other party thereto (other than the Bank), which default is not described in any other subsection of this Section, and such default shall continue for a period of ten (10) days after the earlier of notice thereof to or knowledge thereof by the Borrower; *provided, however, that* if such default is capable of being cured and if the Borrower, any Surety or such other party shall have commenced to cure such default within such period and shall proceed continuously in good faith and with due diligence to cure such default, then such period instead shall be thirty (30) days;

(F) any default, whether in whole or in part, shall occur under Article 20 of the _____ Mortgage;

(G) any payment default shall occur and continue beyond any applicable grace period under any instrument or agreement (other than a Loan Instrument) respecting any Indebtedness [in excess of \$ _____] of the Borrower [or any Surety] or any Indebtedness [in excess of \$ _____] of any other person covered (in whole or in part) by any guaranty or other Credit Support from the Borrower [or any Surety]; or any default, whether in whole or in part, shall occur in the due observance or performance of any term or provision of any instrument or agreement (other than a Loan Instrument) respecting [(i) any Indebtedness [in excess of \$ _____] of the Borrower or any Surety, or any guaranty or other Credit Support from the Borrower or any Surety respecting any Indebtedness [or other obligations] [in excess of \$ _____] of any other person, that shall cause or permit acceleration of any such Indebtedness or demand for payment under any such Indebtedness or Credit Support, [or (ii) any other material contract or obligation to which the Borrower or any Surety is a party, or by which any of them, any part of the Collateral or any material part of their respective other assets and properties may be bound, liable or subject, that shall cause or permit a demand for or reduction in any payment thereunder [in excess of \$ _____] or the termination or [material] modification thereof,] which default is not described in any other subsection of this Section, unless payment shall be made or action shall be taken within five (5) Business Days after such default in an amount or manner sufficient to cure it, *provided that* such payment or action will not result in a breach of any term or provision of this Agreement and the other Loan Instruments;

(H) the Borrower or any Surety shall (i) fail or be unable to pay its debts generally as they become due, (ii) conceal, remove or transfer any of its assets and properties in violation or evasion of any bankruptcy, fraudulent conveyance or similar Applicable Law, (iii) make a general assignment for the benefit of its creditors, (iv) apply for or consent to the appointment of a receiver, trustee, assignee, custodian, sequestrator, liquidator or similar official for itself or any of its assets and properties, (v) commence a voluntary case for relief as a debtor under the United States Bankruptcy Code,

(vi) file with or otherwise submit to any governmental Authority any petition, answer or other document seeking (A) reorganization, (B) an arrangement with creditors or (C) to take advantage of any other present or future Applicable Law respecting bankruptcy, reorganization, insolvency, readjustment of debts, relief of debtors, dissolution or liquidation, (vii) file or otherwise submit any answer or other document admitting or failing to contest the material allegations of a petition or other document filed or otherwise submitted against it in any proceeding under any such Applicable Law, (viii) be adjudicated a bankrupt or insolvent, or (ix) take any action for the purpose of effecting any of the foregoing;

(I) any petition shall be filed, or case proceeding or other action shall be commenced against the Borrower or any Surety for the purpose of effecting, or an order, judgment or decree shall be entered by any court of competent jurisdiction approving (in whole or in part), anything specified in subsection (h) of this Section, or any receiver, trustee, assignee, custodian, sequestrator, liquidator or other official shall be appointed with respect to the Borrower or any Surety, or shall be appointed to take or shall otherwise acquire possession or control of all or a substantial part of the assets and properties of the Borrower or any Surety, and any of the foregoing involuntary actions shall not be vigorously contested in good faith by such party and shall continue unstayed and in effect for any period of 30 consecutive days;

(J) one or more arbitration awards, final judgments, decrees or orders for the payment of money in excess of an aggregate of \$_____ (individually or in the aggregate) shall be rendered against the Borrower or any Surety (other than fully insured losses) and the same shall continue for a period of 30 consecutive days and not be either satisfied and discharged in full or effectively contested and stayed (as to levy, execution or other recovery) to the satisfaction of the Bank;

(K) [any ERISA Event shall occur [in any material respect], or] any action, suit, investigation or proceeding involving or affecting any Plan or any assets or properties of any Plan shall be adversely determined; any fiduciary or sponsor of, or participant in, any Plan shall take or commit any of the actions specified in subsection (h) of this Section in respect of the Plan or all or substantially all of its assets and properties; or any action, suit or proceeding shall otherwise be commenced against any Plan or any of its fiduciaries, sponsors or participants for the purpose of effecting, or any order, judgment or decree shall be entered by any court of competent jurisdiction approving (in whole or in part), anything specified in subsection (h) of this Section in respect of any Plan or all or substantially all of its assets and properties, or any receiver, trustee, assignor, custodian, sequestrator, liquidator or other official shall be appointed with respect to any Plan or all or a substantial part of its assets and properties, or shall be appointed to take or shall otherwise acquire possession or control of all or a substantial part of the assets and properties of any Plan, and any of the foregoing shall continue unstayed and in effect for any period of 30 days; [provided that any such event (individually or in the aggregate with any other such event(s)) could have or has had (in the reasonable judgment of the Bank) an ERISA Effect;]

(L) any loss, destruction, termination, foreclosure or other material impairment, deterioration or diminution, in whole or in part, shall occur with respect to all or any part of the Collateral (other than fully insured casualty losses to the extent the Bank has a perfected first priority security interest in and actually receives all insurance proceeds with respect thereto to the extent required by this Agreement and the other Loan Instruments), any collateral granted by any Surety, or the Bank's perfected security interest therein, or the Borrower or any Surety shall do or fail to do or resist, or cause, suffer or permit anyone else to do, anything that would so affect any such collateral or security interest;

(M) any Loan Instrument (in whole or in part) at any time and for any reason whatsoever (i) shall cease to be in full force and effect, (ii) shall be declared null and void, (iii) shall be contested or otherwise challenged as to its validity or enforceability by the Borrower [or any Surety] [or any of its subsidiaries] or (iv) shall be the subject of any denial by the Borrower [or any Surety] [or any of its subsidiaries] of any liability or obligation of such party thereunder;

(N) the Borrower [or any Surety] [or any of its subsidiaries] shall be or become the subject of or a party to any criminal indictment or conviction [(other than a misdemeanor)];

(O) a change shall occur in the [executive management or] control of the Borrower or any Surety, whether by [a change in any executive officer,] a change in ownership or otherwise; or

(P) [the death or permanent disability of _____; or]

(Q) there shall occur any event or events that (individually or in the aggregate with any other event(s)) could have or has had a Material Adverse Effect [or Guarantor's Adverse Effect], as determined by the Bank in the exercise of its reasonable judgment[, and the Bank shall have given the Borrower notice of such determination].

Section 8.02. *Remedies upon Default.* Upon the occurrence or at any time thereafter during the continuance of any Event of Default, the Bank, upon notice to the Borrower, shall be entitled, without limiting its ability to do so at other times (the Borrower hereby acknowledging that [all Letter of Credit Advances and interest thereon and] certain [other] Obligations are payable on demand as provided in Article II hereof notwithstanding anything in this Section or in Section 8.01 to the contrary): (a) to terminate the Commitment; (b) to declare the Loans and all other Obligations to be immediately due and payable, whether principal, interest or otherwise, without presentment, demand, protest or other notice of any kind, all of which are hereby absolutely, unconditionally, irrevocably and expressly waived forever by the Borrower, notwithstanding anything contained in this Agreement, any Note or any of the other Loan Instruments to the contrary; [and] (c) to exercise or enforce any one or more of the Bank's rights, powers, privileges, remedies and interests under this Agreement, each Note, the Guaranty, the other Loan Instruments and Applicable Law; [and (d) to demand the immediate deposit by the Borrower of cash Collateral in a non-interest bearing demand deposit account with the Bank or such other institution as the Bank may designate in an amount equal to the aggregate unadvanced face amounts of the Letters of Credit then outstanding in order to further secure repayment of all Letter of Credit Advances, together with interest thereon, and all of the other Obligations in full, which deposits shall remain Collateral until the all of the Letters of Credit have been paid (and the corresponding Letter of Credit Advance repaid by the Borrower) or have been surrendered to the Bank for return to and cancellation by the issuers thereof (*provided that* any Letter of Credit that has not been presented for payment shall be deemed for this purpose to have been canceled on the forty-fifth day following the stated expiry date, without, however, relieving the Borrower of any of the Obligations with respect to any such Letter of Credit that is in the process of payment) and all of the other Obligations have been fully paid and satisfied, and which obligation to deposit is itself secured by the Collateral pursuant to this Agreement and the other Loan Instruments;] *provided, however, that* in the event of the occurrence of any of the Events of Default respecting the Borrower set forth in subsections (h) and (i) of Section 8.01, then simultaneously with that event, and without the necessity of any notice or other action by the Bank, (i) the Commitment shall be terminated [and], (ii) the Loans and all of the other Obligations shall be accelerated and immediately due and payable as stated above[, and (iii) the Borrower shall be required to make the deposit of the additional cash Collateral further securing the Letters of Credit and the other Obligations as provided above]. [If the Borrower has not delivered the cash Collateral specified above within five (5) Business Days after it was due, at any time and from time to time thereafter the Bank in its sole and absolute discretion may (but shall not be obligated to) advance to the Borrower all or any portion of the required cash Collateral, by credit to any of the accounts of the Borrower with the Bank or otherwise; and amounts advanced by the Bank pursuant to this option and outstanding from time to time shall be due and payable, together with interest and additional interest thereon at the rates provided in Section 2.04 of this Agreement, ON DEMAND, and shall otherwise constitute "Letter of Credit Advances" for all purposes under this Agreement and the other Loan Instruments.]

Section 8.03. *Enforcement, Etc.* The Bank, in its sole and absolute discretion, may proceed to exercise or enforce any right, power, privilege, remedy or interest that the Bank may have under this Agreement, any other Loan Instrument or Applicable Law: (a) at law, in equity, in rem or in any other forum available under Applicable Law; (b) without notice except as otherwise expressly provided herein; (c) without pursuing, exhausting or otherwise exercising or enforcing any other right, power, privilege, remedy or interest that the Bank may have against or in respect of the Borrower, the Collateral, any Surety, or any other co-obligor, guarantor, surety, pledgor, collateral or other person or thing; and (d) without regard to any act or omission of the Bank or any other person. The Bank may institute one or more proceedings (which may be separate proceedings) with respect to this Agreement and each of the other Loan Instruments in such order and at such times as the Bank may elect in its sole and absolute discretion. This Agreement

and the other Loan Instruments may be enforced without possession of any Note or its production in any action, suit or proceeding. This Agreement and the other Loan Instruments may be enforced with respect to the Borrower without the presence or participation of any Surety or any co-obligor (joint or several), guarantor, pledgor or surety, whether through lack of jurisdiction, venue or service or otherwise, and the Borrower will not raise and hereby expressly waives any objection or defense respecting the need for any such presence or participation.

Section 8.04. *Equitable Relief.* The Borrower acknowledges and agrees that it may be impossible to measure in money the damage to the Bank in the event of a breach of or default under any of the terms and provisions of Sections 6.04, 6.05, 6.07, 6.08, 6.09, 7.03, 7.05, 7.07(a) and 8.02(d) of this Agreement, and that, in the event of any such breach or default, the Bank, in addition to all other rights, powers, privileges and remedies that it may have, shall be entitled to injunctive relief, specific performance or such other equitable relief as the Bank may request to exercise or otherwise enforce any of the terms and provisions of those Sections and to enjoin or otherwise restrain any act prohibited thereby, and the Borrower will not raise and hereby expressly waives any objection or defense that there is an adequate remedy available at law.

Section 8.05. *Reinstatement.* In the event any payment of or any application of any amount, asset or property to any of the Obligations, or any part thereof, at any time is rescinded or must otherwise be restored or returned by the Bank upon the insolvency, bankruptcy or reorganization of the Borrower, any Surety or any other person, whether by order of any court, by any settlement approved by any court, or otherwise, then the terms and provisions of this Agreement shall continue to apply, or shall be reinstated if not then in effect, as the case may be, with respect to the Obligations so rescinded, restored or returned, all as though such payment or application had never been made.

Section 8.06. *Consent to Jurisdiction, Waiver of Personal Service, Etc.* The Borrower hereby consents and agrees that the Supreme Court of the State of _____ for the County of _____ and the United States District Court for the _____ District of _____ each shall have personal jurisdiction and proper venue with respect to any dispute between the Bank and the Borrower under any Loan Instrument; *provided that* the foregoing consent shall not deprive the Bank of the right in its sole and absolute discretion to voluntarily commence or participate in any action, suit or proceeding in any other court having jurisdiction and venue over the Borrower. In any dispute with the Bank, the Borrower will not raise, and hereby expressly waives, any objection or defense to any such jurisdiction as an inconvenient forum. Without in any way limiting the preceding consents to jurisdiction and venue, the parties intend (among other things) to thereby avail themselves of the benefit of Section 5-1402

n* of the General Obligations Law of the State of _____. The Borrower hereby expressly waives personal service of any summons, complaint or other process, which may be delivered by any of the means permitted for notices under Section 9.01 hereof. In addition (and without limitation of) any such delivery or any other delivery permitted under applicable law, the Borrower has executed and delivered to the Bank a Designation of Agent for Service appointing _____ [name of _____ (state) agent] as the agent of the Borrower for service in the State of _____, which the Borrower hereby irrevocably authorizes the Bank to date with such date (if undated) and file with the appropriate Authority at such time as the Bank in its sole and absolute discretion may elect. [Within thirty (30) days after service of process, the Borrower agrees to appear or answer any summons or complaint of the Bank, and should the Borrower fail to appear or answer within said thirty-day period, the Borrower shall be deemed in default under that action and judgment may be requested by the Bank and entered in favor of the Bank against the Borrower for the relief demanded in any complaint so served.] The Borrower acknowledges and agrees that a final judgment in any such action, suit or proceeding shall be conclusive and binding upon the Borrower and may be enforced against the Borrower or any of its assets or properties in any other appropriate jurisdiction selected by the Bank (in its sole and absolute discretion) by an action, suit or proceeding in such other jurisdiction. To the extent that the Borrower may be entitled to immunity (whether by reason of sovereignty or otherwise) from suit in any jurisdiction, from the jurisdiction of any court or from any other legal process, the Borrower hereby irrevocably waives such immunity.

Section 8.07. *Waiver of Jury Trial*. In any action, suit or proceeding in any jurisdiction [arising out of or related directly or indirectly to this Agreement or any other Loan Instrument], whether brought by the Bank against the Borrower, or the Borrower against the Bank, the Borrower and the Bank each hereby expressly waives trial by jury.

Section 8.08. *Waiver of Setoff, Special Damages, Etc.* (a) The Borrower hereby absolutely, unconditionally, irrevocably and expressly forever waives, and agrees that it will not exercise or otherwise enforce, any and all rights of setoff, recoupment, abatement or reduction or other claims or counterclaims respecting any payment due (whether as scheduled or required, upon acceleration or as sought in any action, suit or proceeding by the Bank) under this Agreement, any other Loan Instrument or any other agreement, facility or relationship with the Bank that may now or hereafter be accorded to the Borrower under Applicable Law or otherwise. [To the extent not required as a compulsory counterclaim in any related ongoing proceeding,] the Borrower (i) shall pursue separate exercise and enforcement of any right, power, privilege, remedy or interest retained (and not waived) by the Borrower under this Agreement, the other Loan Instruments, any other agreement, facility or relationship with the Bank and Applicable Law, and (ii) shall not seek to exercise or enforce any such right, power, privilege, remedy or interest in any proceeding instituted by the Bank under or in respect of any Loan Instrument, whether through joinder, consolidation, setoff, recoupment, abatement, reduction, counterclaim, defense or otherwise.

(b) In any dispute with the Bank, the Borrower covenants and agrees that it will not seek, recover or retain any, and the Borrower hereby expressly waives any and all, special, exemplary, punitive, statutory and/or consequential damages (whether through action, suit, counterclaim or otherwise and whether in contract, tort, strict liability or otherwise) to the extent waiver is not limited under Applicable Law.

Section 8.09. *No Fiduciary Relationship, Etc.* The Borrower acknowledges and agrees that its sole relationship with the Bank is that of debtor and creditor, respectively, and that no term or provision of this Agreement or any other Loan Instrument is intended to create, nor shall any such term or provision be deemed or construed to have created, any joint venture, partnership, trust, agency or other fiduciary relationship with the Borrower, any of its subsidiaries or any Surety. The Borrower acknowledges and agrees that the Borrower and each Surety have independently and fully reviewed and evaluated the Loan Instruments, the transactions contemplated thereunder and the potential effects of such transactions on the assets, business, operations, properties and condition (financial or otherwise) of each of the Borrower, its subsidiaries and each Surety, which review and evaluation was made (i) together with counsel and (to the extent deemed prudent by the Borrower) financial and other advisors to the Borrower and each Surety, and (ii) without any reliance upon any oral or written advice, analysis or assurance of any kind whatsoever from the Bank.

Section 8.10. *Bank's Right of Setoff, Etc.* Upon the occurrence and during the continuance of any Event of Default, the Bank hereby is authorized at any time and from time to time, without notice to the Borrower (any such notice being hereby absolutely, unconditionally, irrevocably and expressly waived forever by the Borrower), to set off and apply, directly or through any of its affiliates, custodians, participants and designees, any and all deposits (whether general or special, time or demand, provisional or final, or individual or joint) and other assets and properties at any time held in the possession, custody or control of the Bank or any of its affiliates, custodians, participants and designees, and any Indebtedness or other amount or obligation (including, without limitation, any obligation under any interest rate protection, foreign currency exchange, or other interest rate or exchange rate swap or hedging agreement or arrangement) at any time owing by the Bank or any of its affiliates or participants, to or for the credit, account or benefit of the Borrower against any and all of the Obligations now or hereafter existing under this Agreement or the other Loan Instruments, whether or not the Bank shall have declared a default, accelerated the obligations or made any demand or taken any other action under this Agreement or any other Loan Instrument, and although such obligations may be contingent or unmatured. The Borrower acknowledges that pursuant to Section 7.01 hereof it granted to the Bank a senior security interest in and to, among other things, all such deposits, assets, properties and Indebtedness in the possession of each of the affiliates, custodians, participants and designees of the Bank, and the Borrower hereby authorizes each such person to so set off and apply such amounts at such times and in such manner as the Bank may direct pursuant to this Section, *in each case* to the fullest extent possible as if the person making the setoff were a direct creditor of the Borrower in the full amount of the Obligations. The Bank shall notify the Borrower after any such setoff

and application; *provided, however, that* the failure to give such notice shall not affect the validity of such setoff and application. In debiting any such account, the Obligations shall be deemed to have been paid or repaid only to the extent of the funds actually available in that account notwithstanding any internal procedure of the Bank or any of its affiliates, custodians, participants and designees to the contrary. The rights of the Bank under this Section are in addition to and without limitation of any other rights, powers, privileges, remedies and other interests (including, without limitation, other rights of setoff and security interests) that the Bank may have under this Agreement, the other Loan Instruments and Applicable Law.

Section 8.11. *Reliance, Exculpation and Indemnification.* (a) The Bank shall be entitled to rely upon any notice, consent, certificate, affidavit, statement, paper, document, writing or other communication (which to the extent permitted hereunder may be by telecopy or telephone) reasonably believed by the Bank to be genuine and to have been signed, sent or made by the proper person or persons, and upon opinions and advice of legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by the Bank. The Bank shall be entitled to rely, and in entering into this Agreement and the other Loan Instruments in fact has relied, upon the representations, warranties and other information respecting the Borrower and the Sureties contained in this Agreement and the other Loan Instruments notwithstanding any investigation, analysis or evaluation that may have been made or from time to time may be made by the Bank or its designees of all or any part of the assets, business, operations, properties or condition (financial or otherwise) of the Borrower, any Surety or any other person.

(b) The Bank and its participants, affiliates and designees, and their respective directors, officers, employees, attorneys and agents (together with the Bank, each an "*indemnatee*"), shall not incur any liability for any acts or omissions (and the Borrower hereby expressly waives any and all related claims and actions against each indemnatee), and each indemnatee shall be indemnified, reimbursed and held harmless by the Borrower on demand, and (at the request of the Bank) defended at the expense of the Borrower with counsel selected by the Bank, from and against any and all claims, liabilities, losses and expenses (including, without limitation, the disbursements, expenses and fees of their respective attorneys) that may be imposed upon, incurred by, or asserted against any indemnatee, *in each case* arising out of or related directly or indirectly to this Agreement, any other Loan Instrument, any of the Collateral, any of the Loans [or Letters of Credit] or the application of any proceeds thereof, or any Environmental Claim, except to the extent occasioned by the indemnatee's own acts or omissions breaching a duty owed to the Borrower and amounting to gross negligence or willful misconduct as finally determined pursuant to Applicable Law by a governmental Authority having jurisdiction. The preceding general exculpation and indemnification is not intended (and shall not be deemed or construed) to in any way qualify, condition, diminish, restrict, limit or otherwise affect any (and is in addition to each) other release, waiver, consent, acknowledgment, agreement or other term or provision of this Agreement or any other Loan Instrument.

Section 8.12. *Sole Discretion of the Bank.* Wherever pursuant to this Agreement (a) the Bank exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to the Bank, or (c) any other decision or determination is to be made by the Bank, the decision of the Bank to approve, disapprove or make such determination shall be in the sole and absolute discretion of the Bank, except as may be otherwise expressly and specifically provided in this Agreement.

ARTICLE IX

Miscellaneous

Section 9.01. *Notice.* Except as otherwise expressly provided, any notice, request, demand or other communication permitted or required to be given under this Agreement or any other Loan Instrument shall be in writing, shall be signed by the party giving it, shall be sent by one of the following means to the addressee at the address set forth in [Exhibit C] hereto (or at such other address as shall be designated hereunder by notice to the other parties and persons receiving copies, effective upon actual receipt) and shall be deemed conclusively to have been given: (i) on the first Business Day following the day timely deposited with Federal Express (or other equivalent national overnight courier) or United

States Express Mail for overnight delivery, with the cost of delivery prepaid or for the account of the sender; (ii) on the fifth Business Day following the day duly sent by certified or registered United States mail, postage prepaid and return receipt requested; or (iii) when otherwise actually received by the addressee on a Business Day (or on the next Business Day if received after the close of normal business hours or on any non-Business Day). If a certificate, signed notice or other signed item is expressly required by another provision of this Agreement or any other Loan Instrument, a manually signed original must be delivered by the party giving it; any other notice, request, demand or other communication instead may be sent by telecopy, with the cost of transmission prepaid or for the account of the sender, and shall (except as otherwise specified in this Agreement or any other Loan Instrument) be deemed conclusively to have been given on the first Business Day following the day duly sent. Refusal to accept delivery of any item shall be deemed to be receipt of such item by the refusing party. Copies of notices to persons specified in Exhibit B hereto (if any) may be sent by regular first-class mail, postage prepaid, to such persons, but any failure or delay in sending copies shall not affect the validity of any such notice, request, demand or other communication so given to a party.

Section 9.02. *Expenses of the Bank.* The Borrower shall pay or reimburse on demand any and all costs and expenses incurred by the Bank, whether directly or indirectly, in connection with the preparation, execution and delivery of the Bank's commitment, the preparation, execution and closing of this Agreement and the other Loan Instruments, all waivers, releases, discharges, satisfactions, modifications and amendments thereof and consents with respect thereto, all payments made and actions taken thereunder in the name or on behalf of the Borrower, any Surety or any other guarantor, surety or pledgor under any Loan Instrument, all periodic collateral audits and other evaluations and the ongoing monitoring of the Accounts Receivable, Inventory and other Collateral (including, without limitation, the per diem fees and expenses of the Bank and its designees in performing such audits and other evaluations), all annual and other appraisals of the real estate included in the Collateral, and the administration, maintenance, enforcement and adjudication of this Agreement, the other Loan Instruments and the Bank's rights, powers, privileges, remedies and other interests thereunder and under Applicable Law, including (without limitation) insurance premiums, searches respecting financing statements, unpaid taxes and other Liens, appraisers' and surveyors' fees and expenses, title examination and insurance premiums, surety bond premiums, mortgage recording, documentary, transfer, intangible, note or other similar taxes and revenue stamps, filing and recording expenses and charges, and the disbursements, expenses and fees of counsel to the Bank (including, without limitation, the allocated costs of in-house counsel), currently _____, and the disbursements, expenses and fees of any local or special counsel retained by the Bank or its counsel.

Section 9.03. *Further Assurances.* The Borrower agrees to do such further acts and things and to execute and deliver such statements, assignments, agreements, instruments and other documents as the Bank from time to time reasonably may request in connection with the administration, maintenance, enforcement or adjudication of this Agreement and the other Loan Instruments in order (a) to evidence, confirm, perfect or protect any security interest or other Lien granted or required to have been granted under this Agreement and the other Loan Instruments, (b) to give the Bank or its designee confirmation and assurance of the Bank's rights, powers, privileges, remedies and interests under this Agreement, the other Loan Instruments and Applicable Law, (c) to better enable the Bank to exercise any such right, power, privilege or remedy, or (d) to otherwise effectuate the purpose and the terms and provisions of this Agreement and the other Loan Instruments, each in such form and substance as may be acceptable to the Bank. The Bank shall execute and deliver to the Borrower such documents (in form and substance acceptable to the Bank) as the Borrower reasonably may request in order to effectuate the purpose and terms and provisions of this Agreement.

Section 9.04. *Interpretation.* The parties acknowledge and agree that: each party and its counsel have reviewed and negotiated the terms and provisions of this Agreement (excluding schedules) and have contributed to its revision; the normal rule of construction, to the effect that any ambiguities are resolved against the drafting party, shall not be employed in the interpretation of it; and its terms and provisions shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

Section 9.05. *Section and Other Headings.* The table of contents and section and other headings contained in this

Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Section 9.06. *Provisions of the Notes and Collateral Loan Instruments.* The Notes and the various Loan Instruments creating or evidencing the Bank's interest in the Collateral are each subject to the covenants and other terms and provisions contained in this Agreement to the same extent and effect as if fully set forth therein; and in the event that any term or provision of those instruments and documents conflicts or is inconsistent with any term or provision of this Agreement, the term or provision of this Agreement shall control and be given effect.

Section 9.07. *Governing Law.* This Agreement and the other Loan Instruments: (a) have been executed and delivered in the State of _____; and (b) shall be governed by and construed in accordance with the Applicable Law pertaining in the State of _____ (other than those that would defer to the substantive laws of another jurisdiction). Without in any way limiting the preceding choice of law, the parties intend (among other things) to thereby avail themselves of the benefit of Section 5-1401n* of the General Obligations Law of the State of _____.

Section 9.08. *Severability.* In the event that any term or provision of this Agreement or any other Loan Instrument shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to Applicable Law by an Authority having jurisdiction and venue, that determination shall not impair or otherwise affect the validity, legality or enforceability (a) by or before that Authority of the remaining terms and provisions of this Agreement and the other Loan Instruments, which shall be enforced as if the unenforceable term or provision were deleted, or (b) by or before any other Authority of any of the terms and provisions of this Agreement and the other Loan Instruments.

Section 9.09. *Survival of Representations, Etc.* (a) Each of the representations, warranties, covenants, waivers and other agreements of the Borrower contained in this Agreement and the other Loan Instruments: (i) shall be absolute, irrevocable and unconditional; (ii) shall survive the execution and delivery of this Agreement and the other Loan Instruments, and the advance, repayment and readvance of any or all of the monies to be lent hereunder and thereunder; (iii) shall remain and continue in full force and effect without regard (A) to whether the Loans or other Obligations are now or hereafter existing, acquired or created, and irrespective of the fact that from time to time under the terms and provisions of the Loan Instruments monies may be advanced, repaid and readvanced and the outstanding balance of the Loans may be zero, (B) to any extension or change in the time, manner, place and other terms and provisions of payment or performance of any one or more of the Loans or other Obligations or any Surety's Obligations, (C) to any waiver, modification, extension, renewal, consolidation, spreading, amendment or restatement of any other term or provision of any Loan Instrument, (D) to any full, partial or non-exercise of any of the rights, powers, privileges, remedies and interests of the Bank under any Loan Instrument or Applicable Law, against the Borrower, any Surety or any other person or with respect to any of the Obligations, any Surety's Obligations, any other obligations or any collateral or security interest therein, which exercise or enforcement may be delayed, discontinued or otherwise not pursued or exhausted for any or no reason whatsoever, or which may be waived, omitted or otherwise not exercised or enforced (whether intentionally or otherwise), (E) to any surrender, repossession, sequestration, foreclosure, conveyance or assignment (by deed in lieu or otherwise), sale, lease or other realization, dealing or disposition respecting any collateral, (F) to any release, subordination or impairment of all or any part of the Obligations, any Surety's Obligations, any other obligations or any collateral or any security interest therein (whether intentionally or otherwise), (G) to any statute of limitations or similar time constraint under any Applicable Law, (H) to any investigation, analysis or evaluation by the Bank or its designees of the assets, business, operations, properties or condition (financial or otherwise) of the Borrower, any Surety or any other person, (I) to any act or omission on the part of the Bank or any other person, or (J) to any other event that otherwise might constitute a legal or equitable counterclaim, defense or discharge of a borrower, co-obligor, indemnitor, guarantor, pledgor or surety; (iv) shall not be subject to any defense, counterclaim, setoff, right of recoupment, abatement, reduction or other claim or determination that the Borrower may have against any Surety, the Bank or any other person; (v) shall not be diminished or qualified by the death, disability, dissolution, reorganization, insolvency, bankruptcy, custodianship or receivership of the Borrower, any Surety or any other person, or the inability of any of them to pay its debts or perform or otherwise satisfy its obligations as they become due for any reason whatsoever; and (vi) shall remain and continue in full force and effect (A) until all of the

Obligations have been fully paid and satisfied and (B) thereafter with respect to events occurring prior to such payment and satisfaction.

(b) Without limiting the generality of subsection (a) of this Section or any other term or provision of this Agreement, the Borrower covenants, agrees and consents that, at any time, and from time to time: (i) any collateral securing or intended to secure anyone's obligations under any Loan Instrument may be surrendered, repossessed, sequestered, judicially or nonjudicially foreclosed, sold, conveyed, assigned (by deed in lieu of foreclosure or otherwise), sold, leased or otherwise realized upon, dealt with or disposed of, in whole or in part, whether to the Bank, its designee or otherwise as respectively contemplated thereunder; (ii) any mortgage or other security interest in any such collateral may be held without due recordation or other perfection (whether intentionally or otherwise), may be recorded or otherwise perfected, or may be assigned, released, subordinated or otherwise impaired, dealt with or disposed of in whole or in part; (iii) the liability of any Surety, any other co-obligor, guarantor, surety or pledgor or any other person to pay any and all of the Obligations may be settled, compromised, adjusted, forgiven, released or affected by any other accommodation, in whole or in part, or subordinated to the prior payment of any other debts or claims of that or any other person; (iv) any one or more of this Agreement and the other Loan Instruments, or any one or more of the rights, powers, privileges, remedies and interests of the Bank herein or therein, may be sold, conveyed, assigned or otherwise transferred by the Bank in whole or in part (including participations or other undivided interests) to any other person as provided in this Agreement or any other Loan Instrument; or (v) any other right, power, privilege, remedy or interest of the Bank under this Agreement, any other Loan Instrument or Applicable Law may be exercised or enforced by the Bank or its designee, which exercise or enforcement may be delayed, discontinued or otherwise not pursued or exhausted for any or no reason whatsoever, or any such right, power, privilege, remedy or interest may be waived, omitted or otherwise not exercised or enforced (whether intentionally or otherwise); all in such manner and order, upon such terms and provisions and subject to such conditions as the Bank may deem necessary or desirable in its sole and absolute discretion, all without notice to or further assent from the Borrower except as otherwise expressly provided in this Agreement, and all without affecting this Agreement and the other Loan Instruments or any of the obligations hereunder or thereunder.

Section 9.10. *Counterparts.* This Agreement or any other Loan Instrument may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may be executed by one or more of the parties hereto or thereto, but all of which, when taken together, shall constitute a single agreement binding upon all of the parties hereto or thereto (as the case may be).

Section 9.11. *Effective Date.* This Agreement shall be effective on the date (the "*Effective Date*") as of which (a) this Agreement shall be executed by all the parties hereto and delivered to the Bank and (b) all the conditions precedent required to have been satisfied on or before the Effective Date pursuant to Article IV hereof shall have been satisfied or waived (whether temporarily or otherwise) in writing by the Bank. The Bank shall notify the Borrower of the Effective Date [if other than the date of the closing of this Agreement]; *provided, however, that* the failure to give such notice shall not alter the Effective Date.

Section 9.12. *Successors and Assigns; Assignment.* Whenever in this Agreement or any other Loan Instrument reference is made to any party, such reference shall be deemed to include the successors, assigns, heirs and legal representatives of such party, and, without limiting the generality of the foregoing, all representations, warranties, covenants and other agreements made by or on behalf of the Borrower in this Agreement and the other Loan Instruments shall inure to the benefit of the successors and assigns of the Bank; *provided, however, that* nothing herein shall be deemed to authorize or permit the Borrower to assign any of its rights or obligations under this Agreement or any other Loan Instrument to any other person (whether or not an affiliate of the Borrower), and the Borrower covenants and agrees that it shall not make any such assignment. The Bank from time to time: (a) may assign or sell a participation interest in all or any portion(s) of the rights, powers, privileges, remedies and interests of and/or the loans and other obligations owed to the Bank under this Agreement or any other Loan Instrument (i) to any affiliate of the Bank or to any Federal Reserve Bank (as collateral or otherwise), or (ii) to any other person [with the consent of the Borrower, which shall not be unreasonably withheld]; (b) may furnish and disclose financial statements, documents and

other information pertaining to the Borrower or any Surety to any potential assignee or participant permitted hereunder; and (c) may take any and all other actions that the Bank may determine (in its sole and absolute discretion) to be necessary or appropriate in connection with any such assignment or participation; *in each case* without notice to or consent of the Borrower or any other person.

Section 9.13. *No Third Party Rights.* The representations, warranties and other terms and provisions of this Agreement and the other Loan Instruments are for the exclusive benefit of the parties hereto, and, except as otherwise expressly provided herein or therein, no other person, including creditors of any party hereto, shall have any right or claim against any party by reason of any of those terms and provisions or be entitled to enforce any of those terms and provisions against any party.

Section 9.14. *No Waiver by Action, Etc.* Any waiver or consent respecting any representation, warranty, covenant or other term or provision of this Agreement or any other Loan Instrument shall be effective only in the specific instance and for the specific purpose for which given and shall not be deemed, regardless of frequency given, to be a further or continuing waiver or consent. The failure or delay of a party at any time or times to require performance of, or to exercise its rights with respect to, any representation, warranty, covenant or other term or provision of this Agreement or other Loan Instrument in no manner (except as otherwise expressly provided herein) shall affect its right at a later time to enforce any such provision. No notice to or demand on the Borrower or any Surety in any case shall entitle such party to any other or further notice or demand in the same, similar or other circumstances. The acceptance by the Bank of (a) any partial or late payment shall not constitute a satisfaction or waiver of the full amount then due or the resulting Event of Default or (b) any payment during the continuance of an Event of Default shall not constitute a waiver or cure thereof; and the Bank may accept or reject any such payment without affecting any of its rights, powers, privileges, remedies and other interests under this Agreement, the other Loan Instruments and Applicable Law. All representations, warranties, covenants and agreements of the Borrower and all rights, powers, privileges, remedies and other interests of the Bank hereunder are cumulative and not alternatives, and they are in addition to and shall not limit (except as otherwise expressly provided herein) any other right, power, privilege, remedy or other interest of the Bank under this Agreement, any other Loan Instrument or Applicable Law.

Section 9.15. *Modification, Amendment, Etc.* Except as otherwise expressly provided in a particular Loan Instrument with respect thereto, each and every supplement or amendment to or modification or restatement of this Agreement or any other Loan Instrument shall be in writing and signed by all of the parties hereto or the respective parties thereto, as the case may be, and each and every waiver of, or consent to any departure from, any representation, warranty, covenant or other term or provision of this Agreement or any other Loan Instrument shall be in writing and signed by each affected party hereto or thereto, respectively.

Section 9.16. *Entire Agreement.* This Agreement and the other Loan Instruments contain the entire agreement of the parties and supersede all other representations, warranties, agreements and understandings, oral or otherwise, among the parties with respect to the matters contained herein and therein.

In Witness Whereof, the parties hereto have executed and delivered this Agreement as of the date first written above.

[Name of Borrower]

By: _____
[Borrower's Signer's Name], [Borrower's Signer's Title]

[Name of Bank]

By: _____
[Borrower's Signer's Name], [Borrower's Signer's Title]

37TTT-2 California Legal Forms--Transaction Guide Form T2-11

 STATE OF _____)
 COUNTY OF _____) ss.:
 _____)
 _____)

NON-INDIVIDUAL BORROWER: On this _____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ [Borrower's Signer's Name], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as _____ [Borrower's Signer's Title], and that by his/her signature on the instrument, the person upon behalf of which the individual acted _____ (i.e., **[Name of Borrower]**) executed the instrument.

INDIVIDUAL BORROWER: On this _____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ **[Name of Borrower]**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) executed the instrument.

 [Signature and office of individual taking acknowledgment.]

 STATE OF _____)
 COUNTY OF _____) ss.:
 _____)
 _____)

On this _____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ [Bank's Signer's Name], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as _____ [Bank's Signer's Title], and that by his/her signature on the instrument, the person upon behalf of which the individual acted _____ (i.e., [Name of Bank]) executed the instrument.

 [Signature and office of individual taking acknowledgment.]

FOOTNOTES:

(n1)Footnote *. Check your local statutes for correlating law.

(n2)Footnote *. Check your local statutes for correlating law.



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 2: Loans--Business and Commercial.

37TTT-2 California Legal Forms--Transaction Guide Form T2-12

Form T2-12 Asset-Based Loan Agreement

Description: This form is a sample asset-based loan agreement. It provides language regarding security interests, collections, covenants, remedies, and conditions.

Form T2-12 Asset-Based Loan Agreement

_____ [date]

_____ [address], _____ [city], _____ [state and zip
code]

Gentlemen and Ladies:

This Agreement states the terms and conditions upon which _____ Borrower may obtain loans and other financial accommodations from _____ ("Lender") for our general corporate and business purposes upon the security referred to herein.

Section 1. DEFINITIONS.

1.1 "Accounts" shall mean all of Borrower's present and future accounts, contract rights, general intangibles, chattel paper, documents and instruments, as such terms are defined in the _____ [state] Uniform Commercial Code ("U.C.C."), including, without limitation, all obligations for the payment of money arising out of our sale of goods or rendition of services.

1.2 "Account Debtor" shall mean each debtor or obligor in any way obligated on or in connection with any Account.

1.3 "Eligible Accounts" shall mean Accounts created by the Borrower in the ordinary course of business arising out of its sale of goods or rendition of services, which are and at all times shall continue to meet the following standards: (a)

the Account Debtor on such Account is and at all times continues to be acceptable to the Lender, (b) such Account complies in all respects with the representations, covenants and warranties hereinafter set forth, and (c) no more than 90 days have elapsed since the invoice date of such Account.

1.4 "Net Amount of Eligible Accounts" shall mean the gross amount of Eligible Accounts less sales, excise or similar taxes, and less returns, discounts, claims, credits and allowances of any nature at any time issued, owing, granted, outstanding, available or claimed.

1.5 "Obligations" shall mean any and all loans, indebtedness, liabilities and obligations of any kind owing by the Borrower to the Lender, however evidenced, whether as principal, guarantor or otherwise, whether arising under this Agreement or otherwise, whether now existing or hereafter arising, whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, original, renewed or extended, and whether arising directly or acquired from others (including, without limitation, the Lender's participations or interests in the Borrower's obligations to others) and including, without limitation, the Lender's charges, commissions, interest, expenses, costs and attorneys' fees chargeable to the Borrower in connection with all of the foregoing.

1.6 "Affiliate" shall mean any person or entity which, directly or indirectly, controls, is controlled by or is under common control with, the Borrower, including, without limitation, any person or entity which beneficially owns or holds 5% or more of any class of voting securities, or any other equity interest, of Borrower, or of which Borrower beneficially owns or holds 5% or more of any class of voting securities or any other equity interest. Control (including, with relative meanings, the terms "controlled by" and "under common control with"), as used herein, means the possession, directly or indirectly, of the power in any form to direct or cause the direction of the management and policies of the person or entity in question.

1.7 "Availability" shall mean (A) the lesser at any point in time of: (i) \$_____ less the aggregate unpaid advances to Borrower at that time; or (ii) up to 85% of the Net Amount of Eligible Accounts of Borrower *plus* up to the lesser of 50% of Eligible Inventory of Borrower, valued at the lower of cost (on a first-in, first-out basis) or market or \$_____, *less* (B) (i) the outstanding amount of all acceptances or letters of credit which Lender has issued or obtained for the account of Borrower, (ii) all other Obligations of of Borrower, and (iii) all other reserves which Lender in its sole discretion deems necessary or desirable to maintain with respect to Borrower's account, including, without limitation, any amounts which Lender may be obligated to pay in the future for the account of Borrower.

1.8 "Eligible Inventory" means inventory which Lender, in its sole judgment, deems eligible for the purposes of loans and advances under the Agreement, based on such considerations as Lender may from time to time deem appropriate.

Section 2. LOANS.

Lender shall, in its discretion, make loans to Borrower from time to time, at Borrower's request, in an amount of up to eighty-five percent (85%) of the Net Amount of Eligible Accounts (or such greater or lesser percentage thereof as Lender shall in its sole discretion determine from time to time). All loans shall be charged to a loan account in the name of Borrower on Lender's books. Lender shall render to Borrower each month a statement of Borrower's loan accounts which shall be considered correct and deemed accepted by, and conclusively binding upon, Borrower as an account stated, except to the extent that Lender receives a written notice of any specific exceptions by Borrower thereto within 30 days after the date of such statement. All loans shall be payable at Lender's office specified above or at such other place as Lender may hereafter designate from time to time and, at Lender's option and upon Lender's request, Borrower shall execute and deliver to Lender one or more promissory notes in form and substance satisfactory to Lender to further evidence such loans.

Lender may, in its sole discretion, (a) make loans to Borrower on any one occasion in excess of the limits of Borrower's Availability and/or in excess of the percentage amounts indicated in the definition of Availability, without being required thereby to make loans in excess thereof on any other occasion, and (b) establish and increase or decrease maximum dollar amounts for loans against the Net Amount of Eligible Accounts and against the Eligible Inventory, irrespective of any percentage amounts utilized in determining Availability.

Section 3. INTEREST.

Interest shall be payable by Borrower on the first day of each month upon the closing daily balances in Borrower's loan accounts for each day during the immediately preceding month, at a rate equal to three percent (3%) per annum in excess of the prime commercial interest rate (presently _____% per annum), from time to time publicly announced by _____, _____ [city], _____ [state], whether or not such announced rate is the best rate available at such bank. The interest rate charged hereunder shall increase or decrease by an amount equal to each increase or decrease, respectively, in said prime loan rate, effective on the first day of the month after any change in said prime loan rate. Lender's interest charges shall be calculated on the basis of a 360-day year and shall be included in each monthly statement of Borrower's accounts. Lender shall have the right, at its option, to charge all such interest charges to Borrower's loan accounts on the first day of each month, and such interest charges shall be deemed to be paid by the first amounts subsequently credited thereto.

Section 4. SECURITY INTEREST.

4.1 As security for the prompt performance, observance and payment in full of all Obligations, Borrower hereby grants to Lender a continuing security interest in, a lien upon and a right of setoff against, and hereby assigns, transfers, pledges and sets over to Lender the following (which, together with any of Borrower's other property in which Lender may at any time have a security interest, are herein collectively referred to as the "Collateral"); all present and future (i) Accounts, (ii) moneys, securities and other property and the proceeds thereof, now or hereafter held or received by, or in transit to, Lender from or for Borrower, whether for safekeeping, pledge, custody, transmission, collection or otherwise, and all of Borrower's deposits (general or special), balances, sums and credits with Lender at any time existing, (iii) all of Borrower's right, title and interest, and all of Borrower's rights, remedies, security and liens, in, to and in respect of the Accounts, including, without limitation, rights of stoppage in transit, replevin, repossession and reclamation and other rights and remedies of an unpaid vendor, lien or secured party, guaranties or other contracts of suretyship with respect to the Accounts, deposits or other security for the obligation of any Account Debtor, and credit and other insurance, (iv) all of Borrower's right, title and interest in, to and in respect of all goods relating to, or which by sale have resulted in, Accounts, including, without limitation, all goods described in invoices or other documents or instruments with respect to, or otherwise representing or evidencing, any Account and all returned, retained or repossessed goods, (v) all deposit accounts, as such term is defined in the U.C.C., (vi) all books, records, ledger cards, computer programs and other property and general intangibles at any time evidencing or relating to the Accounts ("Records"), (vii) all other general intangibles of every kind and description, including (without limitation) trade names and trademarks and the goodwill of the business symbolized thereby, and Federal, State and local tax refund claims of all kinds, and (viii) all proceeds of the foregoing, in any form, including, without limitation, any claims against third parties for loss or damage to or destruction of any or all of the foregoing.

4.2 Borrower shall keep and maintain, at its cost and expense, satisfactory and complete books and records of all Accounts, all payments received or credits granted thereon, and all other dealings therewith. At such times as Lender may request, Borrower shall deliver to it all original documents evidencing the sale and delivery of goods or the performance of services which created any Accounts, including but not limited to all original contracts, orders, invoices, bills of lading, warehouse receipts, delivery tickets and shipping receipts, together with schedules describing the Accounts and/or written confirmatory assignments to Lender of each Account, in form and substance satisfactory to Lender and duly executed by Borrower, together with such other information as Lender may request. In no event shall the making or the failure to make or the content of any schedule or assignment or Borrower's failure to comply with the

provisions hereof be deemed or construed to limit or modify Lender's security interest in, lien upon and assignment of the Collateral or Borrower's representations, warranties or covenants under this Agreement.

4.3 Borrower shall, at its sole cost and expense, perform all acts and execute all documents requested by Lender at any time to evidence, perfect, maintain and enforce Lender's security interest and the priority thereof in the Collateral. Upon Lender's request, at any time and from time to time, Borrower shall, at its sole cost and expense, execute and deliver to Lender one or more financing statements (in form and substance satisfactory to Lender) pursuant to the U.C.C. and, where permitted by law, Borrower hereby authorizes Lender to execute and file one or more financing statements signed only by Lender.

4.4 Lender shall at all times and in accordance with the Agreement have its security interests in, and be entitled to enforce all of its rights and remedies with respect to, all of the Accounts and all other Collateral, irrespective of whether it has deemed any of such Accounts and other Collateral eligible for the purposes of loans and advances pursuant to the Agreement.

Section 5. COLLECTION AND ADMINISTRATION.

5.1 Until Borrower's authority is curtailed or terminated at any time by Lender, Borrower shall, at its sole cost and expense and on Lender's behalf, collect, as Lender's property and in trust for Lender, all remittances and all amounts unpaid on Accounts, and Borrower shall not commingle such collections with its own funds. Borrower shall on the day received remit all such collections to Lender, in the form received duly endorsed by Borrower for deposit with Lender, unless Lender shall direct Borrower otherwise. All amounts collected on Accounts when received by Lender shall be credited to Borrower's loan accounts after adding three days for collection, clearance and transfer of remittances, conditional upon final payment to Lender and one day after receipt of a federal funds transfer.

5.2 Lender, during normal business hours, shall have full access to and the right to examine and make copies of Borrower's Records, to confirm and verify all Accounts, to perform general audits and to do whatever else it deems necessary to protect its interest. Lender may at any time remove from Borrower's premises or require it to deliver any Records and Lender may without cost or expense use such of Borrower's personnel, supplies, computer equipment and space at Borrower's places of business as may be reasonably necessary for the handling of collections.

5.3 Borrower shall immediately, upon obtaining knowledge thereof, report to Lender all reclaimed, repossessed or returned goods, Account Debtor claims and any other matter affecting the value, enforceability or collectibility of Accounts. At Lender's request, any goods reclaimed or repossessed by or returned to Borrower will be set aside, marked with Lender's name and held for Lender's account and subject to Lender's security interest. All claims and disputes relating to Accounts are to be promptly adjusted within a reasonable time, at Borrower's sole cost and expense. Lender may, at its option, settle, adjust or compromise claims and disputes relating to Accounts which are not adjusted by Borrower within a reasonable time.

Section 6. REPRESENTATIONS, COVENANTS AND WARRANTIES.

As an inducement to Lender to enter into this Agreement, Borrower represents, covenants and warrants (which shall survive the execution and delivery of this Agreement) that:

6.1 Borrower is and shall be, with respect to all Collateral and all its inventory now existing or hereafter acquired, the owner of such Collateral and inventory free from any lien, security interest, claim or encumbrance of any kind, except in Lender's favor, and shall defend the same against the claims of all persons, except as set forth in Exhibit 1.

6.2 Borrower's records and chief executive office are maintained at the addresses referred to below. Borrower shall not change such locations without Lender's written consent and, prior to making any such change, agrees to execute any

additional financing statements or other documents or notices which Lender may require.

6.3 Borrower shall maintain its shipping forms, invoices and other related documents in a form satisfactory to Lender and shall maintain its books, records and accounts in accordance with generally accepted accounting principles consistently applied. Borrower agrees to furnish Lender monthly with accounts receivable agings, inventory reports (if requested), and interim financial statements (including balance sheet, statement of income and surplus account, and statement of changes in financial position), and to furnish Lender at any time or from time to time with such other information regarding its business affairs and financial condition as Lender may reasonably request, including, without limitation, balance sheets, statements of profit and loss, financial statements, schedules, agings and reports. Borrower shall furnish Lender with audited financial statements on an annual basis certified by independent public accountants selected by Borrower and reasonably acceptable to Lender. All such statements and information shall fairly present Borrower's financial condition as of the dates, and the results of Borrower's operations for the periods, for which the same are furnished.

6.4 Borrower shall duly pay and discharge all taxes, assessments, contributions and governmental charges upon or against it or its properties or assets prior to the date on which penalties attach thereto. Borrower shall be liable for any tax or penalty imposed upon any transaction under this Agreement or giving rise to the Accounts or which Lender may be required to withhold or pay for any reason and Borrower agrees to indemnify and hold Lender harmless with respect thereto, and to repay to Lender on demand the amount thereof, and until paid by Borrower such amount shall be added to and deemed part of Lender's loans to Borrower.

6.5 Each Eligible Account represents a valid and legally enforceable indebtedness based upon an actual and bona fide sale and delivery of goods or rendition of services in the ordinary course of Borrower's business which has been finally accepted by the Account Debtor and for which the Account Debtor is unconditionally liable to make payment of the amount stated in each invoice, document or instrument evidencing the eligible Account in accordance with the terms thereof, without offset, defense or counterclaim; each Eligible Account will be paid in full at maturity; all statements made and all unpaid balances appearing in the invoices, documents and instruments evidencing each Eligible Account are true and correct and are in all respects what they purport to be and all signatures and endorsements that appear thereon are genuine and all signatories and endorsers have full capacity to contract; each Account Debtor is solvent and financially able to pay in full the Eligible Account when it matures; none of the transactions underlying or giving rise to any Account shall violate any state or federal laws or regulations, and all documents relating to the Accounts shall be legally sufficient under such laws or regulations and shall be legally enforceable in accordance with their terms; and all recording, filing and other requirements of giving public notice under any applicable law have been duly complied with.

6.6 The execution, delivery and performance of this Agreement are within Borrower's corporate powers and are not in contravention of law or the terms of its Certificate of Incorporation, By-laws or other incorporation papers, or of any indenture, agreement or undertaking to which Borrower is a party or by which it is bound.

6.7 The Records and chief executive office of Borrower are maintained at _____ [address].

6.8 Borrower is duly organized and existing in good standing under the laws of the state of its incorporation, and is duly qualified to do business and in good standing in all states in which qualification and good standing are necessary in order for Borrower to conduct its business and to own its property. Borrower has all requisite power and authority to conduct its business and to own its property.

6.9 Borrower owns of record and beneficially all of the issued and outstanding capital stock of each of its subsidiaries. Borrower has no active subsidiaries other than _____.

6.10 None of the Accounts is represented by an instrument as to which possession is required to perfect a security interest therein.

6.11 The provisions of the Agreement create legal and valid security interests in and liens on all the Collateral, and when all proper filings and other actions required to perfect Lender's security interests and liens and to provide a continuing perfected security interest and lien have been made or taken, the Agreement will create a perfected and continuing first priority security interest and lien upon all the Collateral (subject only to the rights hereafter arising of any buyer in the ordinary course of business, to the extent set forth in *Section 9-307(1) of the U.C.C.*,n* and any holder of a purchase money security interest, to the extent set forth in *Section 9-312(3) and (4) of the U.C.C.*, none of which exist on the date hereof), securing all the Obligations, and enforceable against Borrower and all third parties.

6.12 Borrower has not, within the past ten years, been known by or used any other corporate or fictitious name, except that of _____.

6.13 The execution, delivery and performance by Borrower of the Agreement will not conflict with, or constitute a violation or breach of, or constitute a default under any judgment, law, statute, rule, or governmental regulation applicable to Borrower, or any contract, mortgage, lien, lease, indenture, order, instrument, agreement or document to which Borrower is a party or bound.

6.14 Borrower has capital sufficient to conduct its business, is solvent and able to pay its debts as they mature and owns property having a fair market value greater than the amount required to pay its debts.

6.15 Borrower is not in violation of any applicable law, statute, regulation or ordinance, in any respect materially and adversely affecting the Collateral or the Borrower's business, assets, operations or condition, financial or otherwise.

6.16 Borrower is not in default with respect to any note, indenture, loan agreement, mortgage, material lease, deed or other material agreement to which Borrower is a party or bound.

6.17 The Agreement has been duly authorized by Borrower by all required corporate action, has been duly executed and delivered by Borrower, and constitutes its legal, valid and binding agreement and obligation, enforceable against it in accordance with its terms without defense, setoff, or counterclaim, except as enforcement may be limited by: (i) applicable bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally; or (ii) the availability of injunctive relief or the remedy of specific performance or the application of principles of equity generally. The execution and delivery of the Agreement by Borrower and the carrying out of their terms and provisions do not and will not: (i) require any action or consent of, or any registration or filing with, any governmental regulatory body or other authority or any party to any agreement or other undertaking or under any order or decree applicable to Borrower; or (ii) result in the creation or imposition of any lien, charge or encumbrance upon the properties and assets of Borrower by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Borrower is a party or which is or purports to be binding upon it, except as contemplated by the Agreement.

6.18 There is no litigation or governmental proceeding or investigation pending or, to the best of Borrower's knowledge, threatened or suspected which, if adversely determined, could have a material adverse effect on Borrower's business or financial condition, or which challenges the execution, delivery or performance of the Agreement or the validity of the transactions contemplated thereby, except as disclosed in Borrower's financial statements for the fiscal year ended December 31, _____ [year].

Section 7. SPECIFIC POWERS.

7.1 Borrower hereby constitutes Lender and its agent and any designee, as Borrower's attorney-in-fact, at Borrower's sole cost and expense, to exercise at any time all or any of the following powers which, being coupled with an interest, shall be irrevocable until all Obligations have been paid in full; (a) to receive, take, endorse, assign, deliver, accept and deposit, in Lender's or Borrower's name, any and all checks, notes, drafts, remittances and other instruments and

documents relating to the Collateral; (b) on or after the occurrence of a Default (as defined in Section 8 of this Agreement), to receive, open and dispose of all mail addressed to Borrower and to notify postal authorities to change the address for delivery thereof to such address as Lender may designate; (c) to transmit to Account Debtors notice of Lender's interest therein and to request from such Account Debtors at any time, in Lender's or Borrower's name or that of Lender's designee, information concerning the Accounts and the amounts owing thereon; (d) on or after the occurrence of a Default, to notify the Account Debtors to make payment directly to the Lender; (e) on or after the occurrence of a Default, to take or bring, in Lender's or Borrower's name and on Borrower's behalf, any U.C.C. financing statements or amendments thereto. Borrower hereby releases Lender and its officers, employees and designees, from any liability arising from any act or acts under this Agreement or in furtherance thereof, whether of omission or commission, and whether based upon any error of judgment or mistake of law or fact.

Section 8. REMEDIES.

8.1 All Obligations shall be, at Lender's option, due and payable without notice or demand upon termination of this Agreement or upon the occurrence of any one or more of the following events of default ("Default"): (a) if Borrower shall fail to pay to Lender when due any amounts owing to Lender under any Obligation, or shall breach any of the terms, covenants, conditions or provisions of this Agreement or any other agreement hereunder; (b) if any guarantor, endorser or other person liable on the Obligations shall terminate or breach any of the terms, covenants, conditions or provisions of any guarantee, endorsement or other agreement of such person with, or in favor of, Lender; (c) if any representation, warranty, or statement of fact made to Lender at any time by Borrower or on Borrower's behalf is false or misleading in any material respect; (d) if Borrower shall become insolvent, fail to meet its debts as they mature, call a meeting of creditors or have a creditors' committee appointed, commence or have commenced against it any action or proceeding for relief under any bankruptcy law, or if a judgment is rendered against Borrower, or if Borrower suspends or discontinues doing business for any reason, or if a receiver, custodian or trustee of any kind is appointed for Borrower or any of its property; or (e) if, at any time, Lender shall, in Lender's sole discretion, consider the Obligations insecure or any part of the Collateral unsafe, insecure or insufficient and Borrower shall not on Lender's demand furnish other Collateral or make payment on account, satisfactory to Lender. Upon the occurrence of any Default, Lender shall have the right (in addition to any other rights Lender may have under this Agreement or otherwise) without further notice to Borrower, to appropriate, set off and apply to the payment of any or all of the Obligations, any or all Collateral, in such manner as Lender shall in its sole discretion determine, to enforce payment of any Collateral, to settle, compromise or release in whole or in part, any amounts owing on the Collateral, to prosecute any action, suit or proceeding with respect to the Collateral, to extend the time of payment of any and all Collateral, to make allowances and adjustments with respect thereto, to issue credits in Lender's or Borrower's name, to sell, assign and deliver the Collateral or any part thereof, at public or private sale, at broker's board, for cash, upon credit or otherwise, at Lender's sole option and discretion, and Lender may bid or become purchaser at any such sale, if public, free from any right of redemption which is hereby expressly waived. Borrower agrees that the giving of 5 days' notice by Lender, sent by ordinary mail, postage prepaid, to Borrower's address as set forth below, designating the place and time of any public sale or of the time after which any private sale or other intended disposition of the Collateral is to be made, shall be deemed to be reasonable notice thereof and Borrower waives any other notice with respect thereto. The net cash proceeds resulting from the exercise of any of the foregoing rights or remedies shall be applied by Lender to the payment of the Obligations in such order as Lender may elect, and Borrower shall remain liable to Lender for any deficiency.

8.2 The enumeration of the foregoing rights and remedies is not intended to be exclusive, and such rights and remedies are in addition to and not by way of limitation of any other rights or remedies Lender may have under the U.C.C. or other applicable law. Lender shall have the right, in its sole discretion, to determine which rights and remedies, and in which order any of the same, are to be exercised, and to determine which Collateral is to be proceeded against and in which order, and the exercise of any right or remedy shall not preclude the exercise of any others, all of which shall be cumulative. No act, failure or delay by Lender shall constitute a waiver of any of its rights and remedies. No single or partial waiver by Lender of any provision of this Agreement, or breach or default thereunder, or of any right or remedy

which Lender may have shall operate as a waiver of any other provision, breach, default, right or remedy or of the same provision, breach, default, right or remedy on a future occasion. Borrower waives presentment, notice of dishonor, protest and notice of protest of all instruments included in or evidencing any of the Obligations or the Collateral and any and all notices or demands whatsoever (except as expressly provided herein). Lender may, at all times, proceed directly against Borrower to enforce payment of the Obligations and shall not be required to take any action of any kind to preserve, collect or protect Lender's or Borrower's rights in the Collateral.

8.3 Borrower hereby waives all rights to a trial by jury, rights of setoff and rights to interpose counterclaims in the event of any litigation with respect to any matter connected with this Agreement, the Obligations, the Collateral or any other transaction between the parties and Borrower hereby irrevocably consents to the jurisdiction of the courts of the state of _____ and of any federal court located in such state in connection with any action or proceeding arising out of or relating to this Agreement, the Obligations, the Collateral or any such other transaction. In any such litigation, Borrower waives personal service of any summons, complaint or other process and agrees that service thereof may be made by certified or registered mail directed to Borrower at its address set forth below. Within 30 days after such mailing, Borrower shall answer or otherwise move with respect to such summons, complaint, or other process, failing which Borrower shall be deemed in default and judgment may be entered by Lender against Borrower for the amount of the claim and other relief requested therein.

8.4 Borrower agrees that Lender has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any person or entity. Lender is hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, names, trade secrets, trade names, trademarks and advertising matter, and any similar property, in completing production of, advertising, and selling any Collateral, and Borrower's rights under all licenses and all franchise agreements shall inure to Lender's benefit. Borrower hereby waives all rights to notice and hearing prior to the exercise by Lender of Lender's rights to repossess the Collateral without judicial process or to replevy, attach or levy upon the Collateral without notice or hearing.

Section 9. EFFECTIVE DATE, CONTROLLING LAW AND TERMINATION.

9.1 This Agreement shall become effective upon acceptance by Lender and shall continue in full force and effect for a term ending two years from the date thereof (the "Renewal Date") and from year to year thereafter, unless sooner terminated as herein provided. Either party may terminate this Agreement on the Renewal Date or on the anniversary of the Renewal Date in any year by giving the other party at least 60 days' prior written notice by registered or certified mail, return receipt requested, and, in addition, Lender shall have the right to terminate this Agreement immediately at any time upon the occurrence of a Default. No termination of this Agreement, however, shall relieve or discharge Borrower of its duties, obligations and covenants hereunder until all Obligations have been paid in full, and Lender's continuing security interest in the Collateral shall remain in effect until such Obligations have been fully discharged. No provision hereof shall be modified or amended orally or by course of conduct but only by a written instrument expressly referring hereto signed by both parties.

9.2 All costs and expenses, including searches, filing fees and reasonable attorneys' fees incurred by Lender in negotiating, preparing, consummating and administering this Agreement and in all efforts made to enforce payment or otherwise effect collection of any Accounts, as well as all attorneys' fees and legal expenses incurred in instituting, maintaining, preserving, enforcing and foreclosing the security interest in any of the Collateral, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions or proceedings arising out of or relating to the transaction contemplated herein, shall be paid for by Borrower on demand and until paid by Borrower shall be added to and deemed part of the Obligations.

9.3 This Agreement and all transactions thereunder shall be deemed to be consummated in the State of _____ and shall be governed by and interpreted in accordance with the laws of that state. If any part or provision of this Agreement is invalid or in contravention of any applicable law or regulation, such part or provision

shall be severable without affecting the validity of any other part or provision of this Agreement. In no event shall charges constituting interest, payable by Borrower under this Agreement, exceed the rate permitted under any applicable law or regulation, and if any part or provision of this Agreement is in contravention of any such law or regulation, such part or provision shall be deemed amended to conform thereto.

9.4 Unless otherwise specified, any notice to be served on either party hereunder must be served by registered or certified mail or prepaid telegram or by hand, addressed to the party to be served at the address shown at the beginning or end of this Agreement, or to any other address to which the party to be served has authorized the other in writing to send such notices. Notices shall be deemed given when sent.

Section 10. AFFIRMATIVE COVENANTS.

10.1 Borrower shall promptly notify Lender in writing of any litigation, suit or administrative proceeding which may materially and adversely affect the Collateral or such Borrower's business, assets, operations or condition, financial or otherwise.

10.2 Borrower shall give Lender 30 days' prior written notice of its opening or closing of any place of business, or of any change in the place where books and records are kept.

10.3 Borrower shall notify Lender in writing within 5 business days of its default under any indebtedness (other than the Obligations) or under any note, indenture, loan agreement, mortgage, material lease, deed or other material agreement or instrument to which it is a party or bound.

10.4 Borrower shall immediately notify Lender in writing of any Default under the Agreement.

10.5 Borrower shall comply with the terms and provisions of each judgment, law, statute, rule, and governmental regulation applicable to it and each contract, mortgage, lien, lease, indenture, order, instrument, agreement, or document to which it is a party or bound, and pay when due all indebtedness and discharge in a timely manner all other obligations undertaken by it, except where the failure to comply would not have a material adverse effect on the Collateral or Borrower's business, assets, operations, or condition, financial or otherwise, and except for matters which Borrower is contesting in good faith by appropriate proceedings diligently pursued.

10.6 As long as any Obligations are outstanding, Borrower shall execute and deliver all such financing statements, security agreements, and such other instruments and documents as Lender may request in order to perfect its security interests in and upon the Collateral. Until all Obligations are fully paid and satisfied, Borrower shall at all times do, make, execute, deliver, record, register or file all such instruments, acts, pledges, assignments and transfers (or cause the same to be done) and shall deliver to Lender such instruments constituting or evidencing the Collateral as Lender may request, to better assure Lender with respect to the security interests granted to it pursuant to the Agreement. Lender will retain its security interests in all the Collateral until all Obligations have been fully paid and satisfied.

Section 11. NEGATIVE COVENANTS.

11.1 Borrower shall not, without Lender's prior written consent, enter into any transaction of merger or consolidation, or transfer, sell, assign, lease or otherwise dispose of all or a substantial part of its properties or assets, or wind up, liquidate or dissolve, or agree to do any of the foregoing, with any person, except sales of inventory in the ordinary course of its business.

11.2 Borrower shall not, without Lender's prior written consent, declare or pay cash dividends upon any of its stock or distribute any of its property or make (except in the ordinary course of business) any loans or extensions of credit to, or investments in, any person or entity, or redeem, retire, purchase or acquire, directly or indirectly, any of its stock, or

make any material change in its capital structure or in its business or operations which might adversely affect the repayment of the Obligations, *provided, however*, that Borrower may invest in: readily marketable direct obligations of the United States Government, or of agencies of the United States Government backed by the full faith and credit of the United States Government; certificates of deposit issued by banks with total assets of not less than \$1,000,000,000; commercial paper of domestic corporations rated at least P-1 by Moody's; and readily marketable non-convertible debt securities of domestic corporations rated at least AA by Moody's.

11.3 Borrower shall not, without Lender's prior written consent, (i) permit the direct or indirect transfer, distribution or payment of any of its funds, assets or property to any Affiliate, except that each Borrower may pay *bona fide* employee compensation to Affiliates for services actually rendered to Borrower; (ii) except as permitted by Section 11.2 above, lend or advance money, credit or property to any Affiliate, or invest in (by capital contribution or otherwise) or purchase or repurchase any stock or indebtedness, or any assets or properties, of any Affiliate; or (iii) guarantee, assume, endorse or otherwise become responsible for, or enter into any agreement or instrument for the purpose of discharging or assuming (directly or indirectly, through the purchase of goods, supplies, services or otherwise) the indebtedness, performance, capability, obligations, dividends or agreement for the furnishing of funds of any Affiliate or any officer, director or employee thereof. Notwithstanding the foregoing, if no Default has occurred and is continuing, Borrower may engage in transactions with Affiliates entered into in the ordinary course of Borrower's business, in amounts and upon terms fully disclosed to Lender and no less favorable to Borrower than Borrower would obtain in a comparable arm's length transaction with a third party who is not an Affiliate.

11.4 Borrower shall not, without Lender's prior written consent, hereafter become liable for the indebtedness of any other person, except by endorsement of instruments for deposit.

11.5 Borrower shall not, without Lender's prior written consent, make a sale to any customer on a sell-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or any other repurchase or return basis.

11.6 Borrower shall not, without Lender's prior written consent, change its corporate name unless it shall first give Lender 30 days' written notice of the change.

11.7 No Borrower will create Accounts under any trade name or style.

Section 12. MISCELLANEOUS.

12.1 All of Borrower's representations and warranties contained in the Agreement shall survive the execution, delivery and acceptance thereof by the parties.

12.2 Each Obligation may, in Lender's discretion, be evidenced by notes or other instruments issued or made by Borrower to Lender. If not so evidenced, such Obligations shall be evidenced solely by entries upon Lender's books and records. Borrowers agree that Lender's books and records showing the Obligations shall be admissible in any action or proceeding arising herefrom, shall be binding upon Borrower for the purpose of establishing the items set forth therein, and shall constitute *prima facie* proof thereof.

12.3 Borrower authorizes and directs Lender to disburse, for Borrower's account, the proceeds of loans made by Lender to Borrower to any such person or entity as any of Borrower's officers or directors, designated in writing by such Borrower as having the authority to do so, shall direct, whether in writing or orally.

12.4 The provisions of the Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto; provided, however, that no interest herein may be assigned by Borrower without the prior written consent of Lender. The rights and benefits of Lender hereunder shall, if Lender so agrees, inure to any party acquiring any interest in the Obligations or any part thereof.

12.5 If, after receipt of any payment of, or proceeds of the Collateral applied to the payment of, all or any part of the Obligations, Lender is for any reason compelled to surrender such payment, or proceeds to any person or entity because such payment or proceeds is determined to be void or voidable as a preference, impermissible set-off, or a diversion of trust funds, or for any other reason, then: the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Lender; the Agreement shall continue in full force as if such payment or proceeds had not been received; and Borrower shall be liable to, and shall indemnify and hold Lender harmless for, the amount of such payment or proceeds surrendered. The provisions of this Section 12.5 shall be and remain effective notwithstanding any contrary action which may have been taken by Lender in reliance upon such payment or proceeds, and any such contrary action so taken shall be without prejudice to Lender's rights under the Agreement and shall be deemed to have been conditioned upon such payment or proceeds having become final and irrevocable. The provisions of this Section 12.5 shall survive the termination of the Agreement.

12.6 In the event that any interest or other charges collected by Lender under the Agreement exceed the highest rate permissible under the law applicable to the Agreement, such excess shall be deemed received on account of, and shall automatically be applied to reduce, the Obligations, other than interest, or if no Obligations are then outstanding, shall be refunded to Borrower.

12.7 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken collectively shall constitute one Agreement.

12.8 No course of dealing between or among the parties to this Agreement or any failure or delay on the part of any such party in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of such party or any other party and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies of such party or any other party. No waiver by Lender of any breach or default by Borrower shall be deemed a waiver of any other previous breach or default or of any breach or default occurring thereafter.

12.9 The captions of the sections of this Agreement are for the purpose of convenience only, are not intended to be a part of this Agreement, and shall not be deemed to modify, explain, enlarge or restrict any of its provisions.

12.10 If any clause or provision of this Agreement shall be held invalid or unenforceable, in whole or in part, in any jurisdiction, such invalidity or unenforceability shall attach only to such clause or provision, or part thereof, and shall not in any manner affect any other clause or provision.

BORROWER

By: _____

Title:

Accepted at _____ [city], _____ [state]:

BANK

By: _____

Title: _____

FOOTNOTES:

(n1)Footnote *. Review your state's statutory versions of U.C.C. Sections 9-307 and 9-312, as they may contain variances from the model U.C.C. version.



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 2: Loans--Business and Commercial.

37TTT-2 California Legal Forms--Transaction Guide Form T2-13

Form T2-13 Revolving Credit Agreement

Description: This form is a sample agreement to provide revolving credit.

Form T2-13 Revolving Credit Agreementn1

REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT (this "Agreement") dated as of _____, _____ by and between BORROWER, INC., a _____ corporation ("Borrower"), and THE BANK, a _____ corporation ("Lender").

W I T N E S S E T H:

WHEREAS, upon the terms and in the events specified herein, Borrower has requested from Lender a revolving credit facility; and

WHEREAS, PARENT, a company organized and existing under the laws of _____ ("Guarantor"), as indirect owner of Borrower, is willing to guarantee the payment and performance of Borrower's obligations under this Agreement; and

WHEREAS, Lender is willing to make advances under the revolving credit facility to Borrower, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. In addition to the other terms defined herein, the following terms used herein shall have the meanings herein specified (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Advance" shall mean an advance made by Lender to Borrower under this Agreement.

"Applicable Commitment Fee Percentage" shall mean on any date (a).____% per annum, if the Index Debt is within Category 1 Ratings on such date and (b). ____% per annum, if the Index Debt is within Category 2 Ratings on such date. The Ratings Provisions shall apply for purposes of the foregoing as though each reference therein to "Applicable Margin" were a reference to "Applicable Commitment Fee Percentage."

"Applicable Credit Fee Percentage" shall mean on any date (a).____% per annum, if the Index Debt is within Category 1 Ratings on such date and (b). ____% per annum, if the Index Debt is within Category 2 Ratings on such date. The Ratings Provisions shall apply for purposes of the foregoing as though each reference therein to "Applicable Margin" were a reference to "Applicable Credit Fee Percentage."

"Applicable Margin" shall mean on any date, with respect to a LIBOR Borrowing, (a).____% per annum, if the Index Debt is within Category 1 Ratings on such date and (b).____% per annum, if the Index Debt is within Category 2 Ratings on such date.

For purposes of the foregoing, (i) if the ratings established by Moody's and S&P shall fall within different categories, the rating in the higher category shall be the Applicable Margin, (ii) if on any date either Moody's or S&P shall not have in effect a rating for Index Debt, then the Applicable Margin will be determined solely by reference to the available remaining rating during a period commencing on and including such date and ending on and excluding the earlier to occur of (x) the thirteenth (30th) day after such date and (y) the date on which a substitute nationally recognized rating agency satisfactory to Lender provides an Index Debt rating (in which event (A) the parties hereto will assign substitute ratings to the categories described under Category 1 Ratings and Category 2 Ratings and (B) such substitute rating agency shall then become one of the rating agencies the Index Debt ratings of which are utilized to determine the Applicable Margin hereunder), (iii) except as set forth in the immediately preceding clause (ii), if the Index Debt is at any time unrated by both Moody's and S&P, the Applicable Margin shall be that corresponding to a Category 2 Ratings and (iv) if any rating established or deemed to have been established by Moody's or S&P shall be changed (other than as a result of a change in the rating system of Moody's or S&P), such change shall be effective as of the date on which it is first announced by the applicable rating agency. Each change in the Applicable Margin shall apply during the period commencing as the effective date of such change and ending on the date immediately preceding the effective date of the next such change. If the rating system of Moody's or S&P shall change, or if either such rating agency shall cease to be in the business of rating corporate debt obligations, Borrower and Lender shall negotiate in good faith to amend the references to specific ratings in this definition to reflect such changed rating system or the cessation by such rating agency of its corporate debt ratings business. The provisions of this paragraph are herein referred to as the "Ratings Provisions."

"Application" shall have the meaning set forth in Section 2.11(b).

"Balance Sheet" shall mean, at any time, the latest published audited consolidated balance sheet of the Group.

"Borrower" shall mean BORROWER, INC., a _____ corporation, and Guarantor, if Guarantor becomes a Borrower pursuant to Section 2.12, and any Subsidiary of Guarantor which becomes a Borrower pursuant to Section 2.12.

"Borrower Accession Instrument" shall mean the instrument attached hereto as Exhibit B.

"Borrowing" shall mean a borrowing under this Agreement.

"Business Day" shall mean any day excluding Saturday, Sunday or any other day on which commercial banks are required or authorized to close in _____ [city], _____ [state].

"Category 1 Ratings" shall mean that the Index Debt is rated (i) by S&P as BBB or higher or (ii) by Moody's as Baa3 or higher.

"Category 2 Ratings" shall mean that the Index Debt is rated (i) by S&P as BB+ or below (or unrated) or (ii) by Moody's as Baa2 or below (or unrated).

"Closing Date" shall mean the date that the conditions set forth in Article IV are satisfied or on which such satisfaction is waived by Lender in writing.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

"Commitment" shall mean the commitment of Lender to make to Borrower advances up to \$_____ in aggregate principal amount at any time outstanding on the terms and conditions set forth in Article II herein and evidenced by the Note, subject to any reductions resulting from the issuance of Letters of Credit pursuant to Section 2.11 hereof.

"Commitment Termination Date" shall mean the earlier of (a) the date on which the Commitment has terminated pursuant to Section 2.7 hereof, and (b) the date on which the Commitment has been fully terminated pursuant to Section 8.2 hereof.

"Debt" shall mean:

- (a) monies borrowed;
- (b) any loan note, bond, note, loan stock, redeemable preference shares, commercial paper, debenture or similar instrument (including any fixed or minimum premium payable, and excluding any discount allowable, on final redemption);
- (c) any acceptance under an acceptance credit facility;
- (d) any receivable sold or discounted (otherwise than on a non-recourse basis);
- (e) the capital value of any lease which is accounted for as a finance lease as that term is described in GAAP; and
- (f) without double counting, any guarantee, indemnity or contingent liability in respect of any indebtedness of any person of a type referred to in (a) to (e) above but only to the extent the indebtedness thereby guaranteed or indemnified against is outstanding.

However:

- (i) indebtedness owed by one member of the Group to another member of the Group will not be taken into account as Debt;

(ii) any item referred to in paragraphs (a) to (f) of the above will only be treated as Debt to the extent that they would be included as Debt in any of the financial statements delivered or to be delivered under Section 6.4 were they to have been drawn up at the time in question; and

(iii) indebtedness owed to trade creditors in the ordinary course of business or indebtedness incurred in relation to forward foreign exchange contracts entered into for bona fide commercial purposes will not be taken into account as Debt.

"Default" shall mean any event that, with notice or lapse of time or both, would constitute an Event of Default.

"Default Rate" shall have the meaning set forth in Section 3.2.

"Dollar" and the sign "\$" shall mean lawful money of the United States of America.

"Encumbrance" shall mean any mortgage, pledge, lien, charge, assignment, hypothecation or other security interest other than a security interest over cash arising in the ordinary course of business or arising out of title retention provisions contained in a contract for the purchase of goods entered into in the ordinary course of business or arising out of operating leases or finance leases entered into in the ordinary course of business.

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

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) which, together with Borrower, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"Event of Default" shall have the meaning set forth in Article VIII.

"Finance Subsidiary" shall mean any Subsidiary of the Guarantor whose primary function is acting as a financing vehicle for the Group.

"Financial Year" shall mean the financial year of the Guarantor ending on or about _____ in each year.

"Group" shall mean the Guarantor and all its Subsidiaries from time to time and "member of the Group" shall be construed accordingly.

"Guarantor" shall mean _____, a _____ corporation.

"Guaranty" shall mean the unconditional guaranty of Guarantor delivered to Lender pursuant to Article IV.

"Hedging Liabilities" shall mean any indebtedness in respect of interest rate swaps, currency swaps (including spot and forward exchange contracts), caps, collars, floors and similar obligations entered into by reference to interest rate or currency movements.

"Index Debt" shall mean the senior, unsecured, non-credit enhanced long-term indebtedness for borrowed money of a Finance Subsidiary of Guarantor.

"Interest Payable" shall mean, in relation to any financial period of the Group, all interest, acceptance commission and amounts in the nature of interest (whether paid, payable or capitalized) incurred by the Group in servicing or maintaining the consolidated Debt of the Group together with all net payments by the Group in respect of relevant

Hedging Liabilities paid or payable by the Group to persons outside the Group during that financial period.

"Interest Period" shall mean the period of time which commences (a) on the date of the making of a Borrowing or (b) on the last day of the immediately preceding Interest Period, and ends up to twelve (12) months thereafter, as Borrower may elect as provided in this Agreement; *provided*, that (i) the first day of an Interest Period must be a Business Day, (ii) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day, unless such Business Day falls in the next calendar month, in which case the Interest Period shall end on the next preceding Business Day, and (iii) Borrower may not elect an Interest Period which would extend beyond the Commitment Termination Date.

"Interest Receivable" shall mean, in relation to any financial period of the Group, interest, amounts in the nature of interest accrued and net amounts in respect of relevant Hedging Liabilities received or receivable by the Group from persons outside the Group during that financial period but only to the extent the same accrue and are received or receivable by the Group in a freely convertible and transferrable currency.

"Lender" shall mean LENDER, INC.

"Letters of Credit" shall mean the letters of credit issued by Lender on behalf of Borrower pursuant to Section 2.11 hereof.

"LIBOR Advance" shall mean an Advance bearing interest based on the LIBOR Rate.

"LIBOR Borrowing" shall mean any Borrowing bearing interest based on the LIBOR Rate.

"LIBOR Rate" shall mean, for the then current Interest Period, the rate per annum equal to the rate obtained by dividing (a) the offered rate for deposits in Dollars of amounts equal or comparable to the principal amount of a Borrowing offered for a term comparable to such Interest Period, which rates appear on the British Bankers Association Settlement Screen LIBOR Page 3:2 as of the time of the request for such LIBOR Borrowing; *provided*, that (x) if more than one such offered rate appears on the British Bankers Association Settlement Screen LIBOR Page, that rate used to determine the LIBOR Rate will be the consensus rate, if any, of such rates appearing thereon, but if no consensus rate is available, the rate used to determine the LIBOR Rate will be the arithmetic average (rounded upward, if necessary, to the next higher 1/100th of 1%) of such offered rates or (y) if no such offered rates appear on such page, the rate used for such Interest Period will be the arithmetic average (rounded upwards, if necessary, to the next higher 1/10th of 1%) of rates quoted by not less than two major banks in New York, New York, selected by Lender, as of the time of the request for such LIBOR Borrowing for deposits in Dollars offered to prime banks in the London interbank market for a period comparable to such Interest Period and in an amount substantially equal to the principal amount of such Borrowing; by (b) a percentage (expressed as a decimal) equal to 100% minus the LIBOR Reserve Percentage for such Interest Period (the rate so determined to be rounded (i) upwards to the next higher 1/100th of 1% if such rate is 5/1,000ths or greater and (ii) downwards to the previous 1/100th of 1% if such rate is less than 5/1,000ths).

"LIBOR Reserve Percentage" shall mean, for any day, that percentage (expressed as a decimal) which is in effect from time to time under Regulation D of the Board of Governors of the Federal Reserve System, as such regulation may be amended from time to time or any successor regulation, as the maximum reserve requirement (including, without limitation, any basic, supplemental, emergency, special, or marginal reserves) applicable with respect to Eurocurrency liabilities, as that term is defined in Regulation D (or against any other category of liabilities that includes deposits by reference to which the interest rate of LIBOR Rate Advances is determined), whether or not Lender has any Eurocurrency liabilities subject to such reserve requirement at that time. LIBOR Rate Advances shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credits for proration, exceptions or offsets that may be available from time to time to Lender.

"Loan Documents" shall mean and include, as the context requires, this Agreement, the Note, the Applications, the Guaranty, the Letters of Credit, and any and all other instruments, agreements, documents and writings contemplated hereby or executed in connection herewith.

"Material" or "material," as used in Articles V, VI and VIII hereof and in the Guaranty, shall mean material as to the ability of Borrower or Guarantor to perform its obligations under each of the Loan Documents to which each is a party.

"Materially Adverse Effect" shall mean a material adverse effect on the ability of Borrower or Guarantor to perform its obligations under each of the Loan Documents to which each is a party.

"Material Subsidiary" shall mean any Subsidiary of the Guarantor to which any one of the following apply:

(a) unconsolidated pre-tax operating profits are ten percent (10%) or more of the consolidated pretax operating profits of the Group;

(b) unconsolidated net assets are ten percent (10%) or more of the consolidated net assets of the Group; or

(c) unconsolidated gross revenues are ten percent (10%) or more of the consolidated gross revenues of the Group, all as shown by reference to the most recent published annual audited consolidated accounts of the Guarantor.

"Moody's" shall mean Moody's Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency.

"Multi employer Plan" shall mean, as of any date, a "Multi employer plan" as defined in *Section 4001(a)(3) of ERISA* that is subject to Title IV of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

"Net Interest" shall mean in respect of any financial period of the Group, Interest Payable in that period less Interest Receivable in that period.

"Note" shall mean the promissory note issued by Borrower pursuant to Section 2.1 hereof evidencing the outstanding aggregate principal amount of Advances under the Commitment either, as originally executed or as the same may from time to time be supplemented, modified, amended, renewed or extended.

"Notice of Borrowing" shall have the meaning set forth in Section 2.4.

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

"PBIT" shall mean in relation to any financial period of the Group, the consolidated net pretaxation profits of the Group before deduction of Net Interest of the Group for that period.

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

"Plan" shall mean any employee pension benefit plan (as defined in *Section 3(2) of ERISA*) established, maintained or contributed to, by or on behalf of Borrower or any ERISA Affiliate for its employees in the United States, including, but not limited to, any defined benefit pension plan, profit sharing plan, money purchase pension plan, savings or thrift plan, stock bonus plan, employee stock ownership plan or Multi employer Plan; *provided*, that the term "Plan" shall not include any arrangement described in *Section 201(2) or 201(7) of ERISA*.

"Quoted Rate Advance" shall mean an Advance bearing interest based on the Quoted Rate.

"Quoted Rate Borrowing" shall mean any Borrowing bearing interest based on the Quoted Rate.

"Quoted Rate" shall mean for any Interest Period for any Quoted Rate Advance, the rate per annum quoted by Lender to Borrower.

"Relevant Accounts" shall mean:

(a) in respect of a financial year of the Group, the audited annual consolidated profit and loss accounts for that year; or

(b) in respect of a financial half year of the Group, the unaudited consolidated profit and loss accounts for that half year. In the case of unaudited consolidated profit and loss accounts for a financial half year of the Group, such accounts will include profit and loss accounts in respect of the second half year of the immediately preceding financial year.

"S&P" shall mean Standard & Poor's Corporation and any successor thereto that is a nationally recognized rating agency.

"Short Term Deposits and Cash" means, at any time, cash in hand or on deposit, tax certificates of deposit and liquid securities but only to the extent such cash or liquid securities are denominated in a freely convertible and transferable currency and would be treated as short term deposits and cash in a consolidated balance sheet of the Group.

"Subsidiary" shall mean, for any Person, any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at the time directly or indirectly owned by such Person.

"Tangible Consolidated Net Worth" means at any time the aggregate of:

(a) the amount paid up or credited as paid up on the issued ordinary and preference share capital of Guarantor (for the avoidance of doubt, redeemable preference share capital of the Guarantor will not be included); and

(b) the amount standing to the credit of the consolidated capital and revenue reserves of the Group; based on the Balance Sheet but adjusted (to the extent that the following items have not already been added, deducted or excluded in calculating (a) or (b) above) by:

(i) adding any amount standing to the credit of the profit and loss account for the Group since the date of the Balance Sheet, to the extent the amount is not attributable to any dividend or other distribution declared, recommended or made by any member of the Group (other than to another member of the Group);

(ii) deducting any amount standing to the debit of the profit and loss account for the Group since the date of the Balance Sheet;

(iii) deducting any amount attributable to goodwill or any other intangible asset;

(iv) deducting any amount attributable to a revaluation of assets after the Financial Year ending _____ or, in the case of assets of a company which becomes a member of the Group after that date, the date on which that company becomes a member of the Group unless in either case such revaluation is based on valuations by independent valuers;

(v) reflecting any variation in the amount of the issued share capital of the Guarantor and the consolidated capital and revenue reserves of the Group after the date of the Balance Sheet;

(vi) reflecting any variation in the interest of the Guarantor in any other member of the Group after the date of the Balance Sheet; and

(vii) excluding any amount attributable to minority interests.

"Total Cash" shall mean, at any time, the aggregate open market value of Short Term Deposits and Cash and the aggregate value of short term investments held by any member of the Group nationally converting, for this purpose, all Short Term Deposits and Cash and short term investments denominated in a currency other than Sterling into their Sterling equivalent at the time of calculation.

"Total Net Debt" shall mean, at any time, the consolidated aggregate principal amount of Debt of the Group at that time less Total Cash of the Group at that time.

"Voting Stock" shall mean securities of any class or classes of a Person, the holders of which are entitled to vote in the election of directors, managers or trustees (or Persons performing similar functions) of such Person.

Section 1.2. Accounting Terms. Unless otherwise defined or specified herein, all accounting terms shall be construed herein, all accounting determinations hereunder shall be made, all financial statements required to be delivered hereunder shall be prepared, and all financial records shall be maintained in accordance with generally accepted accounting principles as in effect in the United States from time to time and applied on a basis consistent with the respective financial statements referred to in Section 6.4; *provided*, that, if at any time the unaudited financial statements referred to in Section 6.4(a)(ii) and/or (iii) are prepared in accordance with generally accepted accounting principles as in effect in the United States, then Borrower shall supply such financial statements to Lender within the applicable periods specified therein.

ARTICLE II

AMOUNT AND TERMS OF REVOLVING CREDIT ADVANCES

Section 2.1. Advances and Note. (a) During the period from the Closing Date to and including the Commitment Termination Date, Lender agrees to make available to Borrower, upon the terms and conditions herein set forth, Advances which shall not exceed in aggregate principal amount at any one time outstanding the Commitment. Prior to the Commitment Termination Date, Borrower, pursuant to the terms and within the limits of this Agreement, may borrow, prepay and reborrow hereunder; *provided*, that Borrower may neither borrow nor reborrow should a Default or an Event of Default have occurred and be continuing.

(b) Advances by Lender under the Commitment shall be evidenced by the Note substantially in the form of Exhibit A attached hereto with appropriate insertions. The Note shall be dated the date hereof, shall be payable to the order of Lender in a stated principal amount equal to the Commitment, and shall bear interest as hereinafter provided. The date and amount of each Advance and each payment of principal with respect thereto shall be recorded on the books and records of Lender, which shall constitute *prima facie* evidence of the accuracy of the information therein recorded. The Note shall mature on the Commitment Termination Date or sooner should the principal and accrued interest thereon be declared immediately due and payable as provided for hereinafter. The amount of each Advance shall not be less than \$ _____ and integral multiples of \$ _____ in excess thereof. The Note shall provide for Borrower to pay all costs of collection, including Lender's actual and reasonable attorneys fees, if collected by or through an attorney at law or in bankruptcy or other judicial proceedings.

Section 2.2. Interest on Note. Interest shall accrue on the unpaid principal amount of each Advance from the date made until paid or until the last day of the applicable Interest Period at the following per annum rates which may be selected by Borrower, subject to and in accordance with the terms of this Agreement:

(i) the LIBOR Rate plus the Applicable Margin, or

(ii) the Quoted Rate.

Section 2.3. Commitment Fee. Borrower shall pay to Lender a commitment fee for the period commencing on the date hereof to and including the Commitment Termination Date, computed at a rate equal to the Applicable Commitment Fee Percentage on the daily undrawn and uncanceled amount of the Commitment then in effect, such fee being payable quarterly, in arrears, commencing _____ [date], and continuing thereafter on the last day of each September, December, March and June and on the Commitment Termination Date.

Section 2.4. Method of Borrowing. (a) Borrower shall give Lender irrevocable written or telephonic notice (promptly confirmed in writing, including telecopy) of any requested Advance under Section 2.1 (a "Notice of Borrowing"), specifying (i) the amount of the Advance, (ii) the date on which the proposed Advance is to be made (which shall be a Business Day), and (iii) the duration of the initial Interest Period applicable thereto. Each Notice of Borrowing shall be given to Lender not later than 1:30 p.m. (Eastern Standard Time) on the day of such requested Advance with respect to a Quoted Rate Borrowing and not later than 11:00 a.m. (Eastern Standard Time) two (2) business days prior to the date of the requested advance with respect to a LIBOR Borrowing. Upon fulfillment of the conditions set forth herein, Lender will make its respective Advances available to Borrower in immediately available funds by crediting Borrower's deposit account number _____ with the Lender.

(b) Each Notice of Borrowing shall be signed by a financial officer of Borrower designated to give such Notice of Borrowing by its Board of Directors, and Borrower shall notify Lender in writing of the names of such officers and shall provide Lender with specimen signatures of such officers. Lender shall be entitled to rely conclusively on such officers' authority to request an Advance on behalf of Borrower until Lender receives from Borrower written notice to the contrary.

Section 2.5. Interest Payment Dates. Interest on the Note shall be payable on the earlier of (i) the last day of each Interest Period with respect to an Advance, or (ii) the last Business Day of each September, December, March and June, commencing on _____ [date].

Section 2.6. Prepayment. (a) Borrower shall have the right to prepay Advances under the Commitment, in whole at any time or in part from time to time, without premium or penalty (subject to Section 3.7), but with accrued interest to the date of such prepayment on the principal amount prepaid; *provided*, that (i) Borrower gives Lender prior written notice of such prepayment, specifying the date such prepayment will occur and specifying the Advance to be prepaid, and (ii) each partial prepayment shall be in an amount of at least \$_____ and integral multiples of \$_____ in excess thereof. Amounts prepaid may be re-borrowed subject to the terms of this Agreement.

(b) Borrower shall prepay at any time the amount by which the aggregate outstanding principal amount of Advances made to it exceeds the Commitment.

Section 2.7. Term; Repayment of Principal. (a) Subject to Sections 2.10 and 8.2, the Commitment shall terminate on _____ [date].

(b) The unpaid principal balance and all accrued and unpaid interest on the Note and all other amounts owing to Lender by Borrower under the Commitment shall be due and payable on the Commitment Termination Date.

Section 2.8. Use of Proceeds. Borrower shall use the proceeds of the Advances under Section 2.1 for payment to Lender of the unpaid principal balance of, and all accrued interest on, all outstanding Borrowings (as defined in the Prior Agreement) and all other amounts owing to Lender pursuant to the Prior Agreement and general corporate purposes and agrees that none of such proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U (12 C.F.R. Part 221 of the Board of Governors of the Federal Reserve System) or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might constitute this credit a "purpose credit" within the meaning of Regulation U.

Section 2.9. Participations. Lender shall have the right to sell undivided ownership interests in the Note, the Advances evidenced thereby and in all of Lender's rights under the Loan Documents to any one or more financial institutions on such terms and conditions as may be deemed appropriate by Lender in its sole discretion.

Section 2.10. Optional Reduction or Termination of Commitment. At any time upon fourteen (14) days irrevocable prior written notice to Lender, Borrower may (a) permanently reduce the amount of the Commitment by a minimum amount of \$_____ and integral multiples of \$_____ in excess thereof, or (b) terminate the Commitment in its entirety. Borrower shall have no right to reinstate or increase the Commitment or any portion thereof after any partial reduction pursuant to the terms of this Section.

Section 2.11. Letters of Credit.

(a) Borrower and Lender agree that, subject to the terms and conditions set forth in this Section, up to the entire unused portion of the Commitment at any time in effect may be used for the issuance of standby letters of credit ("Letter of Credit") by Lender for the account of Borrower; provided, however, Lender shall have no obligation to issue any Letter of Credit with an expiration date which extends beyond the Commitment Termination Date. At the time of issuance of each Letter of Credit, (i) Borrower shall be in full compliance with all terms and conditions of this Agreement, (ii) no Default or Event of Default shall have occurred, (iii) the representations and warranties contained in Article V of this Agreement shall be true and correct (except to the extent that such representations and warranties relate solely to an earlier date), (iv) Lender, if requested, shall have received Borrower's certificate signed by a duly authorized officer of Borrower, dated the date of the issuance of such Letter of credit, stating that (a) the representations and warranties contained in Article V hereof are correct on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date) and (b) no event has occurred and is continuing or would result from the issuance of such Letter of credit which constitutes a Default or Event of Default, and (v) the Loan Documents, and all corporate proceedings in connection with the authorization, execution and delivery of and performance of the obligations under the Loan Documents shall be satisfactory in substance and form to Lender. Borrower acknowledges and agrees that the sum of (x) the aggregate amount of Advances outstanding under this Agreement, plus (y) the face amount of Letters of Credit issued and outstanding pursuant to this Section, may at no time exceed \$_____. Borrower shall pay to Lender an issuance fee for each Letter of Credit, computed at a rate equal to the Applicable Credit Fee Percentage of the face amount of such Letter of Credit, such fee being payable upon issuance of each such Letter of Credit.

(b) In order to effect the issuance of each Letter of Credit, Borrower shall deliver to Lender (which delivery may be by facsimile transmission) a letter of credit application in the form customarily used by Lender (each, an "Application" and collectively, the "Applications") not later than 10:00 a.m. (Eastern Standard Time), two (2) Business Days prior to the proposed date of issuance of the Letter of Credit. Each Application shall be duly executed by an authorized officer of Borrower, shall be irrevocable and shall specify the day on which such Letter of Credit is to be issued (which shall be a Business Day).

Section 2.12. Additional Borrowers. Borrower may, with the prior written consent of Lender, such consent not to be unreasonably withheld, nominate Guarantor or any Subsidiary of Guarantor to become an additional Borrower by

delivery to Lender of a Borrower Accession Instrument executed by Guarantor or that Subsidiary. The Guarantor or any Subsidiary so nominated will become an additional Borrower upon receipt by the Borrower of all the documents listed on Exhibit B.

ARTICLE III

GENERAL PAYMENT PROVISIONS

Section 3.1. Making of Payments. The commitment fee and all payments of principal of, and interest on, the Note shall be made by Borrower in immediately available funds to Lender at its principal office in _____ [city], _____ [state]. All payments due on a date which is not a Business Day shall be deemed to be due on the next succeeding Business Day. All such payments shall be made not later than 1:00 p.m. (Eastern Standard Time) and funds received after that hour shall be deemed to have been received by Lender on the next following Business Day.

Section 3.2. Default Rate of Interest. If Borrower shall fail to pay on the due date therefor, whether by acceleration or otherwise, any principal owing under the Note, then interest shall accrue on such unpaid principal from the due date until and including the date on which such principal is paid in full at the 30 day LIBOR Rate, *plus* the Applicable Margin, *plus* an additional _____ percent (____%) per annum (the "Default Rate").

Section 3.3. Selection of Successive Interest Rates and Interest Periods. Subject to Sections 2.1, 2.7 and 3.5, Borrower may, on the last day of the Interest Period relating thereto, continue or convert any LIBOR Advance or Quoted Rate Advance, as the case may be, into a LIBOR Advance or a Quoted Rate Advance in the same aggregate principal amount for a successive Interest Period. Borrower shall give Lender irrevocable written or telephonic notice (promptly confirmed in writing, telecopy) not later than 1:30 p.m. (Eastern Standard Time) on the day of any conversion to or continuation of any Borrowing, such notice to specify the Interest Period selected by Borrower for such Borrowing. If Lender does not receive timely notice of any Interest Period selected by Borrower as provided for herein or if Borrower selects an Interest Period which is not available under this Agreement, any outstanding Borrowing for which Borrower failed to select an Interest Period or selected an Interest Period which is not available under this Agreement shall be converted to a LIBOR Borrowing with an Interest Period of one (1) day for each of the next succeeding five (5) Business Days, and shall, unless continued as or converted to a Borrowing available hereunder, be immediately paid in full at the expiration thereof. Lender shall promptly notify Borrower by telephone, which notice shall be promptly confirmed in writing (including telecopy) to Borrower, of any such conversion.

Section 3.4. Calculation of Interest and Fees. Interest payable on the Note and the commitment fee payable under Section 2.3 shall be calculated on the basis of a year of 360 days and paid for the actual number of days elapsed.

Section 3.5. Illegality. Notwithstanding any other provisions of this Agreement, if any change in any applicable law, regulation or directive, or in the interpretation or application thereof, shall make it unlawful for Lender to make or maintain any LIBOR Borrowings or to maintain eurodollar deposits in the London interbank market, the obligation of Lender hereunder to make (including any obligation to convert a Borrowing into) or maintain LIBOR Borrowings shall forthwith be cancelled, and Borrower shall, if any LIBOR Borrowings are then outstanding, promptly upon request from Lender, at the option of Borrower, pay all such LIBOR Borrowings and so long as such event or circumstance occurs then only Quoted Rate Borrowings may be made by Borrower.

Section 3.6. Increased Costs. In the event that any change occurring after the date hereof (other than any change by way of imposition or increase of reserve requirements included in the LIBOR Reserve Percentage) in any applicable law, treaty or governmental regulation, or in the interpretation or application thereof, or compliance by Lender with any guideline, request or directive (whether or not having the force of law) issued after the date hereof from any central bank or other U.S. or foreign financial, monetary or other governmental authority, shall: (a) subject Lender to any tax of any kind whatsoever with respect to this Agreement or any Borrowing or change the basis of taxation of payments to

Lender of principal, interest, fees or any other amount payable hereunder (except for changes in the rate of tax on the overall net income of Lender); (b) impose, modify, or hold applicable any reserve, special deposit, assessment or similar requirement against assets held by, or deposits in or for the account of, advances or loans by, or other credit extended by or committed to be extended by any office of Lender, including, without limitation, pursuant to Regulation D of the Board of Governors of the Federal Reserve System; or impose on Lender or on the London interbank market any other condition with respect to this Agreement, the Note, or any Borrowing, and the result of any of the foregoing is to increase the cost to Lender of making or committing to make, renewing or maintaining any Borrowing or to reduce the amount of any payment (whether of principal, interest or otherwise) in respect of any Borrowing, THEN, IN ANY CASE, upon demand by Lender, Borrower shall pay, within five (5) Business Days after demand by Lender, to Lender such additional amounts as shall be sufficient to compensate Lender for such additional costs or such reduction, as the case may be. If Borrower makes a payment under clause (a) of this Section 3.6 and Lender has received or been granted a credit against, or relief or remission or repayment of, any tax paid or payable by it (a "Tax Credit") which, in the opinion of Lender, is attributable to that payment, Lender will, to the extent that it considers it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment, pay to Borrower such amount, as in the opinion of Lender, is attributable to such payment and which Lender considers will leave Lender (after such payment) in no better or worse position than it would have been if Borrower had not been required to make such payment. Nothing in this Section 3.6 will interfere with Lender's right to arrange its tax affairs in whatever manner it deems appropriate, and without limiting the foregoing, Lender will not be under any obligation to claim a Tax Credit or to claim a Tax Credit in priority to any other claims, relief, credit or deduction available to Lender. Lender will not be obligated to disclose any information relating to its tax affairs or any computations in respect thereof to Borrower or any other person. The provisions of this Section 3.6 shall not apply to any increased cost or reduction in return arising as a result of Lender's sale of an interest in the Note, Lender's assignment or transfer of any of Lender's rights hereunder, or Lender's country of residency not being the United State of America, except to the extent any such assignment or transfer of rights is made pursuant to Section 3.9(c) hereof.

Section 3.7. Funding Losses. Borrower shall compensate Lender, within five (5) Business Days after receipt of its written request, for all losses, expenses and liabilities which Lender may sustain:

- (a) if Borrower fails to fulfill on or before the date specified in any Notice of Borrowing given pursuant to Section 2.4 the applicable conditions set forth in Article IV and, as a result thereof or for any reason other than the fault of Lender, a requested Borrowing is not made on the date specified in such Notice of Borrowing (whether or not withdrawn); or
- (b) if any repayment or prepayment of a Borrowing occurs on a date which is not the last day of an Interest Period applicable thereto. The provisions of this Section 3.7 shall not apply to any funding loss to the extent such funding loss is compensated for pursuant to the provisions of Sections 3.5 and 3.6 hereof.

Section 3.8. Capital Adequacy. If Lender shall have determined that the adoption after the date hereof of any applicable law, rule or regulation regarding capital adequacy, or any change therein not contemplated by Lender at the date hereof, or any change not contemplated by Lender at the date hereof in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Lender with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency issued after the date hereof and not contemplated by Lender at the date hereof, has or would have the effect of reducing the rate of return on Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration Lender's policies with respect to capital adequacy) by an amount reasonably deemed by Lender to be material, then from time to time, within five (5) Business Days after demand by Lender, Borrower shall pay Lender such additional amount or amounts as shall compensate Lender for such reduction. In determining any such amount, Lender may use reasonable averaging and attribution methods. The provisions of this Section 3.8 shall not apply to any reduction to the extent such reduction is compensated for pursuant to the provisions of Section 3.6 hereof.

Section 3.9. Notice; Exceptions; Mitigation; Survival.

(a) Lender will notify Borrower of any event occurring after the date hereof that will entitle Lender to compensation pursuant to Section 3.6, 3.7 or 3.8 promptly after Lender obtains knowledge thereof, but in any event within thirty (30) days after the effective date thereof, such notice to contain a written demand for compensation. Such demand shall set forth in reasonable detail the amount of such loss, expense, additional cost, reduced amount or other item payable hereunder and the basis for requesting such amounts. Such amounts shall be presumed correct and Borrower shall, if it chooses to contest the accuracy of any such amounts, bear the burden of establishing the inaccuracy of any amounts.

(b) Sections 3.6 and 3.8 shall not apply to any increased cost or reduction in return arising as a result of a breach by Lender of any fiscal, monetary or capital adequacy limit imposed on Lender by law or any relevant regulatory authority.

(c) If, in respect of Lender, circumstances arise which would, or would on the giving of notice, result in:

(i) any amount becoming payable under Section 3.6 or 3.8; or

(ii) any prepayment or cancellation under Section 3.5, then without limiting the obligations of Borrower under this Agreement and without prejudice to the terms of such Sections, Lender will, in consultation with Borrower and at Borrower's expense, take such reasonable steps as may be available to it to mitigate or remove such circumstances, including, without limitation, the transfer of its rights and obligations under this Agreement to another branch of Lender, acceptable to Borrower, unless to do so is, in Lender's opinion, likely to have an adverse effect on Lender's business, operations or financial condition, or is, in Lender's opinion, likely to be otherwise materially prejudicial to Lender.

(d) Provided Lender complies with the provisions of Section 3.9(a), the obligations of Borrower under Sections 3.6, 3.7, and 3.8 shall survive for a period of one (1) year following termination of this Agreement and the payment of the Note.

ARTICLE IV

CONDITIONS TO CLOSING AND ADVANCES

The obligation of Lender to at any time make Advances is subject to the strict satisfaction by Borrower of the following conditions. In the event Borrower at any time fails to meet the following conditions, Lender shall have no obligation to permit any Borrowing, but the terms of this Agreement shall continue in full force and effect with respect to any prior or subsequent Borrowing made by Borrower hereunder.

Section 4.1. Opinion of Borrower's and Guarantor's Counsel. At the time of the execution of this Agreement, Borrower shall have delivered to Lender a favorable written opinion from counsel for Borrower, dated as of the date on which this Agreement is executed and delivered, substantially in the form of Exhibit C1 attached hereto. At the time of the execution of this Agreement, Borrower shall have delivered to Lender a favorable written opinion from an officer of _____ [the parent of the Borrower] dated as of the date on which this Agreement is executed, substantially in the form of Exhibit C2 attached hereto.

Section 4.2. No Defaults. At the time of each Borrowing under this Agreement, Borrower shall be in full compliance with all the terms and conditions of this Agreement, and no Event of Default, nor any event which upon notice or lapse of time or both would constitute such an Event of Default, shall have occurred.

Section 4.3. Accuracy of Representations and Warranties. At the time of each Borrowing under this Agreement, the representations and warranties contained in Article V of this Agreement shall be true and correct (except to the extent

that such representations and warranties relate solely to an earlier date), and Lender, if requested, shall have received Borrower's certificate signed by a duly authorized officer of Borrower, dated the date of the Borrowing stating that (1) the representations and warranties contained in Article V hereof are correct on and as of the date of such Borrowing as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date) and (2) no event has occurred and is continuing or would result from such Borrowing which constitutes an Event of Default.

Section 4.4. Delivery of Note. At the time of the execution of this Agreement, Borrower shall have executed and delivered to Lender the Note.

Section 4.5. Guaranty. Borrower shall have caused Guarantor to have executed and delivered to Lender a Guaranty substantially in the form of Exhibit D attached hereto, in which the Guarantor shall have unconditionally and irrevocably guaranteed to Lender the due and punctual payment and performance by Borrower of all indebtedness, accrued interest, obligations and other liabilities of whatever kind and description of Borrower to Lender.

Section 4.6. Delivery of Other Documents. At the time of the execution of this Agreement, Borrower shall have caused to be delivered to Lender certified copies of all documents evidencing necessary corporate action and governmental approvals, if any, with respect to this Agreement and the Guaranty, certificates signed by the appropriate officers of Borrower and the Guarantor, and such other documentation as the Lender may reasonably request.

Section 4.7. Proceedings. At the time of the execution of this Agreement and at the time of each Borrowing under this Agreement, the Loan Documents and all corporate proceedings in connection with the authorization, execution and delivery of and the performance of the obligations under the Loan Documents shall be satisfactory in substance and form to Lender.

ARTICLE V

Borrower represents and warrants to Lender that:

Section 5.1. Organization and Corporate Powers. Borrower (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of _____, with all requisite corporate power and authority to own its property and to engage in the business and activities as now conducted, and (b) is duly qualified and in good standing as a foreign corporation authorized to do business in each jurisdiction (other than the jurisdiction of its incorporation) where materially required.

Section 5.2. Corporate Authority. The execution, delivery and performance by Borrower of this Agreement and the other Loan Documents to which it is a party are within its corporate powers, have been duly authorized by all necessary corporate action (including any necessary shareholder action), and do not and will not (a) violate (i) its organizational papers or bylaws or (ii) any provision of any applicable law, rule or regulation, any judgment, order or ruling of any court or governmental agency, or any indenture, agreement or other instrument to which it is a party or by which it or any of its properties is bound, which violation is reasonably likely to have a Material Adverse Effect, or (b) be in conflict with, result in a breach of, or constitute with notice or lapse of time or both a default under, or result in the creation of any Lien upon any of its properties or assets under, any such indenture, agreement or other instrument, which conflict, breach, default or creation is reasonably likely to have a Material Adverse Effect.

Section 5.3. Enforceability. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by Borrower, and constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, except as such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally

and by general equitable principles.

Section 5.4. Litigation. No litigation, arbitration or administrative proceedings are pending or, to Borrower's knowledge, threatened as of the date of this Agreement, which are likely to be adversely determined and, if so determined, would have a Materially Adverse Effect.

Section 5.5. Financial Condition. The audited consolidated accounts of the Group for the Financial Year ending _____ [date], and supplied to Lender prior to the date hereof give a materially true and fair view of the financial condition as of that date and, as of the date of this Agreement, there has been no material adverse change in the consolidated financial condition of the Group.

Section 5.6. Tax Returns. All material federal, state and other tax returns and reports of Borrower required by law to be filed have been completed in full and have been duly filed and prepared in good faith with due diligence, and all material taxes, assessments, fees, withholdings and other governmental charges or levies upon Borrower or its properties, assets and income which are shown on such returns and reports or which have been billed to Borrower have been paid when due or on extension, and Borrower maintains adequate reserves and accruals in respect of all such federal, state and other taxes, assessments, fees, withholdings and other governmental charges or levies for all fiscal periods. There are no material unpaid assessments pending against Borrower for any taxes, fees, withholdings and other governmental charges or levies which have not been accrued for or which are not being actively contested, and Borrower knows of no basis therefor.

Section 5.7. Title to Properties. Borrower has good and marketable title to all of its material properties and assets. Borrower enjoys full and undisturbed possession of all material properties held under leases to which it is a party, none of which contains any unusual or burdensome provision that might reasonably be deemed to materially affect or impair the operation of such properties and assets. All such leases are valid and subsisting and are in full force and effect.

Section 5.8. Consent. To the knowledge of Borrower, no prior material consent, permission, authorization, order, license, exemption or filing or registration with any court, or governmental department, commission, board, bureau, agency, or other instrumentality, domestic or foreign, is necessary in connection with the execution, delivery, performance or enforcement of the Loan Documents.

Section 5.9. ERISA. No fact or circumstance, including, without limitation, any Reportable Event (as used herein "Reportable Event" shall be as defined in ERISA) shall exist in connection with any Plan of Borrower which might constitute grounds for the termination of any such Plan by the PBGC or for the appointment by the appropriate United States District Court of a trustee to administer any such Plan, which termination or appointment is reasonably likely to have a Materially Adverse Effect. For the purposes of this representation and warranty, if Borrower is not the plan administrator, it shall nonetheless be deemed to have knowledge of all facts attributable to the plan administrator designated pursuant to ERISA.

Section 5.10. Guarantor. To the knowledge of Borrower, the Guarantor has the power and authority to execute, deliver and to perform its obligations under the Guaranty; and the execution and delivery by the Guarantor of and the performance by it of its obligations under the Guaranty do not and will not violate any provision of any law, rule or regulation, any judgment, order or ruling of any court or governmental agency, or any indenture, agreement or other instrument to which the Guarantor is a party or by which the Guarantor or any of its property is bound, or be in conflict with, result in a breach of, or constitute with notice or lapse of time or both a default under, such indenture, agreement or other instrument, which

violation, conflict, breach or default is reasonably likely to have a Material Adverse Effect. The Guaranty is a legal, valid and binding agreement of the Guarantor enforceable against the Guarantor in accordance with its terms, subject, however, to bankruptcy, insolvency, reorganization or similar laws, state or federal, which affect the rights of creditors and the enforcement thereof generally.

Section 5.11. Disclosure. Neither this Agreement nor any other document, certificate or statement referred to herein or furnished to Lender by or on behalf of the Borrower in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

Section 5.12. Ownership. The Guarantor owns, either directly or indirectly or through majority owned subsidiaries, 100% of the issued and outstanding capital stock of Borrower.

ARTICLE VI

Borrower covenants and agrees that from the date of this Agreement for so long as any amount is or may be outstanding under this Agreement or the Commitment is in force that:

Section 6.1. Information Miscellaneous. Borrower will provide to Lender promptly (for the confidential use of Lender for the purposes only of evaluating Lender's position under this Agreement) such further information in the possession or control of Borrower which Lender may reasonably require regarding Borrower's or the Group's financial condition which is or is likely to be material for evaluation of Borrower's ability to perform its obligations under this Agreement.

Section 6.2. Existence and Status. Borrower shall maintain its corporate existence and good standing in its state of incorporation and its qualification and good standing as a foreign corporation in all jurisdictions where the failure to be so qualified is reasonably likely to have a Materially Adverse Effect, and shall conduct its business in the manner in which it is now conducted subject only to changes in the ordinary course of business.

Section 6.3. Taxes. Borrower shall pay and discharge all material taxes, assessments, fees, withholdings and other governmental charges or levies imposed upon it, or upon its incoming profits, or upon any property belonging to it, prior to the date on which penalties attach thereto; provided, however, that Borrower shall not be required to pay and discharge any such tax, assessment, fee, withholding, charge or levy so long as the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings.

Section 6.4. Financial Information. Borrower will supply to Lender:

(a) as soon as practical after publication (and in any event within the period specified below):

(i) the audited consolidated accounts of the Group for that financial year, within one hundred twenty (120) days after the end of each of its financial years; and

(ii) the unaudited unconsolidated financial statement of Borrower for that financial year, within one hundred twenty (120) days after the end of each of its financial years; and

(b) as soon as practical after publication (and in any event within the periods specified below):

(i) the unaudited consolidated interim accounts of the Group, within ninety (90) days after the end of the

first half of each of its financial years; and

(ii) the unaudited unconsolidated interim financial statements of Borrower, within ninety (90) days after the end of the first half of each fiscal year; and

(c) together with the accounts and financial statements specified in paragraphs (a) (i) and (b)(i), a certificate signed by an officer of the Guarantor on its behalf certifying compliance with the financial covenants in Section 7.4 as of the date to which those accounts were prepared and setting forth in reasonable detail Guarantor's calculation of the ratios and other financial covenants set forth in Section 7.4.

Section 6.5. Authorizations. Borrower will (a) promptly obtain, maintain and comply with the terms of, and (b) as soon as practical, supply certified copies to the Lender of, any authorization required under any law or regulation in any applicable jurisdiction to enable it to perform its obligation under, or for the validity or enforceability of, this Agreement in all material respects.

Section 6.6. Pari Passu Ranking. Borrower will procure that its obligations under this Agreement do and will rank at least pari passu with all its other present and future unsecured obligations, except for obligations which are mandatorily preferred by law.

Section 6.7. Consistent Application. If any accounts required to be delivered to Lender under Section 6.4 are not prepared in a manner which is substantially consistent with the accounts for the Financial Year ending ____ [date], and the effect of those inconsistencies is to relax in any material respect the covenants contained in Section 7.4, Borrower will provide details of those inconsistencies and the financial covenants will be computed as though the accounts have been prepared consistently.

Section 6.8. Notice of Default. Borrower will notify Lender of the occurrence of any Event of default, or default under any Loan Document or under any other agreement or obligation with any other Person to which it is a party or by which it or any of its properties is bound which is greater than 3,000,000 and reasonably likely to have a Material Adverse Effect, promptly upon becoming aware of it; provided, however, the failure of Borrower to give such notice shall not affect the right and power of Lender to exercise any and all of the remedies on default specified herein.

Section 6.9. Notice of Litigation. Borrower shall notify Lender of any actions, suits or proceedings instituted by any Person against Borrower, or any other member of the Group, claiming money damages in excess of \$_____ above any applicable insurance coverage limit or which otherwise is reasonably likely to have a Material Adverse Effect, said notice to be given within ten (10) days after the first notice to Borrower of the institution of such action, suit or proceedings and to specify the amount of damages being claimed or other relief being sought, the nature of the claim, the Person instituting the action, suit or proceeding, and any other significant features of the claim.

Section 6.10. Maintenance of Insurance. Borrower shall (a) maintain insurance in such amounts and against such liabilities and hazards as customarily is maintained by other companies of similar size and operating similar businesses, and shall furnish, upon Lender's request, a certificate specifying the details of such insurance in effect, or (b) adopt, in lieu of or supplemental to such insurance, such other plan or method of protection, whether by the establishment of an insurance fund or reserve to be held and applied to make good losses from casualties, or otherwise, and conforming to the practices of companies of similar size and operating similar businesses maintaining systems of self insurance.

Section 6.11. ERISA. Borrower shall:

(a) At all times, make prompt payment of contributions required to meet the minimum funding standards set forth in ERISA with respect to its Plans;

(b) Notify Lender immediately of any fact including, without limitation, any Reportable Event arising in connection with any of its Plans, that might constitute grounds for termination thereof by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer such Plan, together with a statement, if requested by Lender, as to the reasons therefor and the action, if any, that Borrower proposes to take with respect thereto; and

(c) Furnish to Lender, upon request, such additional information concerning any of its Plans as may be reasonably requested.

ARTICLE VII

NEGATIVE COVENANTS

Borrower covenants and agrees that from the date of this Agreement for so long as any amount is or may be outstanding under this Agreement or the Commitment is in force that:

Section 7.1. Disposals. No member of the Group will complete the sale, transfer, grant of lease or other disposal of all or any part of its assets except to another member of the Group if that disposal is substantial in the context of the assets of the Group taken as a whole, unless Borrower has notified Lender of the same prior to completion of such disposal.

Section 7.2. Liens and Encumbrances. Borrower will not, and Borrower will procure that each other member of the Group will not, create or permit to exist any Encumbrance on the whole or any part of the respective present and future asset Borrower or any such member of the Group except for the following:

(a) Encumbrances created with the prior written consent of Lender;

(b) Liens arising by operation of law (or in standard terms of trade having similar affect) in the ordinary course of the Group's business;

(c) Encumbrance created by any member of the Group and existing at the date of this Agreement, provided the aggregate principal amount of indebtedness secured thereby does not exceed 10,000,000 or its equivalent; or

(d) any other Encumbrance provided the aggregate principal amount of the Debt secured thereby (excluding Debt secured by any Encumbrances permitted under subsections (a), (b) or above) at any one time outstanding does not exceed an amount equal to _____ percent (____%) of Tangible Consolidated Net Worth of the Group as shown in the then latest annual audited consolidated balance sheet delivered to Lender under Section 6.4.

Section 7.3. Restriction on Debt. No member of the Group (other than the Guarantor) will have outstanding any Debt (including, without limitation, Debt under any guarantee or indemnity) except for:

(a) Debt created with the prior written consent of Lender or Debt under this Agreement;

(b) Debt of Finance Subsidiaries;

(c) Overdraft balances at any bank to the extent matched by cash balances with the same bank in freely convertible currencies where the member of the Group concerned is party to a netting arrangement with that bank as part of its usual banking arrangements;

(d) Debt of up to \$_____ under the Revolving Credit Facility, dated _____ [date], among various members of the Group and _____ Bank (and certain other banks);

(e) Debt up to an amount not exceeding the aggregate principal amount of all Debt of members of the Group which are not Finance Subsidiaries existing as of the date of this Agreement, provided the aggregate principal amount of indebtedness in respect of such Debt does not exceed \$_____ or its equivalent; and

(f) any other Debt provided the aggregate principal amount of such Debt (excluding Debt permitted under subsections (a), (b), (c), (d) or (e) above) at any time outstanding does not exceed an amount equal to _____ percent (____%) of Tangible Consolidated Net Worth of the Group as shown in the then latest annual audited consolidated balance sheet delivered to Lender under Section 6.4.

Section 7.4. Financial Covenants.

(a) At all times Tangible Consolidated Net Worth shall not be less than:

(i) for the period from the date of this Agreement up to but not including _____ [date], \$_____;

(ii) from _____ [date], up to but not including _____ [date], \$_____; and

(iii) from _____ [date] and including _____ [the Commitment Termination Date], \$_____.

(b) At all times Total Net Debt of the Group shall not exceed _____ percent (____%) of Tangible Consolidated Net Worth.

(c) The ratio of PBIT to Net Interest for any period of twelve (12) months ending on the last day of each financial year or half year of the Group shall be equal to or greater than _____ to _____ (____ to _____), as shown in the latest Relevant Accounts.

Section 7.5. Merger or Consolidation. Borrower shall not enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) or convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or a substantial part of its assets; provided, however, Borrower may do any of the actions described in this Section with an entity controlled directly or indirectly by the Guarantor.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default. Any one or more of the following shall constitute an "Event of Default"

hereunder:

(a) Borrower fails to pay on the due date any amount payable by Borrower under this Agreement or the Note and such failure continues unremedied for five (5) Business Days after notice from Lender given on or after the due date;

(b) Borrower fails to comply with any material provision of this Agreement (other than those referred to in (a) above) or in any other agreement with Lender, and, if such default is capable of remedy, Borrower fails to cure such default, within thirty (30) days after notice from Lender;

(c) Any material representation, warranty or statement made herein or made by or furnished on behalf of Borrower in connection herewith shall be incorrect or misleading when made or deemed to be repeated and, in the case of a matter capable of being remedied, is not remedied within thirty (30) days after notice from Lender;

(d) Any Debt or Hedging Liabilities of Borrower or any member of the Group become due and payable prior to their normal maturity date as a result of a default by Borrower or the relevant member of the Group, or any such Debts or Hedging Liabilities are not paid when due after taking into account any applicable grace periods (or any guarantee given by Borrower or any member of the Group in respect of any Debt or Hedging Liabilities is called and the claim is not paid when due after taking into account any applicable grace periods), unless, in any such case, the aggregate principal amount of the Debt or termination amount of the Hedging Liabilities in respect of which any one or more of those events has occurred equals or is less than 3,000,000 or its equivalent or the payment in question is being contested in good faith by Borrower or the member of the Group owing the amount and on the basis of advice from its legal counsel;

(e) Borrower, Guarantor or any Material Subsidiary is unable to pay its debts as they fall due or suspends making payments (whether of principal or interest) with respect to all or any class of its debts;

(f) A tax lien or a judgment or order for the payment of money in excess of \$ _____ or its equivalent, or otherwise reasonably likely to have a Material Adverse Effect, shall be filed or rendered against Borrower, Guarantor or any Material Subsidiary, and such tax lien, judgment or order shall continue unsatisfied (in the case of a tax lien or money judgment) and in effect for the longer of:

(i) thirty (30) days after the date of such judgment or order;

(ii) the appeals period applicable thereto; or

(iii) the period during which the judgment creditor and the relevant judgment debtor are actively discussing settlement, unless the judgment creditor has commenced enforcement proceedings upon such judgment or order, during which period execution shall not be effectively stayed or deferred (whether by action of a court, by agreement or otherwise);

(g) Any Reportable Event shall have occurred, or any finding or determination shall have been made, with respect to a Plan of the Borrower, the Guarantor or any Material Subsidiary under *Section 4041(c)* or *(e) of ERISA*, or any fact or circumstance shall occur with respect to a Plan, that, in the opinion of Lender, provides grounds for the commencement of any proceeding under *Section 4042 of ERISA*, or any proceeding shall be commenced with respect to a Plan under *Section 4042 of ERISA*;

(h) The Guarantor ceases to be the beneficial owner (either directly or through majority owned

subsidiaries) of 100% of the issued and outstanding capital stock of Borrower;

(i) Borrower, the Guarantor or any Material Subsidiary is otherwise in default or there exists an Event of Default (as defined therein) under any note, instrument, document or agreement with or in favor of Lender or any other subsidiary or affiliate of the Lender;

(j) This Agreement, the Note or the Guaranty after their execution and delivery for any reason cease to be in full force and effect, or shall be declared to be null and void, the validity and enforceability thereof shall be contested by the Borrower or the Guarantor, or the Borrower or the Guarantor shall deny that it has any or further liability or obligation hereunder or thereunder;

(k) The Guarantor shall no longer have a duly appointed agent satisfactory to Lender to accept service of process on its behalf in the State of _____, as provided for in the Guaranty;

(l) Any single person or group of persons acting in concert acquires control (as defined in the Securities Exchange Act of 1934) of the Guarantor after the date of this Agreement;

(m) Any involuntary petition is filed against the Guarantor, the Borrower or any Material Subsidiary, in the jurisdiction of its incorporation or in the jurisdiction in which its principal assets or principal place of business are located, under bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect and such petition shall remain undismissed for a period of sixty (60) days, or the Guarantor, the Borrower or Material Subsidiary, as the case may be, approves, consents or acquiesces thereto;

(n) If the Guarantor, the Borrower or any Material Subsidiary makes an assignment for the benefit of creditors, or files a voluntary petition seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency or readjustment of debt, dissolution or liquidation law, of any jurisdiction, whether now or hereafter in effect; or

(o) There occurs, in relation to the Guarantor or any Material Subsidiary, in any country or territory in which it carries on business or to the jurisdiction of whose courts it or any of its assets are subject (other than any jurisdiction referred to in subsection (m) or (n)), any event which corresponds in that country or territory with any of those mentioned in subsection (m) or (n) above, which event is reasonably likely to have a Materially Adverse Effect.

Section 8.2. Remedies.

(a) Upon the occurrence of any one or more of the Events of Default set forth above in subsections 8.1(a) through and including 8.1(o)), Lender may at any time thereafter (i) declare the Advances to be immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived, together with interest thereon and all other amounts payable hereunder, including without limitation, principal, accrued interest and costs of collection (including, without limitation, reasonable attorneys' fees if collected by or through an attorney or in bankruptcy or other judicial proceedings), and/or (ii) terminate all obligations of Lender to Borrower under this Agreement, including, without limitation, all obligations to make Advances and issue Letters of Credit.

(b) Upon the occurrence of any one or more of the Events of Default set forth above in subsections 8.1(m), (n) and (o), then simultaneously therewith (i) the Advances shall be immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived, together with interest thereon and all other amounts payable hereunder, including without

limitation, principal, accrued interest and costs of collection (including, without limitation, reasonable attorneys' fees if collected by or through an attorney or in bankruptcy or other judicial proceedings), and (ii) all obligations of Lender to Borrower under this Agreement shall be terminated, including, without limitation, all obligations to make Advances and issue Letters of Credit.

(c) Other Remedies. Unless and except to the extent expressly provided for to the contrary herein, the rights of Lender specified herein shall be in addition to, and not in limitation of, Lender's rights under any statute or rule of law or equity, or under any other provision of any of the Loan Documents, or under the provisions of any other document, instrument or other writing executed by Borrower or any third party in favor of Lender, all of which may be exercised successively or concurrently.

ARTICLE IX MISCELLANEOUS

Section 9.1. No Waiver. No delay or failure on the part of Lender or on the part of any holder of the Note in the exercise of any right, power or privilege granted under this Agreement, under any other Loan Document, or available at law or in equity, shall impair any such right, power or privilege or be construed as a waiver of any Event of Default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege. No waiver shall be valid against Lender unless made in writing and signed by Lender, and then only to the extent expressly specified therein.

Section 9.2. Notices. All notices and communications provided for hereunder shall be in writing, delivered by hand or sent by first class, registered or certified mail, postage prepaid or sent by Federal Express or by some other form of overnight delivery, or sent by telex, telegraph or other formal electronic communication, to the following addresses:

(1) If to Lender, to:

The Bank

Attention:

Telecopier:

(2) If to Borrower, to:

The Bank

Attention:

Telecopier:

Any such notice shall be deemed effective (a) if personally delivered, on the date personally delivered, (b) if mailed by first class mail, three Business Days after the date it was properly deposited in the mails, (c) if mailed by registered or certified mail, five days after it was properly deposited in the mails, (d) if sent via Federal Express or other form of overnight delivery service, on the first day after it was properly delivered to the delivery service, or (e) if sent by telex, telegram or other form of electronic telecommunication, on the date transmitted if sent before 5:00 P.M. (Eastern Standard Time) on a Business Day or if not on the next Business Day. Rejection or other refusal to accept, or the inability to deliver because of a change in address of which no notice was given, shall be deemed to be the receipt of the notice or communication. Borrower or Lender, or both, may change its address for notice purposes by notice to the other party in the manner provided herein.

All notices to Lender pursuant to Sections 2.4, 2.11 and 3.3 shall be effective upon the earlier of transmission of telex, telecopy or telegram or other form of electronic telecommunication by Borrower or receipt by Lender.

Section 9.3. Governing Law. This Agreement and all other Loan Documents shall be governed by and interpreted in accordance with the laws of the State of _____ unless the individual document specifically provides otherwise.

Section 9.4. Survival. All representations and warranties contained herein or made by or furnished on behalf of Borrower in connection herewith shall survive the execution and delivery of this Agreement and all other Loan Documents.

Section 9.5. Descriptive Headlines. The descriptive headings of the several sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 9.6. Severability. If any part of any provision contained in this Agreement or in any other Loan Document shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions.

Section 9.7. Time is of the Essence. Time is of the essence in interpreting and performing this Agreement and all other Loan Documents.

Section 9.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument.

Section 9.9. Successors and Assigns. This Agreement shall bind and inure to the benefit of Borrower and Lender, and their respective successors and assigns; provided, however, Borrower shall have no right to assign its rights or obligations hereunder to any Person. Notwithstanding anything in this Agreement to the contrary, Lender shall have the right, but shall not be obligated, to sell participations in the loans made pursuant hereto to other banks, financial institutions and investors except as limited by Section 2.9 hereof.

Section 9.10. Amendments: No Implied Waiver. This Agreement may be amended or modified, and Borrower may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if Borrower shall obtain the prior written consent of Lender to such amendment, modification, action or omission to act, and no course or dealing between Borrower and Lender shall operate as a waiver of any right, power or privilege granted under this Agreement, under any other Loan Document, or available at law or in equity.

Section 9.11. Rights Cumulative. All rights, powers and privileges granted hereunder shall be cumulative to and shall not be exclusive of any other rights, powers and privileges granted by any other Loan Document or available at law or in equity.

Section 9.12. Costs, Expenses and Taxes. Borrower shall pay on demand all costs and expenses of the Lender in connection with the preparation, reproduction, execution and delivery of this Agreement, the Note and the other Loan Documents, including the reasonable fees and out of pocket expenses of counsel for the Lender with respect thereto, and all costs and expenses (including without limitation reasonable attorneys' fees), if any, in connection with the enforcement of this Agreement, the Note and all other agreements and documents delivered hereunder and thereunder. In addition, Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution and delivery of this Agreement, the Note and all other Loan Documents and shall save Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omitting to pay such taxes or fees.

Section 9.13. Indemnity. Borrower agrees to protect, indemnify and save harmless Lender, and all directors, officers, employees and agents of Lender, from and against any and all claims, losses or expenses (including, without limitation, reasonable attorneys' fees) arising from or related or incident to:

- (a) the occurrence of any Event of Default;
- (b) any Advance not being borrowed (for any reason whatsoever other than default by Lender) after a Notice of Borrowing has been served; or
- (c) Borrower's use of the proceeds of the Advances,

including without limitation any losses or expenses (excluding loss of profit and other consequential or indirect damages not set forth in this Agreement) reasonably sustained or incurred on account of funds borrowed, contracted for or utilized to fund any amount payable hereunder. The indemnity contained in this Section 9.13 shall survive the termination of this Agreement.

Section 9.14. Usury. It is the intent of the parties hereto not to violate any federal or state law, rule or regulation pertaining either to usury or to the contracting for or charging or collecting of interest, and Borrower and Lender agree that, should any provision of this Agreement or of the Note, or any act performed hereunder or thereunder, violate any such law, rule or regulation, then the excess of interest contracted for or charged or collected over the maximum lawful rate of interest shall be applied to the outstanding principal indebtedness due to Lender by Borrower under this Agreement.

Section 9.15. Construction. Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be more strictly construed against the party who itself or through its agents prepared the same, it being agreed that Borrower, Lender and their respective agents have participated in

the preparation hereof.

Section 9.16. Holidays. In any case where the date for any action required to be performed under this Agreement or under any other Loan Document shall not be a Business Day, then such performance may be made on the next succeeding Business Day.

Section 9.17. Entire Agreement. This Agreement and the other Loan Documents executed and delivered contemporaneously herewith, or contemplated hereby, together with the exhibits and schedules attached hereto and thereto, constitute the entire understanding of the parties with respect to the subject matter hereof, and any other prior or contemporaneous agreements, whether written or oral, with respect thereto including, without limitation, the loan commitment from Lender to Borrower, are expressly superseded hereby. The execution of this Agreement and the other Loan Documents by Borrower was not based upon any facts or materials provided by Lender, nor was Borrower induced to execute this Agreement or any other Loan Document by any representation, statement or analysis made by Lender.

WITNESS the hand and seal of the parties hereto through their duly authorized officers, as of the date first above written.

THE BORROWER

By: _____

Title: _____

[CORPORATE SEAL]

THE LENDER

By: _____

Title: _____

Attest: _____

Title: _____

[BANK SEAL]

FOOTNOTES:

(n1)Footnote 1. The Revolving Credit Agreement can meet the cash needs of the borrower as they arise and is repaid through the collection of accounts receivable of the borrower. The application of the cash revenues of the borrower is utilized to reduce the aggregate amount of the balance outstanding. The interest rate payable is based on the borrower's current bond rating. The borrower is a member of a consolidated reporting group of corporations, each of whom can borrow funds pursuant to this revolving credit agreement.



31 of 92 DOCUMENTS

California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 2: Loans--Business and Commercial.

*37TTT-2 California Legal Forms--Transaction Guide Form T2-14***Form T2-14 Opinion of Counsel**

Description: This form is designed for the borrower's outside counsel. Lender's counsel should consider the advisability of having the borrower's house counsel give certain of the opinions set forth in the sample opinion letter that are likely to be within the knowledge of the house counsel but not within the knowledge of the outside counsel. In lieu of an opinion of counsel, some lenders prefer to obtain U.C.C. insurance insuring the attachment, perfection, and priority of the security interest.

Form T2-14 Opinion of Counsel

[COUNSEL'S LETTERHEAD]

_____,
20____

[Lender's Name and Address]

Ladies and Gentlemen:

We have acted as [special] counsel to [(i)] _____ ("Borrower") in connection with the preparation, execution and delivery of and the transactions contemplated by the [Revolving Credit] [Term Loan] [and Security] Agreement and all exhibits and schedules thereto dated as of _____, 20____ (the "Loan Agreement") between Borrower and _____ ("Lender") [and (ii) _____ ("Guarantor") in connection with the preparation, execution and delivery of, and the transactions contemplated by, the Guaranty dated as of _____, 20____ made by Guarantor in favor of Lender (the "Guaranty")]. All capitalized terms not otherwise defined herein shall have the meanings given to them in the Loan Agreement. For purposes of the opinions expressed herein, we have examined among other documents, the following documents (collectively, the "Documents"):

- (a) A copy of the Loan Agreement together with all exhibits and schedules thereto;
- (b) A copy of the Revolving Note dated as of the Closing Date;
- (c) A copy of the Term Loan Note dated as of the Closing Date;
- (d) Copies of the Trademark Collateral Security Agreement, Trademark Assignment of Security, Patent Collateral Security Agreement and Patent Assignment of Security dated as of the Closing Date;
- (e) A copy of the Guaranty;
- (f) A copy of the Mortgage dated as of the Closing Date;
- (g) A copy of the Pledge Agreement dated as of the Closing Date;
- (h) A copy of the Security Agreement dated as of the Closing Date;
- (i) A copy of the Letter of Credit and Security Agreement dated as of the Closing Date;
- (j) Certificates of Good Standing for each of Borrower and Guarantor;
- (k) Certified copies of the Certificate of Incorporation and all amendments thereto and the by-laws and all amendments thereto for each of Borrower and Guarantor;
- (l) Copies of the financing statements naming Borrower [and Guarantor] as debtor and Lender as secured party, which financing statements [have been filed on _____] [will be filed] with the Secretary of State of the states of _____ [*insert information regarding states*] (the "Financing Statements"); and
- (m) Copies of all [Other/Loan] Documents.

In addition, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such corporate records, agreements, documents and other instruments, and of certificates or comparable documents of public officials and of officers and representatives of Borrower and Guarantor and have made such inquiries of such officers and representatives as we have deemed relevant and necessary as the basis for the opinions hereinafter set forth.

In such examination, we have assumed the genuineness of all signatures (other than the signatures on behalf of Borrower and Guarantor) and the authenticity of all documents submitted to us as originals, the conformity to original documents of documents submitted to us as certified or as copies and the authenticity of the originals of such latter documents. As to all questions of fact material to this opinion that have not been independently established, we have relied upon certificates or other comparable documents of officers and representatives of Borrower and Guarantor and upon the representations and warranties of Borrower and Guarantor contained in the Documents.

No opinion is expressed herein other than as to the laws of the States of _____ [and, with respect to the opinion set forth in subsection "f" below, the State of _____] and the federal laws of the United States of America.

Based on the foregoing, and subject to the qualifications stated herein, we are of the opinion that:

- a. Each of Borrower and Guarantor is duly incorporated, validly existing and in good standing under the laws of the State[s] of _____ [, respectively,] and has the requisite corporate power and authority and has taken all

corporate action necessary to (i) execute, deliver and perform the Documents to which it is a party and (ii) carry on its business and own its property.

b. The Documents have all been duly authorized, executed and delivered and constitute the valid and binding obligations of Borrower and Guarantor enforceable in accordance with their respective terms, except as limited by applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting the enforcement of creditors' rights and the availability of equitable remedies (regardless of whether such enforceability is considered in a proceeding at law or equity).

c. _____ has good and marketable title to all ownership rights or capital shares which it purports to own of _____, free and clear of any lien and all such ownership rights or capital shares have been duly issued and are fully paid and are non-assessable.

d. All consents, approvals or authorizations, if any, of any governmental authority required on the part of each of Borrower and Guarantor in connection with the execution and delivery of the Documents, the ownership of their property or the conduct of their businesses have been duly obtained, and each of Borrower and Guarantor has complied with all applicable provisions of law requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery.

e. The execution, delivery and performance by each of Borrower and Guarantor of the Documents to which it is a party will not result in a breach of any provision of its Certificate of Incorporation or Bylaws, or its rules or regulations nor will such execution, delivery and performance conflict with or result in a breach of any of the terms, conditions or provisions of any law or any regulation, order, writ, injunction or decree of any court or governmental authority [or, to the best of counsel's knowledge and belief, following diligent inquiry, constitute a default (with or without the passing of time or giving of notice) of any of the terms, conditions or provisions of any agreement or instrument to which Borrower or Guarantor is a party or by which Borrower or Guarantor is bound], or result in the creation or imposition of any lien or encumbrance, other than the liens granted in connection with the Documents, upon any of the property of Borrower or Guarantor.

f. The Financing Statements are in proper form for filing and assuming that the Financing Statements have been filed in the recording offices noted on such Financing Statements, the security interests created pursuant to the Documents in Borrower's [and Guarantor's] accounts, general intangibles, instruments, negotiable documents, investment property, inventory, equipment, and goods constitute perfected security interests under the Uniform Commercial Code as adopted in the State[s] of _____ [and _____]. Except for the filing fees to be paid in connection with filing the Financing Statements, no recording, filing, stamp, transfer, privilege or intangible tax must be paid in connection with the execution, delivery, filing, recordation or enforcement of the Financing Statements.

g. To the best of counsel's knowledge after diligent inquiry:

(i) There are no liens, taxes, judgments, actions or proceedings pending against or affecting Borrower or Guarantor in any court or before any governmental authority or arbitration board or tribunal which could reasonably be expected to materially and adversely affect the property, business prospects, profits or conditions (financial or otherwise) of Borrower or Guarantor, except as set forth on Exhibit 2 attached hereto and made a part hereof. Neither Borrower nor Guarantor is in default with respect to any court, governmental authority or arbitration board or tribunal order.

(ii) Each of Borrower and Guarantor has duly qualified and is in good standing as a foreign corporation in each jurisdiction set forth on Exhibit 3 attached hereto and made a part hereof and which constitutes all jurisdictions where the character of their properties or the nature of their activities make such qualification necessary.

(iii) [There is no existing default or existing condition which with or without the passage of time or the giving of notice

or both will result in a default by Borrower or Guarantor under any contract, lease or commitment to which Borrower or Guarantor is a party, or by which Borrower or Guarantor is bound.]

(iv) There are no restrictive, unusual or burdensome contracts (such as leases, employment contracts, contracts calling for the sale of assets not in the ordinary course of business or labor agreements) in existence which are not normally incident to the conduct of the business or transactions of Borrower or Guarantor and there are no existing, pending, or threatened labor controversies or disputes which would affect Borrower or Guarantor.

(v) The only licenses, trademarks, trade names, patents, copyrights, consents, approvals, authorizations or franchises required or advisable in connection with the conduct of the business of Borrower or Guarantor are set forth in Exhibit 4 attached hereto and made a part hereof, and they are in full force and effect without any modification, amendment or revocation which would materially or adversely affect the conduct of their respective businesses.]

h. The Pledge Agreement creates valid liens on and encumbrances against the stock pledged thereunder, subject to no other liens or encumbrances except as set forth on Exhibit 5 attached hereto and made a part hereof.

As used herein, the phrase "a diligent inquiry" means conversations between counsel and officers of Borrower and Guarantor and a review of counsel's own files and records concerning the matters covered hereby.

This opinion is rendered solely for the benefit of Lender in connection with the transactions described above and may be relied upon only by you.

Very truly yours,

_____ [name]



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CHAPTER 3: Loans--Guaranty.

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§ 3.syn Synopsis to Chapter 3: Loans--Guaranty.

Form T3-1 Guaranty Agreement

Form T3-1 Guaranty Agreement

Form T3-2 Personal Guaranty

Form T3-2 Personal Guaranty

Form T3-3 Corporate Guaranty

Form T3-3 Corporate Guaranty

Form T3-4 Absolute and Unlimited Guaranty (Corporate Guarantor)

Form T3-4 Absolute and Unlimited Guaranty (Corporate Guarantor)

Form T3-5 Absolute and Limited Guaranty (Individual Guarantor)

Form T3-5 Absolute and Limited Guaranty (Individual Guarantor)

Form T3-6 Limited Guaranty of Collection (Individual Guarantor)

Form T3-6 Limited Guaranty of Collection (Individual Guarantor)

Form T3-7 Amended and Restated Absolute and Limited Guaranty

Form T3-7 Amended and Restated Absolute and Limited Guaranty

Form T3-8 Guaranty of Validity

Form T3-8 Guaranty of Validity



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CHAPTER 3: Loans--Guaranty.

37TTT-3 California Legal Forms--Transaction Guide Form T3-1

Form T3-1 Guaranty Agreement

Description: This form provides a sample agreement whereby borrower's guarantor, who owns of record and beneficially all of the issued and outstanding capital stock of borrower, guarantees payment of the obligations of the borrower under a loan agreement.

Form T3-1 Guaranty Agreement

GUARANTY AGREEMENT

GUARANTY AGREEMENT dated as of January _____, 20_____, among PARENT CORPORATION, a corporation (herein called the "Guarantor") and the _____BANK (herein called the "Bank");

WITNESSETH:

WHEREAS, the Guarantor owns of record and beneficially all of the issued and outstanding capital stock of BORROWER CORPORATION, a corporation (herein called the "Borrower"); and

WHEREAS, the Borrower has entered into a Loan Agreement with the Bank dated as of January _____, 20_____, (herein called the "Loan Agreement") providing a loan to the Borrower by the Bank (such loan herein called the "Loan"); and

WHEREAS, the Loan will be evidenced by a promissory note issued by the Borrower in favor of the Bank in accordance with the terms of the Loan Agreement (such promissory note herein called the "Note"); and

WHEREAS, under the terms of the Loan Agreement, it is a condition to the obligations of the Bank to make the Loan that the Guarantor guarantee payment of the obligations of the Borrower under the Note, the Loan Agreement and the Security Documents (as defined in the Loan Agreement); and

WHEREAS, it is a benefit to and in the best interest of the Guarantor that the Bank make the Loan and the Guarantor is

willing to and desires to enter into this Guaranty Agreement to enable the Borrower to borrow the Loan from the Bank;

NOW, THEREFORE, in order to induce the Bank to make the Loan and for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which the Guarantor hereby acknowledges, the parties hereto do hereby agree as follows:

1. Unconditional Guaranty.

(a) The Guarantor hereby unconditionally guarantees to the Bank the due and punctual payment to it of (i) the principal amount of, and interest on, the Note and (ii) any and all other amounts due to the Bank at any time pursuant to the Loan Agreement and any of the Security Documents, together with any and all expenses which may be incurred by the Bank in collecting all or any part of the amounts due to the Bank thereunder and hereunder, or in enforcing any of the obligations of the Borrower thereunder or of the Guarantor hereunder or thereunder. The obligations of the Guarantor under this Guaranty Agreement constitute an absolute, unconditional, present and continuing irrevocable guaranty of payment and not of collectibility, and if the Borrower shall fail to pay any amount when due as aforesaid, the Guarantor agrees that it will immediately pay the same to the Bank.

(b) The Guarantor guarantees that the obligations of the Borrower under the Note, the Loan Agreement and any of the Security Documents and the obligations of the Guarantor hereunder will be paid to the Bank strictly in accordance with the terms of the Note, the Loan Agreement and the Security Documents and regardless of any law, regulation or decree now or hereafter in effect which might in any way affect any of the terms or provisions thereof, or the rights of the Bank as against the Borrower or the Guarantor, or which might cause or permit to be invoked any alteration of the time, amount or manner of payment by the Borrower or the Guarantor of any of their respective obligations under the Note, the Loan Agreement or any such Security Documents or hereunder. The obligations of the Guarantor hereunder shall be absolute and unconditional irrespective of the validity, legality or enforceability of the Note, the Loan Agreement or any instrument, agreement or document referred to therein, and shall not be affected by or contingent upon any action taken under the Note, the Loan Agreement or any such instrument, agreement or document referred to therein, or the exercise of any rights or power thereby conferred, or by any failure or omission to enforce any right thereby conferred, or by any demand of or attempt to collect from, or failure to demand payment from or attempt to collect from, the Borrower under the Note, the Loan Agreement or any of the Security Documents or any attempt to realize upon any security provided by the Borrower, the Guarantor or others, or the release or discharge for any reason of any such security for or any other person or entity liable on or in respect of the obligations of the Borrower under the Note, the Loan Agreement, or any of the Security Documents or of the Guarantor hereunder, or by the giving of time or any other forbearance by the Bank, or the waiver, consent or release by the Bank with respect to any provision of the Note, the Loan Agreement, or any instrument, agreement or document referred to therein, or by the liquidation or dissolution of, or the merger or consolidation of the Borrower into or with any corporation, or any sale or transfer by the Borrower of all or any part of its property or assets, or by the bankruptcy, receivership, insolvency, reorganization or similar proceedings involving or affecting the Borrower, or by any modification, alteration, amendment or addition of or to the Note, the Loan Agreement, or any instrument, agreement or document referred to therein, or by any other circumstance whatsoever (with or without notice to or knowledge of the Guarantor) which may or might in any manner or to any extent vary the risks of the Guarantor or might otherwise constitute a legal or equitable discharge of a surety or a guarantor or otherwise, it being the purpose and intent of this Guaranty Agreement that the obligations of the Guarantor hereunder shall be absolute and unconditional, present and continuing under any and all circumstances, including, without limitation, the existence, non-existence, validity or value of any security or collateral securing the obligations of the Borrower under the Note, the Loan Agreement, and any of the Security Documents.

2. Waivers by Guarantor. Guarantor hereby waives presentment, protest, notice of protest, demand for payment, diligence, notice of any other action at any time taken or omitted by the Bank and, generally, all demands and notices of every kind in connection with this Guaranty Agreement and the obligations hereby guaranteed, and any defense, set-off or counterclaim which the Guarantor may otherwise assert against the Borrower or the Bank.

3. *Covenants of the Guarantor.* Until the payment in full of the principal of, and interest on, the Loan and the Note and all other amounts payable by the Borrower under the Loan Agreement and any of the Security Documents to the Bank, the Guarantor covenants and agrees that:

(a) it will not effect any sale, assignment, transfer or conveyance, or take or permit any direct or indirect corporate action, the effect of which would cause the Borrower not to be owned by the Guarantor as it is now owned, and it will cause through appropriate direct or indirect corporate action all of the outstanding capital stock of the Borrower to be pledged under the Pledge Agreement (as defined in the Loan Agreement);

(b) it will keep its corporate existence, rights and franchises in full force and effect, and will not dissolve and will not consolidate with or merge into any other person, firm or corporation or consolidate with or merge into it;

(c) it will not, and will not permit any corporation, association or business entity more than a majority of the voting shares or interest of which is at the time directly or indirectly owned by it (herein called a "Subsidiary" and collectively "Subsidiaries") to, directly or indirectly, engage in any significant business or operations other than those in existence as of the date hereof.

(d) it shall not, without the prior written consent of the Bank, which consent, as to matters relating to Subsidiaries other than the Borrower, shall not be unreasonably withheld:

(i) sell any of the capital stock of any of its Subsidiaries, or

(ii) permit any of its Subsidiaries to cease or decide to cease its operations unless such operations are assumed by the Guarantor or one or more of its other Subsidiaries, or

(iii) sell or dispose of, or decide to sell or dispose of, all or substantially all of its assets, or permit any of its Subsidiaries to sell or dispose of or decide to sell or dispose of all or substantially all of such Subsidiary's assets otherwise than to the Guarantor or one or more of its other Subsidiaries, provided that the Guarantor or any of its Subsidiaries may sell or dispose of assets owned directly or indirectly by any of them, if the aggregate of the assets sold or disposed of during any twelve-month period by the Guarantor and all of its Subsidiaries do not constitute a substantial part of the total assets of the Guarantor and all of its Subsidiaries.

For the purpose hereof "a substantial part of the total assets of the Guarantor and all of its Subsidiaries" shall mean that part of the total assets of the Guarantor and all of its Subsidiaries, according to the latest financial statements delivered or to be delivered to the Bank pursuant hereto, which is equal to 20% of such total assets.

(e) it will not in any fiscal year declare or pay any dividend in cash or otherwise or make any other distribution on or with respect to shares of its capital stock or set apart or cause or permit to be set apart any sums or property for such purpose, if the aggregate of all such action is in excess of 66-2/3% of its consolidated net after tax income for such year (the computation of consolidated net after tax income for such year shall not reflect either gains or losses incurred in any prior year); nor will it redeem, purchase or otherwise acquire directly or indirectly any shares of its capital stock; consolidated net income shall be determined in accordance with generally accepted accounting principles in the United States consistently applied and on a basis substantially the same as that used by the Guarantor in preparing the financial statements referred to in Section 3.8 of the Loan Agreement; provided, however, that no such declaration, payment, distribution, setting apart, redemption or purchase shall be made in the event that an Event of Default (as defined in the Loan Agreement), or an event which with the passage of time or giving of notice, or both, would constitute such an Event of Default shall have occurred and be continuing;

(f) it will not, and will not permit any Subsidiary to, directly or indirectly,

(i) make any loan or advance to, or assume, guarantee, endorse, agree to purchase or repurchase, or provide funds in respect of, or otherwise become liable upon any indebtedness, obligation or dividend of any other person, firm, or corporation or enterprise; or

(ii) purchase or otherwise acquire or invest in any obligation, stock or other security of (other than marketable direct obligations of the United States and the agencies thereof, or certificates of deposit, time deposits or bankers' acceptances of prime banks), or make any capital contribution to, any other person, firm or corporation or enterprise except that the foregoing restrictions shall not apply to: (A) indebtedness of the Borrower to the Bank incurred pursuant to the terms of the Loan Agreement, (B) indebtedness of the Borrower to the Guarantor provided that such indebtedness to the Guarantor is by its terms subordinated, upon the happening of an Event of Default (as defined in the Loan Agreement), to the prior payment in full of the Loan and the Note and any other indebtedness of the Borrower to the Bank pursuant to the terms of the Loan Agreement, (C) guaranties by the Guarantor of indebtedness of Subsidiaries other than the Borrower, (D) transactions between the Guarantor and the Subsidiaries other than those described in subparagraphs (B) and (C) of this subsection 3(f), (E) transactions between Subsidiaries, (F) the performance of existing obligations disclosed in writing to the Bank prior to the date hereof, and (G) endorsement of negotiable instruments for deposit or collection in the ordinary course of business;

(g) it will maintain consolidated net worth (computed in accordance with generally accepted accounting principles in the United States consistently applied) of not less than \$_____ or, if such consolidated net worth is not so maintained, furnish additional security for the payment of the Loan and the Note in an amount and nature and upon such terms as the Bank in its sole discretion shall deem acceptable;

(h) it will deliver to the Bank within 120 days after the end of its fiscal years a consolidated and consolidating balance sheet of the Guarantor and its consolidated Subsidiaries as at the end of, and the related consolidated and consolidating statements of income, retained earnings, capital surplus and changes in financial position for, the year then ended, in each case prepared in accordance with generally accepted accounting principles in the United States consistently applied and fairly presenting the financial condition, results of operations and changes in financial position of the Guarantor and its consolidated Subsidiaries, accompanied by a report of _____, or such other independent certified public accountants acceptable to the Bank certifying that they have examined such balance sheet and statements and giving their opinion thereof; such report shall also be accompanied by a statement of such independent certified public accountants that in making the examination necessary in connection with such report, they have obtained no knowledge of any default in the fulfillment of the terms, covenants and conditions of subsections (d), (e), (f) or (g) or if such independent certified public accountants shall have obtained from such examination knowledge of any such default, they shall disclose in such statement the default or defaults and the nature thereof;

(i) it will deliver to the Bank within 90 days after each quarter except the final quarter of each of its fiscal years a consolidated and consolidating balance sheet of the Guarantor and its consolidated Subsidiaries as at the end of, and the related consolidated and consolidating statements of income, retained earnings, capital surplus and changes in financial position for, the period then ended, in each case prepared in accordance with generally accepted accounting principles in the United States consistently applied and fairly presenting the financial condition, results of operations and changes in financial position of the Guarantor and its consolidated Subsidiaries, unaudited but certified as correct by the principal accounting officer or a vice president of the Guarantor to the best of his knowledge and belief;

(j) it will promptly notify the Bank of any default under Section 5.3(b) of the Loan Agreement and of any material adverse change in the assets, property, liabilities, business or financial condition of the Guarantor or any of its Subsidiaries, or material adverse development which threatens the validity, enforceability or performance of this Guaranty Agreement or any instrument, agreement or document referred to herein or any action taken or to be taken pursuant hereto or thereto; and

(k) it will deliver to the Bank from time to time such additional information regarding the financial condition or business of the Guarantor and its Subsidiaries as the Bank may reasonably request.

4. *Continuity of Effectiveness.* This Guaranty Agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time payment or performance of any of the obligations of the Borrower under the Note, the Loan Agreement or any instrument, agreement or any of the Security Documents is rescinded or must otherwise be restored or returned by the Bank upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise all as though such payment has not been made.

5. *Successors and Assigns.* All the terms and provisions of this Guaranty Agreement shall be binding upon the successors and assigns of the Guarantor and inure to the benefit of and be enforceable by the respective successors and assigns of the Bank (including any holder of the Note) whether expressed or not.

6. *Subrogation.* The Guarantor shall not be subrogated, in whole or in part, to the rights of the Bank against the Borrower under the Note, the Loan Agreement or any of the Security Documents until the payment in full of the principal of and interest on the Note and all other amounts payable by the Borrower under the Loan Agreement or any of the Security Documents.

7. *General.* Neither this Guaranty Agreement nor any provisions hereof may be waived, changed, discharged or terminated orally but only by instrument in writing signed by the party against whom enforcement of any waiver, change, modification, discharge or termination is sought. The captions and headings in this Guaranty Agreement are for purposes of reference only, and shall not restrict any of the terms or provisions hereof. This Guaranty Agreement shall be construed in accordance with and governed by the laws of the State of _____. This Guaranty Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

8. *Severability.* If any word, phrase, sentence, paragraph, provision or section of this Guaranty Agreement shall be held, declared, pronounced or rendered invalid, void, unenforceable or inoperative for any reason by any court of competent jurisdiction, governmental authority, statute or otherwise, such holding, declaration, pronouncement or rendering shall not adversely affect any other word, phrase, sentence, paragraph, provision or section of this Guaranty Agreement, which shall otherwise remain in full force and effect and be enforced in accordance with its terms.

9. *Notices.* All notices, statements, reports and other communications hereunder shall be deemed to have been given when mailed by first-class, registered or certified mail (postage prepaid) or transmitted by tested telex or cable (charges prepaid) confirmed by letter as aforesaid to the respective addresses set forth in the Loan Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Guaranty Agreement to be executed the day and year first above written.

PARENT CORPORATION

By: _____

[Capacity]

THE BANK

By: _____



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CHAPTER 3: Loans--Guaranty.

*37TTT-3 California Legal Forms--Transaction Guide Form T3-2***Form T3-2 Personal Guaranty****Description:** This form provides a means for establishing a personal guaranty in a secured lending agreement.**Form T3-2 Personal Guaranty**

GUARANTY

(Individual)

_____, [address] _____, 20_____

FOR VALUE RECEIVED, and in consideration of loans made or to be made or credit otherwise extended or to be extended by _____ ("Lender") to or for the account of _____ ("Borrower") from time to time and at any time and for other good and valuable consideration, and to induce Lender to make such loans or extensions of credit and to make or grant such renewals, extensions, releases of collateral or relinquishments of legal rights as Lender may deem advisable, the undersigned (and each of them if more than one, the liability under this Guaranty being joint and several) (jointly and severally referred to as "Guarantor" or "the undersigned") unconditionally guaranties to Lender, its successors, endorsees and assigns, the prompt payment when due (whether by acceleration or otherwise) of all present and future obligations and liabilities of any and all kinds of Borrower to Lender and of all instruments of any nature evidencing or relating to any such obligations and liabilities upon which Borrower or one or more parties and Borrower is or may become liable to Lender, whether incurred by Borrower as maker, endorser, drawer, acceptor, guarantor, accommodation party or otherwise, and whether due or to become due, secured or unsecured, absolute or contingent, joint or several, and however or whenever acquired by Lender, whether arising under, out of, or in connection with that certain [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20_____ between Lender and Borrower (as amended, modified, restated or supplemented from time to time, the "Loan Agreement") or any documents, instruments or agreements relating to or executed in connection with the Loan Agreement or any documents, instruments or agreements referred to therein (together with the Loan Agreement, as each may be amended, modified, restated or supplemented from time to time, the "Loan Documents"), or otherwise (all of which are herein collectively referred to as the "Obligations"), and irrespective of the genuineness, validity, regularity or enforceability of such Obligations, or of any instrument evidencing any of the Obligations or of any collateral therefor or of the existence or extent of such collateral, and irrespective of the

allowability, allowance or disallowance of any or all of the Obligations in any case commenced by or against Borrower under Title 11, United States Code, including, without limitation, and to the maximum extent permitted by law, obligations or indebtedness of Borrower for post-petition interest, fees, costs and charges that would have accrued or been added to the Obligations but for the commencement of such case. In furtherance of the foregoing, the undersigned hereby agrees as follows:

1. No Impairment. Lender may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of the undersigned, extend the time of payment of, exchange or surrender any collateral for, renew or extend any of the Obligations or increase or decrease the interest rate thereon, and may also make any agreement with Borrower or with any other party to or person liable on any of the Obligations, or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between Lender and Borrower or any such other party or person, or make any election of rights Lender may deem desirable under the United States Bankruptcy Code, as amended, or any other federal or state bankruptcy, reorganization, moratorium or insolvency law relating to or affecting the enforcement of creditors' rights generally (any of the foregoing, an "Insolvency Law") without in any way impairing or affecting this Guaranty. This instrument shall be effective regardless of the subsequent incorporation, merger or consolidation of Borrower, or any change in the composition, nature, personnel or location of Borrower and shall extend to any successor entity to Borrower, including a debtor in possession or the like under any Insolvency Law.

2. Guaranty Absolute. The undersigned guarantees that the Obligations will be paid strictly in accordance with the terms of the Loan Agreement and/or any other document, instrument or agreement creating or evidencing the Obligations, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of Borrower with respect thereto. Guarantor hereby knowingly accepts the full range of risk encompassed within a contract of "continuing guaranty" which risk includes the possibility that Borrower will contract additional indebtedness for which Guarantor may be liable hereunder after Borrower's financial condition or ability to pay its lawful debts when they fall due has deteriorated, whether or not Borrower has properly authorized incurring such additional indebtedness. The undersigned acknowledges that (i) no oral representations, including any representations to extend credit or provide other financial accommodations to Borrower, have been made by Lender to induce the undersigned to enter into this Guaranty and (ii) any extension of credit to the Borrower shall be governed solely by the provisions of the Loan Agreement. The liability of the undersigned under this Guaranty shall be absolute and unconditional, in accordance with its terms, and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation: (a) any waiver, indulgence, renewal, extension, amendment or modification of or addition, consent or supplement to or deletion from or any other action or inaction under or in respect of the Loan Documents or any other instruments or agreements relating to the Obligations or any assignment or transfer of any thereof, (b) any lack of validity or enforceability of any Loan Document or other documents, instruments or agreements relating to the Obligations or any assignment or transfer of any thereof, (c) any furnishing of any additional security to Lender or its assignees or any acceptance thereof or any release of any security by Lender or its assignees, (d) any limitation on any party's liability or obligation under the Loan Documents or any other documents, instruments or agreements relating to the Obligations or any assignment or transfer of any thereof or any invalidity or unenforceability, in whole or in part, of any such document, instrument or agreement or any term thereof, (e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Borrower, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not the undersigned shall have notice or knowledge of any of the foregoing, (f) any exchange, release or nonperfection of any collateral, or any release, or amendment or waiver of or consent to departure from any guaranty or security, for all or any of the Obligations, or (g) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the undersigned. Any amounts due from the undersigned to Lender shall bear interest until such amounts are paid in full at the highest rate then applicable to the Obligations. To the maximum extent permitted by law, Obligations include post-petition interest whether or not allowed or allowable.

3. Waivers. (a) This Guaranty is a guaranty of payment and not of collection. Lender shall be under no obligation to institute suit, exercise rights or remedies or take any other action against Borrower or any other person liable with respect to any of the Obligations or resort to any collateral security held by it to secure any of the Obligations as a condition precedent to the undersigned being obligated to perform as agreed herein and Guarantor hereby waives any and all rights which it may have by statute or otherwise which would require Lender to do any of the foregoing. Guarantor further consents and agrees that Lender shall be under no obligation to marshal any assets in favor of Guarantor, or against or in payment of any or all of the Obligations. The undersigned hereby waives all suretyship defenses and any rights to interpose any defense, counterclaim or offset of any nature and description which the undersigned may have with respect to the undersigned's obligations under this Guaranty.

(b) The undersigned further waives (i) notice of the acceptance of this Guaranty, of the making of any such loans or extensions of credit, and of all notices and demands of any kind to which the undersigned may be entitled, including, without limitation, notice of adverse change in Borrower's financial condition or of any other fact which might materially increase the risk of the undersigned and (ii) presentment to or demand of payment from anyone whomsoever liable upon any of the Obligations, protest, notices of presentment, non-payment or protest and notice of any sale of collateral security or any default of any sort.

(c) Notwithstanding any payment or payments made by the undersigned hereunder, or any setoff or application of funds of the undersigned by Lender, the undersigned shall not be entitled to be subrogated to any of the rights of Lender against Borrower or against any collateral or guarantee or right of offset held by Lender for the payment of the Obligations, nor shall the undersigned seek or be entitled to seek any contribution or reimbursement from Borrower in respect of payments made by the undersigned hereunder, until all amounts owing to Lender by Borrower on account of the Obligations are paid in full and the Loan Agreement has been terminated. If, notwithstanding the foregoing, any amount shall be paid to the undersigned on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full and the Loan Agreement shall not have been terminated, such amount shall be held by the undersigned in trust for Lender, segregated from other funds of the undersigned, and shall forthwith upon, and in any event within two (2) business days of, receipt by the undersigned, be turned over to Lender in the exact form received by the undersigned (duly endorsed by the undersigned to Lender, if required), to be applied against the Obligations, whether matured or unmatured, in such order as Lender may determine, subject to the provisions of the Loan Agreement. Any and all present and future debts and obligations of Borrower to any of the undersigned are hereby waived and postponed in favor of, and subordinated to the full payment and performance of, all present and future debts and obligations of Borrower to Lender.

(d) The undersigned further waives the right to renounce any disposition or transfer of assets whether created under a will, trust agreement or intestacy statute, with respect to any devise, bequest, distributive share, trust account, life insurance or annuity contract, employee benefit plan (including, without limitation, any pension, retirement, death benefit, stock bonus or profit sharing plan, system or trust), or any other disposition or transfer created by any testamentary or nontestamentary instrument or by operation of law, and any of the foregoing created or increased by reason of a renunciation made by another person.

4. Security. All sums at any time to the credit of the undersigned and any property of the undersigned in Lender's possession or in the possession of any bank, financial institution or other entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, Lender (each such entity, an "Affiliate") shall be deemed held by Lender or such Affiliate, as the case may be, as security for any and all of the undersigned's obligations to Lender and to any Affiliate of Lender, no matter how or when arising and whether under this or any other instrument, agreement or otherwise.

5. Representations and Warranties. The undersigned hereby represents and warrants (all of which representations and warranties shall survive until all Obligations are indefeasibly satisfied in full and the Loan Agreement has been irrevocably terminated), that:

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- (a) Legal Capacity. The undersigned has full legal capacity to execute and deliver this Guaranty and to perform the obligations of the undersigned under this Guaranty.
- (b) Legal, Valid and Binding Character. This Guaranty constitutes the legal, valid and binding obligation of the undersigned enforceable in accordance with its terms, except as enforceability may be limited by applicable Insolvency Law.
- (c) Violations. The execution, delivery and performance of this Guaranty will not violate any requirement of law applicable to the undersigned or any material contract, agreement or instrument to which the undersigned is a party or by which the undersigned or any property of the undersigned is bound or result in the creation or imposition of any mortgage, lien or other encumbrance other than to Lender on any of the property or assets of the undersigned pursuant to the provisions of any of the foregoing.
- (d) Consents or Approvals. No consent of any other person or entity (including, without limitation, any creditor of the undersigned) and no consent, license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty.
- (e) Litigation. No litigation, arbitration, investigation or administrative proceeding of or before any court, arbitrator or governmental authority, bureau or agency is currently pending or, to the best knowledge of the undersigned, threatened (i) with respect to this Guaranty or any of the transactions contemplated by this Guaranty or (ii) against or affecting the undersigned, or any property or assets of the undersigned, which, if adversely determined, would have a material adverse effect on the business, operations, assets or condition, financial or otherwise, of the undersigned.
- (f) Material Adverse Change. Since _____, 20____ [which is the date of the undersigned's most recent financial statement delivered to Lender], there has been no material adverse change in the assets or condition, financial or otherwise, of the undersigned.
- (g) Financial Benefit. The undersigned has derived or expects to derive a financial or other advantage from each and every loan, advance or extension of credit made under the Loan Agreement or other Obligation incurred by Borrower to Lender.

The foregoing representations and warranties shall be deemed to have been made by the undersigned on the date of each borrowing by Borrower under the Loan Agreement on and as of such date of such borrowing as though made hereunder on and as of such date.

6. Acceleration. (a) If any breach of any covenant or condition or other event of default shall occur and be continuing under any agreement made by Borrower or the undersigned to Lender, or either Borrower or the undersigned should at any time become insolvent, or make a general assignment, or if a proceeding in or under any Insolvency Law shall be filed or commenced by, or in respect of, the undersigned, or if a notice of any lien, levy, or assessment is filed of record with respect to any assets of the undersigned by the United States of America or any department, agency, or instrumentality thereof, or if any taxes or debts owing at any time or times hereafter to any one of them becomes a lien or encumbrance upon any assets of the undersigned in Lender's possession, or otherwise, any and all Obligations shall for purposes hereof, at Lender's option, be deemed due and payable without notice notwithstanding that any such Obligation is not then due and payable by Borrower.

(b) The undersigned will promptly notify Lender of any default by the undersigned in the performance or observance of any term or condition of any agreement to which the undersigned is a party if the effect of such default is to cause, or permit the holder of any obligation under such agreement to cause, such obligation to become due prior to its stated

maturity and, if such an event occurs, Lender shall have the right to accelerate the undersigned's obligations hereunder.

7. Payments from Guarantor. Lender, in its sole and absolute discretion, with or without notice to the undersigned, may apply on account of the Obligations any payment from the undersigned or any other guarantor, or amounts realized from any security for the Obligations, or may deposit any and all such amounts realized in a non-interest bearing cash collateral deposit account to be maintained as security for the Obligations.

8. Costs. The undersigned shall pay on demand, all costs, fees and expenses (including expenses for legal services of every kind) relating or incidental to the enforcement or protection of the rights of Lender hereunder or under any of the Obligations.

9. No Termination. This is a continuing irrevocable guaranty and shall remain in full force and effect and be binding upon the undersigned, and the undersigned's heirs, administrators, executors, successors and assigns, until all of the Obligations have been paid in full and the Loan Agreement has been irrevocably terminated. If any of the present or future Obligations are guaranteed by persons, partnerships or corporations in addition to the undersigned, the death, release or discharge in whole or in part or the bankruptcy, merger, consolidation, incorporation, liquidation or dissolution of one or more of them shall not discharge or affect the liabilities of the undersigned under this Guaranty. The death of the undersigned shall not effect a termination of this Guaranty and loans and advances made by Lender and any indebtedness incurred by Borrower from Lender subsequent to such death shall continue to constitute Obligations guaranteed hereunder.

10. Recapture. Anything in this Guaranty to the contrary notwithstanding, if Lender receives any payment or payments on account of the liabilities guaranteed hereby, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under any Insolvency Law, common law or equitable doctrine, then to the extent of any sum not finally retained by Lender, the undersigned's obligations to Lender shall be reinstated and this Guaranty shall remain in full force and effect (or be reinstated) until payment shall have been made to Lender, which payment shall be due on demand.

11. Books and Records. The books and records of Lender showing the account between Lender and Borrower shall be admissible in evidence in any action or proceeding, shall be binding upon the undersigned for the purpose of establishing the items therein set forth and shall constitute prima facie proof thereof.

12. No Waiver. No failure on the part of Lender to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Lender of any right, remedy or power hereunder preclude any other or future exercise of any other legal right, remedy or power. Each and every right, remedy and power hereby granted to Lender or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Lender at any time and from time to time.

13. Waiver of Jury Trial. THE UNDERSIGNED DOES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR WITH RESPECT TO THIS GUARANTY OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR RELATING OR INCIDENTAL HERETO. THE UNDERSIGNED DOES HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.

14. Governing Law; Jurisdiction; Amendments. THIS INSTRUMENT CANNOT BE CHANGED OR TERMINATED ORALLY, AND SHALL BE GOVERNED, CONSTRUED AND INTERPRETED AS TO VALIDITY, ENFORCEMENT AND IN ALL OTHER RESPECTS IN ACCORDANCE WITH THE LAWS OF THE STATE OF

_____. THE UNDERSIGNED EXPRESSLY CONSENTS TO THE JURISDICTION AND VENUE OF THE SUPREME COURT OF THE STATE OF _____, COUNTY OF _____, AND OF THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____ [state] FOR ALL PURPOSES IN CONNECTION HEREWITH. ANY JUDICIAL PROCEEDING BY THE UNDERSIGNED AGAINST LENDER INVOLVING, DIRECTLY OR INDIRECTLY ANY MATTER OR CLAIM IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED HEREWITH SHALL BE BROUGHT ONLY IN THE SUPREME COURT OF THE STATE OF _____, COUNTY OF _____ OR THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____ [state]. THE UNDERSIGNED FURTHER CONSENTS THAT ANY SUMMONS, SUBPOENA OR OTHER PROCESS OR PAPERS (INCLUDING, WITHOUT LIMITATION, ANY NOTICE OR MOTION OR OTHER APPLICATION TO EITHER OF THE AFOREMENTIONED COURTS OR A JUDGE THEREOF) OR ANY NOTICE IN CONNECTION WITH ANY PROCEEDINGS HEREUNDER, MAY BE SERVED INSIDE OR OUTSIDE OF THE STATE OF _____ OR THE _____ DISTRICT OF _____ [state] BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL SERVICE PROVIDED A REASONABLE TIME FOR APPEARANCE IS PERMITTED, OR IN SUCH OTHER MANNER AS MAY BE PERMISSIBLE UNDER THE RULES OF SAID COURTS. THE UNDERSIGNED WAIVES ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED HEREON AND SHALL NOT ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE OR BASED UPON FORUM NON CONVENIENS.

15. Severability. To the extent permitted by applicable law, any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16. Amendments, Waivers. No amendment or waiver of any provision of this Guaranty nor consent to any departure by the undersigned therefrom shall in any event be effective unless the same shall be in writing executed by the undersigned and Lender.

17. Notice. All notices, requests and demands to or upon the undersigned, shall be in writing and shall be deemed to have been duly given or made (a) when delivered, if by hand, (b) three (3) days after being sent, postage prepaid, if by registered or certified mail, (c) when confirmed electronically, if by facsimile, or (d) when delivered, if by a recognized overnight delivery service in each event, to the numbers and/or address set forth beneath the signature of the undersigned.

18. Successors. Lender may, from time to time, without notice to the undersigned, sell, assign, transfer or otherwise dispose of all or any part of the Obligations and/or rights under this Guaranty. Without limiting the generality of the foregoing, Lender may assign, or grant participations to, one or more banks, financial institutions or other entities all or any part of any of the Obligations. In each such event, Lender, its Affiliates and each and every immediate and successive purchaser, assignee, transferee or holder of all or any part of the Obligations shall have the right to enforce this Guaranty, by legal action or otherwise, for its own benefit as fully as if such purchaser, assignee, transferee or holder were herein by name specifically given such right.

19. Release. Nothing except cash payment in full of the Obligations shall release the undersigned from liability under this Guaranty.

IN WITNESS WHEREOF, this Guaranty has been executed by the undersigned this _____ day of _____, 20_____.

[NAME OF GUARANTOR]

Telephone: Address: _____
 No.: _____
 Facsimile: _____
 No.: _____

[NAME OF GUARANTOR]

Telephone: Address: _____
 No.: _____
 Facsimile: _____
 No.: _____

STATE OF _____)
 COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that s/he resides at _____, that s/he has read the foregoing instrument and is fully familiar with the contents thereof; that s/he signed her/his name thereto of her/his own free will and volition.

 Notary Public

STATE OF _____)
 COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that s/he resides at _____, that s/he has read the foregoing instrument and is fully familiar with the contents thereof; that s/he signed her/his name thereto of her/his own free will and volition.

 Notary Public



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 3: Loans--Guaranty.

*37TTT-3 California Legal Forms--Transaction Guide Form T3-3***Form T3-3 Corporate Guaranty****Description:** This form provides a means for establishing a corporate guaranty in a secured lending agreement.**Form T3-3 Corporate Guaranty**

GUARANTY

(Corporate)

_____ [address] _____, 20____

FOR VALUE RECEIVED, and in consideration of loans made or to be made or credit otherwise extended or to be extended by _____ ("Lender") to or for the account of _____ ("Borrower") from time to time and at any time and for other good and valuable consideration and to induce Lender, in its discretion, to make such loans or extensions of credit and to make or grant such renewals, extensions, releases of collateral or relinquishments of legal rights as Lender may deem advisable, the undersigned (and each of them if more than one, the liability under this Guaranty being joint and several) (jointly and severally referred to as "Guarantor" or "the undersigned") unconditionally guaranties to Lender, its successors, endorsees and assigns the prompt payment when due (whether by acceleration or otherwise) of all present and future obligations and liabilities of any and all kinds of Borrower to Lender and of all instruments of any nature evidencing or relating to any such obligations and liabilities upon which Borrower or one or more parties and Borrower is or may become liable to Lender, whether incurred by Borrower as maker, endorser, drawer, acceptor, guarantor, accommodation party or otherwise, and whether due or to become due, secured or unsecured, absolute or contingent, joint or several, and however or whenever acquired by Lender, whether arising under, out of, or in connection with that certain [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20____ between Lender and Borrower (as amended, modified, restated or supplemented from time to time, the "Loan Agreement") or any documents, instruments or agreements relating to or executed in connection with the Loan Agreement or any documents, instruments or agreements referred to therein (together with the Loan Agreement, as each may be amended, modified, restated or supplemented from time to time, the "Loan Documents"), or otherwise (all of which are herein collectively referred to as the "Obligations"), and irrespective of the genuineness, validity, regularity or enforceability of such Obligations, or of any instrument evidencing any of the Obligations or of any collateral therefor or of the existence or extent of such collateral, and

irrespective of the allowability, allowance or disallowance of any or all of the Obligations in any case commenced by or against Borrower under Title 11, United States Code, including, without limitation, and to the maximum amount permitted by law, obligations or indebtedness of Borrower for post-petition interest, fees, costs and charges that would have accrued or been added to the Obligations but for the commencement of such case. In furtherance of the foregoing, the undersigned hereby agrees as follows:

1. No Impairment. Lender may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of the undersigned, extend the time of payment of, exchange or surrender any collateral for, renew or extend any of the Obligations or increase or decrease the interest rate thereon, and may also make any agreement with Borrower or with any other party to or person liable on any of the Obligations, or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between Lender and Borrower or any such other party or person, or make any election of rights Lender may deem desirable under the United States Bankruptcy Code, as amended, or any other federal or state bankruptcy, reorganization, moratorium or insolvency law relating to or affecting the enforcement of creditors' rights generally (any of the foregoing, an "Insolvency Law") without in any way impairing or affecting this Guaranty. This instrument shall be effective regardless of the subsequent incorporation, merger or consolidation of Borrower, or any change in the composition, nature, personnel or location of Borrower and shall extend to any successor entity to Borrower, including a debtor in possession or the like under any Insolvency Law.

2. Guaranty Absolute. The undersigned guarantees that the Obligations will be paid strictly in accordance with the terms of the Loan Agreement and/or any other document, instrument or agreement creating or evidencing the Obligations, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of Borrower with respect thereto. Guarantor hereby knowingly accepts the full range of risk encompassed within a contract of "continuing guaranty" which risk includes the possibility that Borrower will contract additional indebtedness for which Guarantor may be liable hereunder after Borrower's financial condition or ability to pay its lawful debts when they fall due has deteriorated, whether or not Borrower has properly authorized incurring such additional indebtedness. The undersigned acknowledges that (i) no oral representations, including any representations to extend credit or provide other financial accommodations to Borrower, have been made by Lender to induce the undersigned to enter into this Guaranty and (ii) any extension of credit to the Borrower shall be governed solely by the provisions of the Loan Agreement. The liability of the undersigned under this Guaranty shall be absolute and unconditional, in accordance with its terms, and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation: (a) any waiver, indulgence, renewal, extension, amendment or modification of or addition, consent or supplement to or deletion from or any other action or inaction under or in respect of the Loan Documents or any other instruments or agreements relating to the Obligations or any assignment or transfer of any thereof, (b) any lack of validity or enforceability of any Loan Document or other documents, instruments or agreements relating to the Obligations or any assignment or transfer of any thereof, (c) any furnishing of any additional security to Lender or its assignees or any acceptance thereof or any release of any security by Lender or its assignees, (d) any limitation on any party's liability or obligation under the Loan Documents or any other documents, instruments or agreements relating to the Obligations or any assignment or transfer of any thereof or any invalidity or unenforceability, in whole or in part, of any such document, instrument or agreement or any term thereof, (e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Borrower, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not the undersigned shall have notice or knowledge of any of the foregoing, (f) any exchange, release or nonperfection of any collateral, or any release, or amendment or waiver of or consent to departure from any guaranty or security, for all or any of the Obligations or (g) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the undersigned. Any amounts due from the undersigned to Lender shall bear interest until such amounts are paid in full at the highest rate then applicable to the Obligations. To the maximum extent permitted by law, Obligations include post-petition interest whether or not allowed or allowable.

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3. Waivers. (a) This Guaranty is a guaranty of payment and not of collection. Lender shall be under no obligation to institute suit, exercise rights or remedies or take any other action against Borrower or any other person liable with respect to any of the Obligations or resort to any collateral security held by it to secure any of the Obligations as a condition precedent to the undersigned being obligated to perform as agreed herein and Guarantor hereby waives any and all rights which it may have by statute or otherwise which would require Lender to do any of the foregoing. Guarantor further consents and agrees that Lender shall be under no obligation to marshal any assets in favor of Guarantor, or against or in payment of any or all of the Obligations. The undersigned hereby waives all suretyship defenses and any rights to interpose any defense, counterclaim or offset of any nature and description which the undersigned may have with respect to the undersigned's obligations under this Guaranty.

(b) The undersigned further waives (i) notice of the acceptance of this Guaranty, of the making of any such loans or extensions of credit, and of all notices and demands of any kind to which the undersigned may be entitled, including, without limitation, notice of adverse change in Borrower's financial condition or of any other fact which might materially increase the risk of the undersigned and (ii) presentment to or demand of payment from anyone whomsoever liable upon any of the Obligations, protest, notices of presentment, non-payment or protest and notice of any sale of collateral security or any default of any sort.

(c) Notwithstanding any payment or payments made by the undersigned hereunder, or any setoff or application of funds of the undersigned by Lender, the undersigned shall not be entitled to be subrogated to any of the rights of Lender against Borrower or against any collateral or guarantee or right of offset held by Lender for the payment of the Obligations, nor shall the undersigned seek or be entitled to seek any contribution or reimbursement from Borrower in respect of payments made by the undersigned hereunder, until all amounts owing to Lender by Borrower on account of the Obligations are paid in full and the Loan Agreement has been terminated. If, notwithstanding the foregoing, any amount shall be paid to the undersigned on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full and the Loan Agreement shall not have been terminated, such amount shall be held by the undersigned in trust for Lender, segregated from other funds of the undersigned, and shall forthwith upon, and in any event within two (2) business days of, receipt by the undersigned, be turned over to Lender in the exact form received by the undersigned (duly endorsed by the undersigned to Lender, if required), to be applied against the Obligations, whether matured or unmatured, in such order as Lender may determine, subject to the provisions of the Loan Agreement. Any and all present and future debts and obligations of Borrower to any of the undersigned are hereby waived and postponed in favor of, and subordinated to the full payment and performance of, all present and future debts and obligations of Borrower to Lender.

4. Security. All sums at any time to the credit of the undersigned and any property of the undersigned in Lender's possession or in the possession of any bank, financial institution or other entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, Lender (each such entity, an "Affiliate") shall be deemed held by Lender or such Affiliate, as the case may be, as security for any and all of the undersigned's obligations to Lender and to any Affiliate of Lender, no matter how or when arising and whether under this or any other instrument, agreement or otherwise.

5. Representations and Warranties. The undersigned hereby represents and warrants (all of which representations and warranties shall survive until all Obligations are indefeasibly satisfied in full and the Loan Agreement has been irrevocably terminated), that:

(a) Corporate Status. The undersigned is a corporation duly organized, validly existing and in good standing under the laws of the State of _____ and has full power, authority and legal right to own its property and assets and to transact the business in which it is engaged.

(b) Authority and Execution. The undersigned has full power, authority and legal right to execute and deliver, and to perform its obligations under, this Guaranty and has taken all necessary corporate and legal action to authorize the

execution, delivery and performance of this Guaranty.

(c) Legal, Valid and Binding Character. This Guaranty constitutes the legal, valid and binding obligation of the undersigned enforceable in accordance with its terms, except as enforceability may be limited by applicable Insolvency Law.

(d) Violations. The execution, delivery and performance of this Guaranty will not violate any requirement of law applicable to the undersigned or any material contract, agreement or instrument to which the undersigned is a party or by which the undersigned or any property of the undersigned is bound or result in the creation or imposition of any mortgage, lien or other encumbrance other than to Lender on any of the property or assets of the undersigned pursuant to the provisions of any of the foregoing.

(e) Consents or Approvals. No consent of any other person or entity (including, without limitation, any creditor of the undersigned) and no consent, license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty.

(f) Litigation. No litigation, arbitration, investigation or administrative proceeding of or before any court, arbitrator or governmental authority, bureau or agency is currently pending or, to the best knowledge of the undersigned, threatened (i) with respect to this Guaranty or any of the transactions contemplated by this Guaranty or (ii) against or affecting the undersigned, or any of property or assets of the undersigned, which, if adversely determined, would have a material adverse effect on the business, operations, assets or condition, financial or otherwise, of the undersigned.

(g) Material Adverse Change. Since _____ [which is the date of the undersigned's most recent financial statement delivered to Lender], there has been no material adverse change in the assets or condition, financial or otherwise, of the undersigned.

(h) Financial Benefit. The undersigned has derived or expects to derive a financial or other advantage from each and every loan, advance or extension of credit made under the Loan Agreement or other Obligation incurred by Borrower to Lender.

The foregoing representations and warranties shall be deemed to have been made by the undersigned on the date of each borrowing by Borrower under the Loan Agreement on and as of such date of such borrowing as though made hereunder on and as of such date.

6. Acceleration. (a) If any breach of any covenant or condition or other event of default shall occur and be continuing under any agreement made by Borrower or the undersigned to Lender, or either Borrower or the undersigned should at any time become insolvent, or make a general assignment, or if a proceeding in or under any Insolvency Law shall be filed or commenced by, or in respect of, the undersigned, or if a notice of any lien, levy, or assessment is filed of record with respect to any assets of the undersigned by the United States of America or any department, agency, or instrumentality thereof, or if any taxes or debts owing at any time or times hereafter to any one of them becomes a lien or encumbrance upon any assets of the undersigned in Lender's possession, or otherwise, any and all Obligations shall for purposes hereof, at Lender's option, be deemed due and payable without notice notwithstanding that any such Obligation is not then due and payable by Borrower.

(b) The undersigned will promptly notify Lender of any default by the undersigned in the performance or observance of any term or condition of any agreement to which the undersigned is a party if the effect of such default is to cause, or permit the holder of any obligation under such agreement to cause, such obligation to become due prior to its stated maturity and, if such an event occurs, Lender shall have the right to accelerate the undersigned's obligations hereunder.

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7. Payments from Guarantor. Lender, in its sole and absolute discretion, with or without notice to the undersigned, may apply on account of the Obligations any payment from the undersigned or any other guarantor, or amounts realized from any security for the Obligations, or may deposit any and all such amounts realized in a non-interest bearing cash collateral deposit account to be maintained as security for the Obligations.

8. Costs. The undersigned shall pay on demand, all costs, fees and expenses (including expenses for legal services of every kind) relating or incidental to the enforcement or protection of the rights of Lender hereunder or under any of the Obligations.

9. No Termination. This is a continuing irrevocable guaranty and shall remain in full force and effect and be binding upon the undersigned, and the undersigned's successors and assigns, until all of the Obligations have been paid in full and the Loan Agreement has been irrevocably terminated. If any of the present or future Obligations are guaranteed by persons, partnerships or corporations in addition to the undersigned, the death, release or discharge in whole or in part or the bankruptcy, merger, consolidation, incorporation, liquidation or dissolution of one or more of them shall not discharge or affect the liabilities of the undersigned under this Guaranty.

10. Recapture. Anything in this Guaranty to the contrary notwithstanding, if Lender receives any payment or payments on account of the liabilities guaranteed hereby, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under any Insolvency Law, common law or equitable doctrine, then to the extent of any sum not finally retained by Lender, the undersigned's obligations to Lender shall be reinstated and this Guaranty shall remain in full force and effect (or be reinstated) until payment shall have been made to Lender, which payment shall be due on demand.

11. Books and Records. The books and records of Lender showing the account between Lender and Borrower shall be admissible in evidence in any action or proceeding, shall be binding upon the undersigned for the purpose of establishing the items therein set forth and shall constitute prima facie proof thereof.

12. No Waiver. No failure on the part of Lender to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Lender of any right, remedy or power hereunder preclude any other or future exercise of any other legal right, remedy or power. Each and every right, remedy and power hereby granted to Lender or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Lender at any time and from time to time.

13. Waiver of Jury Trial. THE UNDERSIGNED DOES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR WITH RESPECT TO THIS GUARANTY OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR RELATING OR INCIDENTAL HERETO. THE UNDERSIGNED DOES HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.

14. Governing Law; Jurisdiction; Amendments. THIS INSTRUMENT CANNOT BE CHANGED OR TERMINATED ORALLY, AND SHALL BE GOVERNED, CONSTRUED AND INTERPRETED AS TO VALIDITY, ENFORCEMENT AND IN ALL OTHER RESPECTS IN ACCORDANCE WITH THE LAWS OF THE STATE OF _____. THE UNDERSIGNED EXPRESSLY CONSENTS TO THE JURISDICTION AND VENUE OF THE SUPREME COURT OF THE STATE OF _____, COUNTY OF _____, AND OF THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____ [state] FOR ALL PURPOSES IN CONNECTION HEREWITH. ANY JUDICIAL PROCEEDING BY THE UNDERSIGNED AGAINST LENDER INVOLVING, DIRECTLY OR INDIRECTLY ANY

MATTER OR CLAIM IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED HERewith SHALL BE BROUGHT ONLY IN THE SUPREME COURT OF THE STATE OF _____, COUNTY OF _____ OR THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____ [state]. THE UNDERSIGNED FURTHER CONSENTS THAT ANY SUMMONS, SUBPOENA OR OTHER PROCESS OR PAPERS (INCLUDING, WITHOUT LIMITATION, ANY NOTICE OR MOTION OR OTHER APPLICATION TO EITHER OF THE AFOREMENTIONED COURTS OR A JUDGE THEREOF) OR ANY NOTICE IN CONNECTION WITH ANY PROCEEDINGS HEREUNDER, MAY BE SERVED INSIDE OR OUTSIDE OF THE STATE OF _____ [state] OR THE _____ DISTRICT OF _____ [state] BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL SERVICE PROVIDED A REASONABLE TIME FOR APPEARANCE IS PERMITTED, OR IN SUCH OTHER MANNER AS MAY BE PERMISSIBLE UNDER THE RULES OF SAID COURTS. THE UNDERSIGNED WAIVES ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED HEREON AND SHALL NOT ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE OR BASED UPON FORUM NON CONVENIENS.

15. Severability. To the extent permitted by applicable law, any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16. Amendments, Waivers. No amendment or waiver of any provision of this Guaranty nor consent to any departure by the undersigned therefrom shall in any event be effective unless the same shall be in writing executed by the undersigned and Lender.

17. Notice. All notices, requests and demands to or upon the undersigned, shall be in writing and shall be deemed to have been duly given or made (a) when delivered, if by hand, (b) three (3) days after being sent, postage prepaid, if by registered or certified mail, (c) when confirmed electronically, if by facsimile, or (d) when delivered, if by a recognized overnight delivery service in each event, to the numbers and/or address set forth beneath the signature of the undersigned.

18. Successors. Lender may, from time to time, without notice to the undersigned, sell, assign, transfer or otherwise dispose of all or any part of the Obligations and/or rights under this Guaranty. Without limiting the generality of the foregoing, Lender may assign, or grant participations to, one or more banks, financial institutions or other entities all or any part of any of the Obligations. In each such event, Lender, its Affiliates and each and every immediate and successive purchaser, assignee, transferee or holder of all or any part of the Obligations shall have the right to enforce this Guaranty, by legal action or otherwise, for its own benefit as fully as if such purchaser, assignee, transferee or holder were herein by name specifically given such right. Lender shall have an unimpaired right to enforce this Guaranty for its benefit with respect to that portion of the Obligations which Lender has not disposed of, sold, assigned, or otherwise transferred.

19. Release. Nothing except cash payment in full of the Obligations shall release the undersigned from liability under this Guaranty.

IN WITNESS WHEREOF, this Guaranty has been executed by the undersigned this _____ day of _____, 20_____.

[GUARANTOR]

By: _____

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Name: _____

Title: _____

Address: _____

Telephone No.: _____

Facsimile No.: _____

[GUARANTOR]

By: _____

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Facsimile No.: _____

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came
_____ to me known, who being by me duly sworn, did depose and say s/he is the
_____ of _____, the corporation described in and which executed the foregoing
instrument; and that s/he signed her/his name thereto by order of the board of directors of said corporation.

Notary Public

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came
_____ to me known, who being by me duly sworn, did depose and say s/he is the
_____ of _____, the corporation described in and which executed the foregoing
instrument; and that s/he signed her/his name thereto by order of the board of directors of said corporation.

Notary Public



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Form T3-4 Absolute and Unlimited Guaranty (Corporate Guarantor)

Description: This form provides a means for establishing an absolute and unlimited guaranty arrangement (i.e, the corporate guarantor situation).

Form T3-4 Absolute and Unlimited Guaranty (Corporate Guarantor)

GUARANTY

_____ [city], _____ [state][date]

1. FOR VALUE RECEIVED, and in consideration of loans made or to be made or credit otherwise extended or to be extended by _____ (hereinafter referred to as "Lender") to or for the account of _____ of _____ [address] (hereinafter referred to as "Borrower") from time to time and at any time and for other good and valuable consideration and to induce Lender, in its discretion, to make such loans or extensions of credit and to make or grant such renewals, extensions, releases of collateral or relinquishments of legal rights as Lender may deem advisable, the undersigned unconditionally guarantees to Lender, its successors, endorsees and assigns the prompt payment when due of all present and future obligations and liabilities of any and all kinds of the Borrower to Lender and of all instruments of any nature evidencing or relating to any such obligations and liabilities upon which the Borrower or one or more parties and the Borrower is or may become liable to Lender whether incurred by the Borrower as maker, endorser, drawer, acceptor, guarantor, accommodation party or otherwise, and whether due or to become due, secured or unsecured, absolute or contingent, joint or several, and howsoever or whenever acquired by Lender (all of which are herein collectively referred to as the "Obligations"), and irrespective of the genuineness, validity, regularity or enforceability of such Obligations, or of any instrument evidencing any of the Obligations or of any collateral therefor or of the existence or extent of such collateral.
2. The undersigned hereby assents that Lender may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of the undersigned, extend the time of payment of, exchange or surrender any collateral for, renew or extend any of the Obligations or increase the interest rate thereon, and may also make any agreement with the Borrower or with any other party to or person liable on any of the Obligations, or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or any agreement between Lender and the Borrower or any such other party or person,

without in any way impairing or affecting this guarantee.

3. The undersigned hereby acknowledges that the undersigned has derived or expects to derive a financial or other advantage from each and every Obligation incurred by the Borrower to Lender.

4. The undersigned waives notice of the acceptance of this guaranty, of the making of any such loans or extensions of credit, and of all notices and demands of any kind to which the undersigned may be entitled, including, without limitation, notice of adverse change in Borrower's financial condition or of any other fact that might materially increase the risk of the undersigned; the undersigned further waives presentment to or demand of payment from anyone whomsoever liable upon any of the Obligations, protest, notices of presentment, nonpayment or protest and notice of any sale of collateral security or any default of any sort.

5. The undersigned agrees to pay on demand, all fees and expenses (including reasonable expenses for legal services of every kind) relating, or incidental reasonable to the enforcement or protection of the rights of Lender hereunder or under any of the Obligations.

6. All sums at any time to the credit of the undersigned and any property of the undersigned in Lender's possession shall be deemed held by Lender as security for any and all of the undersigned's obligations to Lender.

7. This is a continuing guaranty and may be terminated as to the undersigned only upon a written notice of termination sent by registered or certified mail, return receipt requested, and duly received by Lender. Such termination shall become effective ninety (90) days after the date duly received by Lender (the "Effective Date"); provided, however, that this guaranty shall continue and the undersigned and its successors and assigns remain bound hereunder after the Effective Date for all Obligations existing as of the Effective Date and any and all renewals, extensions, or modifications of such Obligations, together with all interest, costs, and fees due thereon. If any of the present or future Obligations are guaranteed by persons, partnerships or corporations in addition to the undersigned, the death, release or discharge in whole or in part or the bankruptcy, liquidation or dissolution of one or more of them shall not discharge or affect the liabilities of the undersigned under this guaranty.

8. If Lender receives any payment or payments on account of the liabilities guaranteed hereby, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under any bankruptcy act or code, state or federal law, common law or equitable doctrine, then to the extent of any sum not finally retained by Lender, the undersigned's obligations to Lender shall be reinstated and this Guarantee shall remain in full force and effect (or be reinstated) until payment shall have been made to you, which payment shall be due on demand.

9. The books and records of Lender showing the account between Lender and the Borrower shall be admissible in evidence in any action or proceeding, shall be binding upon the undersigned for the purpose of establishing the items therein set forth and shall constitute prima facie proof thereof.

10. This guaranty is an absolute and unconditional guaranty of payment and not of collection, and Lender shall be under no obligation to take any action against the Borrower or any other person liable with respect to any of the Obligations or resort to any collateral security held by it to secure any of the Obligations as a condition precedent to the undersigned being obligated to perform as agreed herein. The undersigned hereby waives any rights to interpose any defense, counterclaim or offset of any nature and description that it may have or that may exist between and among Lender, Borrower and/or the undersigned with respect to the undersigned's obligations under this guaranty (other than cash payment in full of the Obligations).

11. The undersigned hereby waives any rights to be subrogated to the rights of Lender with respect to the Obligations until such time as Lender shall have received cash payment in satisfaction of all of the Obligations, and the undersigned

hereby agrees that it will not institute or take any action seeking reimbursement against the Borrower or contribution from any co-guarantors until such times as Lender shall have received cash payment in satisfaction of all of the Obligations.

12. The undersigned hereby agrees that it will not sell, create or suffer to exist any mortgage, pledge, lien, charge, encumbrance, assignment, security interest or transfer upon or against any of its shares of stock of the Borrower, whether now owned or hereafter acquired except for (i) the Stock Pledge Agreement dated _____ by the undersigned to _____ and (ii) the Stock Pledge Agreement dated _____ by the undersigned to _____ and _____.

13. The undersigned agrees that it will not, at any time, directly or indirectly, prepay, repurchase, redeem, retire or otherwise acquire, or make payment on account of any principal of, interest on or premium payable in connection with the repayment or redemption of (a) the subordinated promissory note issued by the undersigned in favor of _____ dated _____ in the original principal sum of \$2,100,000, (b) the subordinated promissory note issued by the undersigned in favor of _____ dated _____ in the original principal sum of \$400,000, (c) the subordinated promissory note issued by the undersigned in favor of _____ dated _____ in the original principal sum of \$100,000 and (d) the junior subordinated debentures issued by the undersigned in favor of the Original Owners (as that term is defined in the Loan Agreement) dated _____ in the aggregate original principal sum of \$200,000. Notwithstanding the foregoing, the undersigned may make scheduled payments of the notes described in (a) through (d) above in accordance with their terms (and subject to the subordination provisions contained therein), so long as there has been no default in the Obligations and no demand for payment has been made under this Guaranty.

14. The undersigned agrees that if the Borrower or the undersigned should at any time become insolvent, or make a general assignment, or if a proceeding in bankruptcy or any insolvency or reorganization proceeding shall be filed or commenced by, or in respect of the Borrower or the undersigned, any and all obligations of the undersigned shall, at Lender's option, forthwith become due and payable without notice.

15. The undersigned further agrees (i) that it will promptly notify Lender of any default by the undersigned in the performance or observance of any term or condition of any agreement to which the undersigned is a party if the effect of such default is to cause, or permit the holder of any obligation under such agreement to cause, such obligation to become due prior to its stated maturity and (ii) if such an event as referred to in clause (i) occurs Lender shall have the right to accelerate the undersigned's obligations hereunder.

16. No failure on the part of Lender to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Lender of any right, remedy or power hereunder preclude any other or future exercise of any other legal right, remedy or power.

17. The undersigned does hereby waive the right to trial by jury in any action or proceeding instituted with respect to this guaranty or any of the transactions contemplated hereby. The undersigned does hereby waive any and all right to a trial by jury in any action or proceeding based hereon. This instrument constitutes the entire and complete agreement between the Lender and undersigned, cannot be changed or terminated orally, and shall be governed, construed and interpreted as to validity, enforcement and in all other respects in accordance with the laws of the State of _____, the exclusive jurisdiction of the _____ State Supreme Court, County of _____, being hereby consented to for all purposes in connection herewith. The undersigned further consents that any summons may be served upon it by registered or certified mail, return receipt requested, or in such other manner as may be permissible by law.

18. Each and every right, remedy and power hereby granted by Lender or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Lender at any time and from time to time.

IN WITNESS WHEREOF, this guaranty has been executed by the undersigned this _____ day of _____, 20_____.

GUARANTOR

By:

Title:

Jurat



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37TTT-3 California Legal Forms--Transaction Guide Form T3-5

Form T3-5 Absolute and Limited Guaranty (Individual Guarantor)

Description: This form provides a means for establishing an absolute and limited guaranty arrangement.

Form T3-5 Absolute and Limited Guaranty (Individual Guarantor)

Date: _____, 20____

GUARANTY

[Name and Address of Creditor]

1. In order to induce you to enter into a certain Revolving Credit, Term Loan and Security Agreement, dated as of _____, 20____ ("Loan and Security Agreement"), with _____ ("Borrower") and in consideration of any loans, advances, payment, extensions of credit, benefits or financial accommodations heretofore or hereafter made, granted or extended by you or that you have or will become obligated to make, grant or extend to or for the account of the Borrower, the undersigned guarantees without deduction by reason of set-off, defense, or counterclaim of any party, or loss of contribution from any guarantor hereunder, the due performance of all of the contracts and agreements with you, both present and future and any and all subsequent renewals, extensions, continuations, modifications, supplements and amendments thereof, and the prompt payment to you with interest of any and all sums that may be presently due and owing or that shall in the future become due and owing to you from the Borrower. This liability shall include but not be limited to any and all amounts charged or chargeable to the account of the Borrower and any and all existing and future obligations and indebtedness of the Borrower under the Loan and Security Agreement, whether acquired by you by assignment, transfer, or otherwise, and whether or not such obligations and indebtedness shall arise under the Loan and Security Agreement or under any other contract or agreement or any renewal, modification, supplement or amendment thereof, or shall be represented by or payable under instruments of indebtedness or otherwise, and whether or not such obligations and indebtedness shall be acquired by you from any concern that is your parent or subsidiary or the co-subsidiary of your parent or for which you may now or in the future act as a lender ("Obligations").

2. The liability of the undersigned hereunder shall in no event exceed the principal sum of \$1,000,000 together with all accrued interest thereon, and all fees and expenses (including reasonable expenses for legal services of every kind) relating, or incidental to the enforcement or protection of your rights hereunder or with respect to any of the Obligations. Such liability shall not be affected by nor shall anything herein contained be deemed to be a limitation of the amount of credit that may be extended to Borrower, or the number of transactions with Borrower, or the nature or amount of the Obligations that may be incurred by Borrower.
3. The undersigned hereby acknowledges that the undersigned has derived or expect to derive a financial or other advantage from each and every Obligation incurred by the Borrower to you.
4. The undersigned hereby waives notice of acceptance hereof and of all notices and demands of any kind to which the undersigned may be entitled, including without limitation, notice of adverse change in Borrower's financial condition or of any other fact that might materially increase the risk of the undersigned; all demands of payment on, and notice of nonpayment, protest and dishonor to the undersigned, or the Borrower, or the makers, or endorsers of any notes or other instruments for which the undersigned is or may be liable hereunder.
5. The undersigned hereby further waives the right to renounce any disposition or transfer of assets whether created under a will, trust agreement or intestacy statute, with respect to any devise, bequest, distributive share, trust account, life insurance or annuity contract, employee benefit plan (including, without limitation, any pension, retirement, death benefit, stock bonus or profit sharing plan, system or trust), or any other disposition or transfer created by any testamentary or nontestamentary instrument or by operation of law, and any of the foregoing created or increased by reason of a renunciation made by another person.
6. All sums at any time to the credit of the undersigned and any property of the undersigned in your possession shall be deemed held by you as security for any and all of the undersigned's obligations to you and to any company or companies that may now or at any time be your parent or subsidiary, or the co-subsidiary of your parent, no matter how or when arising and whether under this or any other instrument, agreement or otherwise.
7. The undersigned further waives notice of and hereby consents to any agreement or arrangements whatever with the Borrower or any one else including, without limitation, agreements and arrangements for payment extension, subordination, composition, arrangement, discharge or release of the whole or any part of said obligations or of said indebtedness, contracts or agreements or other guarantors, or of the making of any election of rights or remedies you may deem desirable under any Bankruptcy Code, or for the change or surrender of any and all security, or for compromise, whether by way of acceptance of part payment or of dividends or in any other way whatsoever, and the same shall in no way impair the undersigned's liability hereunder. Nothing shall discharge or satisfy the liability of the undersigned hereunder except the full performance and payment of the said obligations and indebtedness with interest.
8. The undersigned shall have no right of subrogation, reimbursement or indemnity whatsoever and no right of recourse to or with respect to any assets or property of the Borrower or to any collateral for said debts and obligations of the Borrower to you, unless and until all said debts and obligations shall have been paid and performed in full. Any and all present and future debts and obligations of the Borrower to any of the undersigned are hereby waived and postponed in favor of, and subordinated to the full payment and performance of, all present and future debts and obligations of the Borrower to you.
9. The undersigned agrees that if the Borrower or any of the undersigned should at any time become insolvent, or make a general assignment, or if a proceeding in bankruptcy or any insolvency or reorganization proceeding shall be filed or commenced by, or in respect of the Borrower or any of the undersigned, any and all obligations of the undersigned shall, at your option, forthwith become due and payable without notice.
10. If you receive any payment or payments on account of the liabilities guaranteed hereby, which payment or payments

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or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under any bankruptcy act or code, state or federal law, common law or equitable doctrine, then to the extent of any sum not finally retained by you, the undersigned obligations to you shall be reinstated and this guaranty shall remain in full force and effect (or be reinstated) until the undersigned shall have made payment to you, which payment shall be due on demand.

11. Your books and records showing the account between you and the Borrower shall be admissible in evidence in any action or proceeding, shall be binding upon the undersigned for the purpose of establishing the items therein set forth and shall constitute prima facie proof thereof.

12. This guaranty is and shall be construed to be an absolute, continuing and unconditional guaranty of payment limited only as set forth herein, and shall continue in full force and effect, notwithstanding the death of the undersigned.

13. This guaranty shall be enforceable before or after proceeding against Borrower or simultaneously therewith, without recourse to any security, and shall be effective regardless of the subsequent incorporation, merger or consolidation of the Borrower, or any change in the composition, nature, personnel or location of the Borrower.

14. This guaranty shall inure to and shall be enforceable by you, any concern that is or may at any time be your parent or subsidiary or the co-subsidiary of your parent, and your and their successors and assigns and shall be binding upon the heirs, executors, administrators, successors, and assigns of the undersigned.

15. This agreement constitutes the entire and complete agreement between us, cannot be changed, modified, or amended except in writing signed by the parties, and shall be construed under and governed by _____ [state] law.

16. The undersigned hereby waives the right to trial by jury in any action or proceeding arising out of or related to this guaranty and consents to the exclusive jurisdiction of the Supreme Court of the State of _____, County of _____, in such action or proceeding. The undersigned further consents that any summons or other process may be served by registered or certified mail, return receipt requested, or any other manner allowed by law.

17. Nothing except cash payment in full of the Obligations shall release the undersigned from liability under this guaranty.

Dated:

.....

Witness

.....

GUARANTOR

.....

Address

State of _____

)

)

ss.:

County of _____)

On _____ day of _____, 20_____ before me personally came _____ to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he/she executed the same.

.....

Notary Public



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Form T3-6 Limited Guaranty of Collection (Individual Guarantor)

Description: This form provides a means to establish a limited guaranty arrangement with a lender.

Form T3-6 Limited Guaranty of Collection (Individual Guarantor)

Date: _____, 20____

GUARANTY

(Name and Address of Creditor)

1. In order to induce you to enter into a certain Revolving Credit, Term Loan and Security Agreement, dated as of _____, 20____ ("Loan and Security Agreement"), with _____ ("Borrower") and in consideration of any loans, advances, payment, extensions of credit, benefits, or financial accommodations heretofore or hereafter made, granted, or extended by you or that you have or will become obligated to make, grant or extend to or for the account of the Borrower, the undersigned guarantees without deduction by reason of set-off, defense, or counterclaim of any party, or loss of contribution from any guarantor hereunder, the due performance of all of the contracts and agreements with you, both present and future and any and all subsequent renewals, extensions, continuations, modifications, supplements and amendments thereof, and the collection by you with interest of any and all sums that may be presently due and owing or that shall in the future become due and owing to you from the Borrower. This primary liability shall include but not be limited to any and all amounts charged or chargeable to the account of the Borrower and any and all existing and future obligations and indebtedness of the Borrower under the Loan and Security Agreement, whether acquired by you by assignment, transfer, or otherwise, and whether or not such obligations and indebtedness shall arise under the Loan and Security Agreement or under any other contract or agreement or any renewal, modification, supplement or amendment thereof, or shall be represented by or payable under instruments of indebtedness or otherwise, and whether or not such obligations and indebtedness shall be acquired by you from any concern that is your parent or subsidiary or the co-subsidiary of your parent or for which you may now or in the future act as a lender ("Obligations").

2. The liability of the undersigned hereunder shall in no event exceed the principal sum of \$1,000,000 together with all accrued interest thereon, and all fees and expenses (including reasonable expenses for legal services of every kind) relating, or incidental to, the enforcement or protection of your rights hereunder or with respect to any of the Obligations. Such liability shall not be affected by nor shall anything herein contained be deemed to be a limitation of the amount of credit that may be extended to Borrower, or the number of transactions with Borrower, or the nature or amount of the Obligations that may be incurred by Borrower.
3. The undersigned hereby acknowledges that the undersigned has derived or expects to derive a financial or other advantage from each and every Obligation incurred by the Borrower to you.
4. The undersigned hereby waives notice of acceptance hereof and of all notices and demands of any kind to which the undersigned may be entitled, including without limitation, notice of adverse change in Borrower's financial condition or of any other fact that might materially increase the risk of the undersigned; all demands of payment on, and notice of nonpayment, protest and dishonor to the undersigned, or the Borrower, or the makers, or endorsers of any notes or other instruments for which the undersigned is or may be liable hereunder.
5. The undersigned hereby further waives the right to renounce any disposition or transfer of assets whether created under a will, trust agreement or intestacy statute, with respect to any devise, bequest, distributive share, trust account, life insurance or annuity contract, employee benefit plan (including, without limitation, any pension, retirement, death benefit, stock bonus or profit sharing plan, system or trust), or any other disposition or transfer created by any testamentary or nontestamentary instrument or by operation of law, and any of the foregoing created or increased by reason of a renunciation made by another person.
6. All sums at any time to the credit of the undersigned and any property of the undersigned in your possession shall be deemed held by you as security for any and all of the undersigned's obligations to you and to any company or companies that may now or at any time be your parent or subsidiary, or the co-subsidiary of your parent, no matter how or when arising and whether under this or any other instrument, agreement or otherwise.
7. The undersigned further waives notice of and hereby consents to any agreement or arrangements whatever with the Borrower or any one else including, without limitation, agreements and arrangements for payment extension, subordination, composition, arrangement, discharge or release of the whole or any part of said obligations or of said indebtedness, contracts or agreements or other guarantors, or of the making of any election of rights or remedies you may deem desirable under any Bankruptcy Code, or for the change or surrender of any and all security, or for compromise, whether by way of acceptance of part payment or of dividends or in any other way whatsoever, and the same shall in no way impair the undersigned's liability hereunder. Nothing shall discharge or satisfy the liability of the undersigned hereunder except the full performance and payment of the said obligations and indebtedness with interest.
8. The undersigned shall have no right of subrogation, reimbursement or indemnity whatsoever and no right of recourse to or with respect to any assets or property of the Borrower or to any collateral for said debts and obligations of the Borrower to you, unless and until all said debts and obligations shall have been paid and performed in full. Any and all present and future debts and obligations of the Borrower to any of the undersigned are hereby waived and postponed in favor of, and subordinated to the full payment and performance of, all present and future debts and obligations of the Borrower to you.
9. The undersigned agrees that if the Borrower or any of the undersigned should at any time become insolvent, or make a general assignment, or if a proceeding in bankruptcy or any insolvency or reorganization proceeding shall be filed or commenced by, or in respect of the Borrower or any of the undersigned, any and all obligations of the undersigned shall, at your option, forthwith become due and payable without notice.
10. If you receive any payment or payments on account of the liabilities guaranteed hereby, which payment or payments

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or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under any bankruptcy act or code, state or federal law, common law or equitable doctrine, then to the extent of any sum not finally retained by you, the undersigned obligations to you shall be reinstated and this Guarantee shall remain in full force and effect (or be reinstated) until the undersigned shall have made payment to you, which payment shall be due on demand.

11. Your books and records showing the account between you and the Borrower shall be admissible in evidence in any action or proceeding, shall be binding upon the undersigned for the purpose of establishing the items therein set forth and shall constitute prima facie proof thereof.

12. This guaranty is and shall be construed to be a continuing guaranty of collection limited only as set forth herein, and shall continue in full force and effect, notwithstanding the death of the undersigned.

13. This guaranty shall be enforceable, and effective regardless of the subsequent incorporation, merger or consolidation of the Borrower, or any change in the composition, nature, personnel or location of the Borrower.

14. This guaranty shall inure to and shall be enforceable by you, any concern that is or may at any time be your parent or subsidiary or the co-subsidiary of your parent and your and their successors and assigns and shall be binding upon the heirs, executors, administrators, successors and assigns of the undersigned. The undersigned does hereby waive any and all right to a trial by jury in any action or proceeding based hereon. This instrument cannot be changed or terminated orally, and shall be governed, construed and interpreted as to validity, enforcement and in all other respects in accordance with the laws of the State of _____, the jurisdiction of the _____ State courts being hereby consented to for all purposes in connection herewith.

Dated:

.....

Witness

.....

GUARANTOR

.....

Address

State of _____)
County of _____) ss.:

On _____ day of _____, 20____ before me personally came _____ to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he/she executed the same.

.....

Notary Public



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 3: Loans--Guaranty.

37TTT-3 California Legal Forms--Transaction Guide Form T3-7

Form T3-7 Amended and Restated Absolute and Limited Guaranty

Description: This form provides a means to revise an absolute and limited guaranty.

Form T3-7 Amended and Restated Absolute and Limited Guaranty

AMENDED AND RESTATED GUARANTY

GUARANTY, entered into as of this _____ day of _____,
20_____, of _____, residing at _____, (the "Guarantor"), in favor
of _____, a federal savings bank with its principal office at _____ (the "Bank").

W I T N E S S E T H

WHEREAS, the Bank has entered into a financing arrangement with _____, a corporation (the
"Company"), pursuant to which the Bank has loaned the Company the amount of \$2,350,000;

WHEREAS, the Company wishes to continue to obtain financing from the Bank and the Bank is willing to continue to
make financing available to the Company upon the terms and subject to the conditions provided in a Financing
Agreement (the "Financing Agreement") dated as of _____ between the Company and the Bank and in
the other Loan Documents (as defined in the Financing Agreement);

WHEREAS, the Guarantor, being a shareholder, director an officer of the Company, has previously entered into a
Guaranty dated as of _____ (the "First Guaranty") and a Guaranty dated _____ (the
"Second Guaranty"); and

WHEREAS, the Bank has required as a condition to its entering into an agreement that will, among other things, amend
certain of the provisions of the Financing Agreement (the "April Agreement") and its loaning the Company up to an
additional \$500,000 (over and above the existing indebtedness of \$2,350,000) that the Guarantor execute an amended
and restated Guaranty that will supersede the First Guaranty and the Second Guaranty;

NOW THEREFORE, in consideration of the foregoing and the covenants, agreements, and representations and warranties hereinafter set forth, the guarantor hereby agrees as follows:

1. *Definitions.* The term "Financing Agreement" shall mean the Financing Agreement, as it may be supplemented, amended or modified from time to time, including without limitation the supplemental letter agreement dated _____ and the April Agreement. Any capitalized term that is not defined herein shall have the meaning given to such term in the Financing Agreement.

2. *Guaranty of Payment.* The Guarantor hereby unconditionally and irrevocably guarantees to the Bank the full and punctual payment, when due, of all amounts required to be paid by the Company under the Financing Agreement and the Note, as well as the payment and performance of all other obligations, liabilities and indebtedness of whatever nature of the Company to the Bank, arising under or in connection with the Financing Agreement and the other Loan Documents (and including any liabilities, obligations and indebtedness arising under or in connection with the First Financing), whether now existing or hereafter arising, direct or indirect, joint or several, absolute or contingent, due or to become due, secured or unsecured (hereinafter, all of the foregoing are collectively referred to as the "Obligations" such term to have the same meaning as given thereto in the Financing Agreement), when and as the same shall become due and payable, whether at acceleration or otherwise; *provided, however*, that under this Section 2 (which aggregate liability is exclusive of any liability under Section 3 hereof) exceed an amount equal to the greatest of: (a) an amount equal to 35% of the total amount to (1) the total amount of the Obligations, *less* (2) an amount equal to seventy-five percent (75%) of the Eligible Receivables Amount, determined, at the election and in the sole discretion of the Bank, as of the first Business Day (the "Determination Date") following (A) the date of the occurrence of the Default in respect of which payment hereunder is being sought or (B) the date of which the Bank, pursuant to the exercise of its rights and remedies under the Security Agreement, sells, transfers or otherwise disposes of all or any of the Collateral or (C) any date on which the Bank asserts a claim against the Guarantor for payment under this Guaranty; it being further understood and acknowledged that in determining the Eligible Receivables Amount there shall be excluded any Accounts Receivable that are subject to defense, setoff or counterclaim, or with respect to which any defense, setoff or counterclaim has been asserted, through and including the Determination Date. This Guaranty is an absolute and unconditional guaranty of payment and not of collectibility only, and may be enforced by the Bank without first resorting to any other right or remedy that it may have against the Company or any other of the Guarantors. If the Company shall fail to pay punctually any of the Obligations when and as the same shall become due and payable, whether at maturity or by acceleration or otherwise, or if a Default shall otherwise occur under the Financing Agreement, then the Bank may, without notice to the Company or the Guarantor, declare the Obligations, whether or not due, to be due and payable as to the Guarantor, and the Guarantor shall pay the same within 120 days after the Bank makes a demand for such payment, subject to the limitation in the amount set forth above, in immediately available funds to the Bank.

3. *Costs and Expenses.* The Guarantor shall forthwith upon demand reimburse the Bank in immediately available funds for all costs and expenses incurred by or on behalf of the Bank (including, without limitation, accountants', attorneys' and auditors' fees and their respective disbursements and courts costs incurred in connection with the financing Agreement and the other Loan Documents or making any Loans thereunder or in enforcing the Obligations of the Guarantor hereunder).

4. *Obligations of Guarantor Not Affected.* This Guaranty is a continuing guaranty and all liabilities to which it applies or may apply shall be conclusively presumed to have been created in reliance hereon. The liabilities and obligations of the Guarantor hereunder are unconditional and shall remain in full force and effect without regard to, and shall not be affected or impaired in any respect by, (a) any assignment, transfer, amendment, modification, rescission or cancellation of, or addition or supplement to, any of the other Loan Documents; (b) the invalidity, illegality or unenforceability, in whole or in part, or any of the other Loan Documents; (c) any exercise, non-exercise, waiver, release or cancellation by the Bank of any right, remedy, power or privilege under or in respect of any of the Loan Documents; (d) any consent, release, extension, indulgence, or any other action, inaction or omission under on in respect of any of the Loan

Documents or of or with respect to the Obligors; (e) any receivership, insolvency, bankruptcy, liquidation, reorganization, arrangement, readjustment, composition, dissolution or other similar proceeding involving or affecting the Company or the Agency or either of the Principals; (f) any sale, exchange, release, transfer, assignment, conveyance, or other dealing with or disposition of the Collateral; (g) any improper filing or recording or any failure by the Bank to file, record or to otherwise perfect or continue perfection of any lien or security interest in favor of the Bank on any of the Collateral, or to preserve, maintain or otherwise properly deal with any of the Collateral; (h) any defense, setoff or counterclaim asserted by the Obligor or Guarantor; or (i) any other cause or circumstance whatsoever, including, without limitation, any other act thing, omission or delay that would or might in any manner or to any extent vary the risk of the Guarantor or that would or might otherwise operate as a discharge of the Guarantor as a matter of law, whether or not the Guarantor shall have notice or knowledge of any of the matters referred to in this Section 4.

5. *First Guaranty and Second Guaranty.* The terms and provisions of the First Guaranty and the Second Guaranty are hereby superseded in their entirety by the terms and provisions of this Guaranty, provided that the representations and warranties made in the First Guaranty and the Second Guaranty shall survive in accordance with the provisions of Section 14 hereof.

6. *Waivers and Consents.* Except as otherwise specifically provided herein, the Guarantor hereby waives (a) notice of acceptance of this Guaranty or of any action taken or not taken in reliance hereon; (b) presentment, demand, notice and protest of any kind with respect to the Obligations; (c) notice of any of the matters referred to in Section 4 of this Guaranty; (d) all other notices and demands that may be required by statute, rule or law or otherwise to preserve any right of the Bank against the Company, the Agency or the principals with respect to the delivery, acceptance, performance, default or enforcement of this Guaranty or any of the other Loan Documents, including, without limitation, notice of protest and dishonor, notice of acceptance, default or nonpayment; and (e) any right of subrogation by virtue of payments made hereunder unless and until the Bank shall have received full payment of all of the Obligations.

7. *No Violations or Consents.* The Guarantor represents and warrants that the execution and delivery by him of this Guaranty does not, and the consummation of the transactions contemplated herein will not, (a) violate, conflict with, or constitute a breach or default under, with or without notice or lapse of time or both, or result in a lien or encumbrance upon any of his assets or property pursuant to, any contract, guaranty, commitment, indenture, lease, order, judgment or other agreement or instrument to which such Guarantor is a party or by which he may be bound or (b) require the consent or approval of any person or entity.

8. *Reinstatement.* This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, the Obligations is rescinded or must otherwise be restored to the Company or returned by the Company upon the insolvency, bankruptcy or reorganization or similar proceeding involving the Company, or otherwise, all as though such payment had not been made and notwithstanding the cancellation of the Note or any other instrument evidencing any liability of the Company, and the Guarantor shall be and remain liable to the Bank hereunder for the payment so rescinded, if at any time payment, or any part thereof, the Obligations is rescinded or must otherwise be restored to the Company or returned by the Company upon the insolvency, bankruptcy or reorganization or similar proceeding involving the Company, or otherwise, all as though such payment had not been made and notwithstanding the cancellation of the Note or any other instrument evidencing any liability of the Company, and the Guarantor shall be and remain liable to the Bank hereunder for the payment so rescinded or otherwise restored to the same extent as if such payment had never been received by the Bank.

9. *Subordination.* Any and all rights of the guarantor to the payment of any and all present and future indebtedness of the Company to the Guarantor shall be subordinate and subject to the rights of the Bank to payment in full of the Obligations. In the event that any repayment of indebtedness shall be received by the Guarantor contrary to the provisions of this Section, whether in connection with any insolvency, bankruptcy, liquidation, reorganization, arrangement, readjustment, composition, dissolution or other similar proceeding involving the Company, or otherwise,

such repayment shall be paid over to the Bank for application to the Obligations and the Guarantor hereby irrevocably assigns to the Bank all of its claims against and all rights in and to all indebtedness due to the Guarantor from the Obligors, and the Guarantor hereby irrevocably authorizes and appoints the Bank to effect the collection of any amounts due thereon for application to the payment of other Obligations.

10. *Consent to Service.* (a) The Guarantor hereby irrevocably submits to the jurisdiction of the United States District Court for the _____ District of _____ [state] and of any of the courts of the State of _____ located in the City of _____ with respect to any action, suit or proceeding arising out of or under this Guaranty or any dispute hereunder.

(b) The Guarantor hereby irrevocably constitutes, designates and appoints _____ as his lawful agent, for an in his behalf, to accept and acknowledge service of, and upon whom may be served, all necessary processes in any action, suit or proceeding arising out of or under this Guaranty or any dispute hereunder, that may be had or brought against him, or any of his successors or assigns, in any of the courts of the State of _____ (including, without limitation, the Federal and State courts referred to in paragraph (a) hereof), such service of process or notice, or the acceptance thereof by said agent endorsed or notice, or the acceptance thereof by said agent endorsed thereon, to have the same force and effect as if the Guarantor were resident of the State of _____ and such process had been served upon such Guarantor.

11. *No Waiver or Amendment; Cumulative Remedies.* No course of dealing between the Guarantor and the Bank and no failure to exercise or delay in exercising on the part of the Bank any right, power or privilege under the terms of this Guaranty, under the terms of any other Loan Document or under the terms of any other agreements, instruments or documents between the Bank and the Company or between the Bank and any other Person shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude the exercise of any other or further privilege. No amendment, rescission or modification of any provision of this Guaranty shall be effective unless expressly set forth in a writing duly executed by the Bank. The rights and remedies provided herein, in the other Loan Documents or in any other agreement, instrument or document between the Bank and Company are cumulative and not exclusive of or in derogation of, any other rights or remedies provided at law, in equity or otherwise. This Guaranty and the Loan Documents set forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede any and all prior agreements and understandings of the parties hereto with respect to the subject matter hereof.

12. *Successors and Assigns.* This Guaranty shall be binding upon, and shall inure to the benefit of and be enforceable by, the respective successors and assigns of the Bank and Guarantor. Notwithstanding the foregoing, the Bank may assign or delegate all or any part of its rights under this Guaranty to any person or entity, including, but not limited to, _____, or may designate any person or entity, including _____, to act on behalf of the Bank with respect to any rights and privileges of the Bank hereunder, but the Guarantor may not assign or delegate all or any part of his obligations hereunder.

13. *Term of Guaranty.* This Guaranty shall remain in full force and effect until the Obligations have been paid and discharged in full.

14. *Survival.* All representations and warranties made herein, in any agreement or in any statements, notices, invoices, certificates, schedules, consignments, designations, documents or other instruments delivered to the Bank in connection with this Guaranty or any other agreement, including without limitation the First Guaranty and the Second Guaranty, shall survive the execution and delivery of this Guaranty, the issuance and delivery of the Note and the extension of any credit or the making of any advances under the Note.

15. *Notices.* All notices, requests, demands or other communications hereunder shall be in writing and shall be deemed to have been duly given or made when delivered, if personally delivered by messenger or courier, or when mailed, if

sent by certified or registered mail, return receipt requested, addressed as set forth below or as otherwise designated by notice given hereunder:

If to the Bank:

.....

With a copy to:

..... (attorney for Bank)

If to the Guarantor:

.....

With a copy to:

..... (attorney for Guarantor)

16. *Enforceability.* Any provision of this Guaranty that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Guarantor hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

17. *Governing Law.* This Guaranty, and all rights and obligations of the parties hereunder, shall be construed and enforced in accordance with and governed by the law of the State of _____, without reference to the statutes, rules and principles of conflicts of laws thereunder.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date first set forth above.

.....

Guarantor

Jurat



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 3: Loans--Guaranty.

37TTT-3 California Legal Forms--Transaction Guide Form T3-8

Form T3-8 Guaranty of Validity

Description: This form provides a guaranty of validity within a secured lending agreement.

Form T3-8 Guaranty of Validity

GUARANTY OF VALIDITY

_____[address]

Ladies and Gentlemen:

Reference is made to the [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20____ (as amended, modified, restated or supplemented from time to time, the "Loan Agreement") with _____ ("Borrower"). All capitalized terms not otherwise defined herein shall have the meanings given to them in the Loan Agreement. In order to induce you to enter into the Loan Agreement and all supplements and agreements related thereto (collectively, the "Agreements") and make loans and/or advances to Borrower on the security of the Receivables and Inventory of Borrower, and to induce you to enter into financial arrangements generally with Borrower on such and other security, among other good and valuable consideration, the undersigned hereby guarantees and warrants to you that (a) every report, certificate or financial statement delivered to you (a "Report") will disclose to you any Receivable which does not constitute a bona fide existing obligation of a customer of Borrower owing to Borrower and arising out of and acquired by Borrower in the ordinary course of its business as shown in the invoice and assignment to you of such Receivable at the prices and on the terms stated therein or shall otherwise disclose to you why such Receivable should not be an Eligible Receivable, (b) there will not be included in any Report any Receivable which is not due and owing to Borrower without defense, offset or counterclaim and without dispute as to price, terms, quality or in any other respect except for bona fide disputes arising in arms-length transactions; (c) each Receivable included in a Report to you will be genuine and what it purports to be; and (d) Borrower will not hold, any remittances by customers on account of Receivables or checks, monies, or other forms of payment received by Borrower other than as your property to be promptly delivered to you.

The undersigned further guarantees and warrants to you that every Report to you will disclose to you any consigned

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Inventory and any Inventory which is not the sole and absolute property of the Borrower, subject only to Permitted Liens; and that no Report will contain any statement with respect to the description, guaranty, quality or value of any Inventory which is materially inaccurate or misleading.

The liability of the undersigned hereunder on account of each matter relating to a Report for which the undersigned has given you this guaranty shall exist only to the extent of any loss or damage actually sustained by you as a result of, and to the extent, such Report is false, inaccurate or misleading.

The undersigned waives notice of acceptance hereof and notices of any kind to which he may be entitled, and further waives notice and hereby consents to any agreements or arrangements among you and Borrower or anyone else including, without limitation, agreements and arrangements for payment, extension, subordination, composition, arrangement, compromise, discharge or release of the whole or any part of any indebtedness due to you or change in the financial condition of Borrower or the change or surrender of any and all Inventory and/or warehouse receipts and none of such shall in any way impair the undersigned's liability hereunder. Notwithstanding any payment or payments made by the undersigned hereunder, or any setoff or application of funds of the undersigned by you, the undersigned shall not be entitled to be subrogated to any of your rights against Borrower or against any collateral or guarantee or right of offset held by you for the payment of the Obligations nor shall the undersigned seek or be entitled to seek any contribution or reimbursement from Borrower in respect of payments made by the undersigned hereunder, until all amounts owing to you by Borrower on account of the Obligations are paid in full and the Loan Agreement had been terminated. If, notwithstanding the foregoing, any amount shall be paid to the undersigned on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full and the Loan Agreement shall not have been terminated, such amount shall be held by the undersigned in trust for you, segregated from other funds of the undersigned, and shall, forthwith upon and (in any event within two (2) business days of) receipt by the undersigned, be turned over to you in the exact form received by the undersigned (duly endorsed by the undersigned to you, if required), to be applied against the Obligations, whether matured or unmatured, in such order as you may determine, subject to the provisions of the Loan Agreement.

The undersigned hereby further waives the right to renounce any disposition or transfer of assets whether created under a will, trust agreement or intestacy statute, with respect to any devise, bequest, distributive share, trust account, life insurance or annuity contract, employee benefit plan (including, without limitation, any pension, retirement, death benefit, stock bonus or profit sharing plan, system or trust), or any other disposition or transfer created by any testamentary or nontestamentary instrument or by operation of law, and any of the foregoing created or increased by reason of a renunciation made by another person.

This Guaranty shall continue in full force and effect until all of the Obligations to you have been paid in full and the Loan Agreement has been terminated.

This Guaranty shall be binding upon the heirs, legal representatives, successors and assigns of the undersigned and shall extend to and include your successors and assigns. The death of the undersigned shall not release his estate from liability hereunder, but the estate of the undersigned shall have no liability with respect to any Report issued after the death of the undersigned.

This Guaranty shall be construed in accordance with the laws of the State of _____. Your rights hereunder shall be cumulative and not alternative.

THE UNDERSIGNED AGREES THAT ALL ACTIONS AND PROCEEDINGS RELATING DIRECTLY OR INDIRECTLY TO THIS GUARANTY SHALL BE LITIGATED IN THE FEDERAL DISTRICT COURT OF THE _____ DISTRICT OF _____ [state] OR, AT YOUR OPTION, IN ANY OTHER COURT LOCATED IN _____ STATE OR ELSEWHERE AS YOU MAY SELECT AND THAT SUCH COURTS ARE CONVENIENT FORUMS AND THE UNDERSIGNED SUBMITS TO THE PERSONAL

JURISDICTION OF SUCH COURT. WE WAIVE PERSONAL SERVICE OF PROCESS AND CONSENT THAT SERVICE OF PROCESS UPON US MAY BE MADE BY CERTIFIED MAIL OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO US AT OUR ADDRESS APPEARING ON YOUR RECORDS, AND SERVICE SO MADE SHALL BE DEEMED COMPLETED TWO (2) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED. BOTH PARTIES HERETO WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS GUARANTY.

Very truly yours,

Witness

Address: _____

Dated: _____, 20____

STATE OF

COUNTY OF

)

)

)

ss.:

On the _____ day of _____, 20____ before me personally came _____ to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

Notary Public



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 4: Loans--Real Property.

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§ 4.syn Synopsis to Chapter 4: Loans--Real Property.

Form T4-1 Permanent Loan Commitment

Form T4-1 Permanent Loan Commitment

Form T4-2 Construction Loan Security Agreement--Loan Predicated Upon Commitment for Long-term Financing;
Security Interest to Cover Personal Property

Form T4-2 Construction Loan Security Agreement--Loan Predicated Upon Commitment for Long-term Financing;
Security Interest to Cover Personal Property

Form T4-3 Commitment for Permanent Real Estate Loan--Offer By a Mortgage Broker

Form T4-3 Commitment for permanent real estate loan--offer by a mortgage broker--includes prepayment penalty



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 4: Loans--Real Property.

*37TTT-4 California Legal Forms--Transaction Guide Form T4-1***Form T4-1 Permanent Loan Commitment**

Description: This form is used to establish a construction loan. It details terms, requirements, conditions, and documentation.

Form T4-1 Permanent Loan Commitment

_____ [name of permanent lender]
 _____ [address of permanent lender]

....., _____

_____ [name of borrower]
 _____ [address of borrower]

Re: Permanent Loan Commitment for _____ [state name of construction project, e.g., The Blackacre Ranch Homes]

Ladies and Gentlemen:

We are pleased to advise you that your loan application has been approved by _____ [name of permanent lender] ("Lender") subject to the following terms and conditions:

A. TERMS OF LOAN

1. Borrower: _____ [name of borrower]
2. Amount: \$_____ [e.g., \$6,000,000]
3. Interest Rate: Index: _____ [e.g., Prime Rate]

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Margin: _____ [e.g., two tenths of one percent (0.2%)]

4. Term: _____ [e.g., twenty (20) years]

5. Monthly Installment: _____ [e.g., two hundred thirty-nine (239) consecutive monthly installments of principal and interest of _____ dollars (\$) each. The two hundred fortieth and final installment shall be the then outstanding principal balance, plus accrued interest].

6. Guaranty: _____ [name of individual property owner or project developer], of the top _____ dollars (\$) of the loan amount.

7. Commitment Fee: _____ dollars (\$) as a commitment fee shall be due and payable on acceptance of this commitment. Such fee shall be refunded when the loan is closed. If the loan is not closed in accordance with this commitment, Lender may retain this fee as liquidated damages.

8. Security: The loan shall be evidenced by a promissory note secured by:

(a) A mortgage or deed of trust (the "Mortgage") constituting a first lien on the real property (the "Premises") consisting of approximately _____ acres located at _____ [address of property]. Site to be improved with _____ [state nature of construction project, e.g., five hundred (500) single family houses of approximately five thousand (5,000) square feet of usable floor space each]. The final legal description of the Premises must be satisfactory to Lender.

(b) A general collateral assignment of all income, rents, and leases from or concerning the Premises.

(c) A security agreement constituting a first lien on all furniture, furnishings, and equipment used in the operation of the Premises and presently owned or acquired in the future by the Borrower.

9. Prepayment: Borrower, on giving Lender _____ [e.g., sixty (60) days' prior written notice], may prepay the loan in full on any interest payment date, on the payment of a prepayment penalty in the amount of _____ [e.g., one (1)] percent of the then outstanding balance of the loan.

10. Closing-Funding: If the conditions of this commitment are not met and the loan closed by _____ [date], Lender's obligations hereunder shall terminate.

[Optional]

11. Disbursement Contingent On Leasing: On full compliance with all conditions of this commitment except this leasing condition, Lender shall disburse _____ dollars (\$) [amount less than full amount of loan]. Thereafter, if within _____ [time period satisfactory to permanent lender, e.g., twelve (12) months] from the date of the initial disbursements, leases satisfactory to Lender providing for a gross income of _____ dollars (\$) are in full force and effect with the tenants in possession and paying their required rent, Lender shall disburse _____ dollars (\$) [balance of loan amount]. If the Borrower fails to meet the leasing requirement, Lender's obligation for further disbursement terminates and the total of disbursements made to date shall become the total amount of the loan, and the monthly payments shall be adjusted accordingly.

B. REQUIREMENTS OF LOAN

1. Title Insurance: Lender shall be furnished with a mortgagee title insurance policy in an amount, form, and substance, and written by a title insurance company, satisfactory to Lender and insuring the Mortgage as a valid first lien on the premises. The policy shall contain no exceptions except those specifically waived in writing by Lender.
2. Insurance: Borrower must obtain policies of public liability, fire, and extended coverage insurance in amounts satisfactory to Lender. Borrower must also obtain business interruption insurance in an amount sufficient to pay all taxes, insurance premiums, and debt service on the Premises for one (1) year. Said policies must be written by companies satisfactory to Lender with a mortgagee loss payable clause naming Lender as mortgagee on all real and personal property and giving Lender ten (10) days' prior written notice of any cancellation.
3. Survey: Lender shall be furnished with a satisfactory current survey of the premises, prepared and certified to by a duly registered land surveyor or engineer acceptable to Lender, which survey shall disclose all improvements, utilities, easements, and rights-of-way, and such other details as may be requested by Lender.
4. Personal Property Schedule: Borrower shall furnish Lender at closing a detailed schedule of the personal property covered by Lender's lien showing the valuation of the personal property on a form approved by Lender. A revised form shall be submitted to Lender by the _____ [e.g., first (1st)] day of _____ [month, e.g., March] of each year during the term of the loan showing the personal property under Lender's lien as of the previous _____ [month and day, e.g., December 31].

C. CONDITIONS OF LOAN

1. Completion and Inspection: This loan is conditioned on the improvements being completed in accordance with the final plans and specifications, as confirmed by an on-site inspection of the completed improvements by Lender's representative. Said plans and specifications must be approved by Lender in writing prior to the start of construction. No change of any substance shall be made in the final plans and specifications as approved without Lender's prior written approval.
2. Financial Statements: During the term of this loan, Borrower shall furnish Lender, within ninety (90) days of the end of Borrower's fiscal year, audited statements prepared by a Certified Public Accountant satisfactory to Lender. The statements shall be prepared exclusively for the premises and shall show a balance sheet, the annual income, and the detailed operating expenses of the property.
3. Tax and Insurance Escrow Deposits: Borrower shall deposit with Lender, on a monthly basis, one twelfth (1/12) of annual taxes and required insurance premiums. Said deposits shall be noninterest bearing. Borrower shall deposit sufficient funds with Lender at the closing to make the escrow current.
4. Closing Attorney: This loan shall be closed by Lender's counsel located in the State of _____. Lender's counsel shall prepare all documents to be used in connection with the closing and funding of this loan.
5. Attorney's Opinion: At the time of the closing of the loan, Lender's local counsel shall deliver an opinion addressed to Lender in form, scope, and substance satisfactory to Lender's general counsel concerning all aspects of the loan transaction including the legality, validity, and binding effect of all required loan documents.
6. Restriction on Secondary Financing and Sale of Premises: So long as this commitment or any part of the loan contemplated under it is outstanding, the Premises and the personal property shall remain free and clear of all encumbrances, liens, mortgages, security interest, and secondary financing, unless approved in writing by Lender, and the Borrower shall not, voluntarily or by operation of law, sell, transfer, or convey all or any part of its interest in the

Premises or personal property or any portion of either, without the prior written approval of the transferee by Lender. The occurrence of any of the foregoing shall, at the option of Lender, constitute grounds for terminating this commitment and for accelerating any and all sums unpaid under the loan. The Mortgage shall contain a restriction on secondary financing that is valid and enforceable under the laws of the State of _____.

7. Costs and Expenses: Borrower shall pay all costs and expenses incurred in connection with the preparation for and the closing of the loan, whether the loan is closed or not, including, without limitation, appraisal fees, inspection fees, legal fees for outside counsel, if any, all intangible taxes, all transfer taxes, all recording costs and taxes, all license and permit fees, and all title insurance and other insurance premiums.

8. Representations of Borrower: The validity of this commitment is subject to the accuracy of all information, representations, and materials submitted with or in support of the application for this loan, and any failure of accuracy, material changes, or deliberate misstatement in Borrower's submissions shall, at the option of Lender, operate to terminate this commitment and all of Lender's obligations under it.

9. Nonassignability: Neither this commitment nor the loan proceeds shall be assignable by Borrower without the prior written consent of Lender, and any attempt at assignment without consent shall be void.

10. Modifications and Amendments: No change in the provisions of this commitment shall be binding unless in writing and executed in the name of and by an officer of Lender.

11. Miscellaneous Provisions:

(a) _____ [state] Law to Apply: This Agreement, the loan transaction contemplated under it, and all loan documents executed pursuant to it, shall be construed in accordance with the laws of the State of _____, and all obligations of the parties are performable in _____ County, _____ [state].

(b) Parties Bound: This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided in this commitment.

(c) Legal Construction: In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been a part of it.

(d) Prior Agreements Superseded: This Agreement constitutes the sole and only agreement of the parties to it and supersedes any prior understandings or written or oral agreements between the parties respecting this subject matter.

(e) Attorney's Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party. These fees may be set by the court in the trial of the underlying action or may be enforced in a separate action brought for that purpose. These fees shall be in addition to any other relief that may be awarded.

(f) Specific Performance: The parties declare that it is impossible to measure in money the damages that will accrue to a party to this Agreement, his or her heirs, executors, administrators, legal representatives, successors, or assigns by reason of a failure to perform any of the obligations under this Agreement. Therefore, if a party, his or her heirs, executors, administrators, legal representatives, successors, or assigns shall institute any action or proceeding to enforce the provisions of this Agreement, any person against whom such action or proceeding is brought agrees that specific

performance may be sought and obtained for any breach of this Agreement.

(g) Notice: Unless otherwise provided by this Agreement, any notice, tender, or delivery to be given under it by either party to the other may be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received as of the date of _____ [actual receipt or mailing].

12. Triparty Agreement: Lender requires an agreement between Borrower, the Interim Lender, and Lender, wherein it is agreed that the Interim Lender shall deliver and assign to Lender on completion of the improvements and at Lender's request, the liens existing under the Interim Lender's deed of trust and security agreements with the understanding that any endorsement or assignment on the Interim Lender's part is to be without recourse or warranty.

13. Voidability of Commitment: This commitment shall be voidable at the option of Lender if any of the following events occur:

- (a) A proceeding is commenced by or against Borrower under any bankruptcy or insolvency law.
- (b) Borrower's business is discontinued or suspended for any reason.
- (c) There is any material adverse change in Borrower's business or financial condition.
- (d) Borrower defaults on any other obligation it may have to Lender.
- (e) Any part of the premises have been damaged and not repaired to Lender's satisfaction.

The term "Borrower" as used in this Agreement shall be deemed to include any person named as a prospective endorser, guarantor, or surety in connection with the proposed loan.

14. Indemnification: Borrower agrees to indemnify and hold Lender harmless from and against all loss, costs, liability, and expense (including reasonable attorney's fees) that may be incurred by Lender on account of any claim made by any party or parties for a brokerage commission, finder's fee, or like payment in connection with Lender's agreeing to make or making this loan.

D. DOCUMENTATION OF LOAN

1. Documents Required: Lender shall be furnished with security and credit instruments as Lender shall deem necessary for its protection. In addition to any other documents that may be required by Lender, the following documents shall be required on or before the closing:

- (a) Note;
- (b) Mortgage;
- (c) Security Agreement;
- (d) UCC Financing Statement;
- (e) Assignment of Income, Rents, and Leases;

(f) Guaranty (if applicable);

(g) If either Borrower or Guarantor is a partnership, executed copies of Articles of Partnership certified to by all partners;

(h) If either Borrower or Guarantor is a corporation, evidence of corporate authority of Borrower to make the loan and Guarantor to guarantee the loan;

(i) If either the Borrower or Guarantor is a corporation, current Certificates of Good Standing;

(j) Authorization and designation of persons to request and receive disbursements;

(k) Survey;

(l) Insurance policies;

(m) Mortgage Title Insurance Policy;

(n) Closing Statement signed by the Borrower and Lender's local counsel;

(o) Evidence of (i) satisfactory zoning and (ii) availability and priority of all utility and municipal services required for the project.

2. Approval of Documents: All loan documents and the validity and priority of all loan documents shall be satisfactory in all respects to Lender and its counsel.

E. ACCEPTANCE OF COMMITMENT

On return by Borrower to Lender of a fully executed copy of this commitment, along with the _____ dollars (\$_____) commitment fee referred to in Paragraph A(7), above, by _____ [date], this letter shall constitute an agreement obligating Lender to make and Borrower to accept a loan in accordance with the terms and conditions set out above. The commitment fees requested to be paid by Borrower under this document shall constitute a condition of Borrower's obligation to accept and Lender's obligation to make the loan referred to, in accordance with the terms, provisions, and conditions of this document. If the executed copy and the commitment fee are not received by the Lender by _____ [date], this commitment shall be null and void.

Very truly yours,

_____ [name of permanent lender]

By: _____ [signature]

_____ [typed name and title]

Accepted this _____ day of _____ [date].

_____ [name of borrower]

By: _____ [signature]

_____ [typed name and title]



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 4: Loans--Real Property.

*37TTT-4 California Legal Forms--Transaction Guide Form T4-2***Form T4-2 Construction Loan Security Agreement--Loan Predicated Upon Commitment for Long-term Financing; Security Interest to Cover Personal Property**

Description: This form is used to establish a loan commitment for a first mortgage and sets out the terms of the mortgage loan, including, among other things, language detailing construction, protection against prior liens, first deed of trust, fees, default, and assignment.

Form T4-2 Construction Loan Security Agreement--Loan Predicated Upon Commitment for Long-term Financing; Security Interest to Cover Personal Property

AGREEMENT made this _____ [day] of _____ [month], _____ [year], between _____ [name], a(n) _____ [state] _____ [entity] with its principal place of business at _____ [address] (the "Borrower"), and _____ [name], a(n) _____ [state] _____ [entity] with its principal place of business at _____ [address] (the "Lender").

WHEREAS, the Borrower owns the land described in Schedule A, hereto annexed and made a part hereof (the "Property"), and has applied to the Lender for a loan of _____ Dollars (\$ _____) to aid the Borrower in erecting and equipping on such land the building and other improvements described in Schedule B, hereto annexed and made a part hereof (the "Building"); and

WHEREAS, the Lender has agreed to make the loan upon the terms, covenants, and conditions hereinafter set forth, and the Borrower has agreed to take such loan; and

WHEREAS, _____ [name], a(n) _____ [state] _____ [entity] with its principal place of business at _____ [address] (the "Long-Term Lender"), has issued a commitment dated _____ [month] _____ [day], _____ [year], to make a _____ Dollars (\$ _____) long-term loan to the Borrower, to be evidenced by a note in that amount and to be secured by a deed of trust conveying the Property, on and subject to the terms and conditions set forth in such commitment;

NOW, THEREFORE, in consideration of the mutual promises herein after contained and of other valuable consideration, the parties hereto agree as follows:

1. Agreement to Make Loan. Subject to the terms hereof, the Borrower shall take, and the Lender shall make a loan in the principal sum of _____ Dollars (\$_____) (the "Loan"), to be advanced as provided below. Such loan shall be evidenced by the Borrower's promissory note of even date herewith for such amount, and made payable to the order of the Lender on _____[month] _____[day], _____[year], or such earlier date as may be provided in the note. Interest shall accrue from the date of each advance at the rate of _____ percent (_____%) per annum, payable monthly on the first day of each and every month until the note is fully paid. The note shall contain such other terms and provisions as the Lender and Long-Term Lender shall determine are needed for their protection. Such note shall be secured by a deed of trust of even date herewith (the "Deed of Trust"), on the fee title to the Property.

2. Construction by Borrower. The Borrower shall erect and complete on the Property on or before _____[month] _____[day], _____[year], the Building substantially in accordance with the plans and specifications therefor to be filed with and duly approved by all governmental authorities having jurisdiction in respect thereof. Such plans and specifications for the Building shall be submitted to and approved by the Lender and the Long-Term Lender and shall be initially for identification by the parties hereto and the Long-Term Lender. The plans and specifications shall not, however, be deemed to be complete or finally approved unless they include provisions for the installation of all sidewalks, curbs, gutters, landscaping, utility connections, and all essential equipment required by and necessary for the operation of the completed Building. After approval of such plans and specifications, all changes therein must be approved by the Lender, and the Lender may also require the prior approval of the Long-Term Lender.

3. Protection Against Prior Liens. The Borrower represents and promises that no excavating or work of any character has been or will be commenced, nor any material of any description delivered on or near the Property for the erection of the Building, prior to the recording of the Deed of Trust.

4. First Deed of Trust on Land and Personal Property. The Lender shall not be obligated to make any advances hereunder unless the Deed of Trust is a valid and enforceable first lien on the Property and the Building, except for taxes and assessments not yet due and payable and other liens, if any, acceptable to the Lender. All fixtures and articles of personal property to be installed in the Building or on the Property or used in the operation thereof by the Borrower (including, without limitation, all furniture, furnishings, fixtures, decor, business and service equipment, linen, china, silverware, and glassware) shall form part of the mortgaged premises covered by and subject to the lien of the Deed of Trust. The Borrower shall, at its own expense, execute and deliver, as additional security for the payment of the note, when and if requested so to do by the Lender or Long-Term Lender, a Security Agreement, in form and substance acceptable to the Lender and the Long-Term Lender, on all fixtures and articles of personal property that may hereafter be installed or placed in the Building or on the Property.

5. Fees Paid by Borrower. The Borrower, at the time fixed for the delivery of the note and Deed of Trust, shall pay all fees heretofore agreed to be paid to the Lender, the expense of examination of title, mortgagee's title insurance in such amount and form as may be satisfactory to the Lender, the recording fee and tax upon the Deed of Trust, and any present or future assignment or assignments or collateral security, if any, required by the Lender. The Borrower shall, at its expense, furnish a survey to the Lender at the time the first advance is made hereunder and shall also furnish to the Lender such other and additional surveys during the course of construction, including a survey after the completion of construction, as may be required by the Lender, all at the expense of the Borrower. No advances shall be made to the Borrower unless title to the Property is satisfactory to the Lender's counsel at the time such advance is requested and due. In case the Lender pays or advances any money for fees, surveys, recording, recording tax, examination of title, mortgagee's title insurance policies, preparation of loan documents, and any expenses incurred in the procuring and making of the loan, and in the payment of any insurance premiums, encumbrance, tax, assessment or other charge or

lien upon the property, and any other amounts necessary for the payment of the cost of improvements, the Lender may reimburse itself out of any subsequent advances to be made in accordance herewith, and such reimbursement shall be deemed an advance under this agreement and secured by the note and Deed of Trust.

6. Disbursements of Loan. Advances upon the note and Deed of Trust shall be made at such times and in such amounts as the Lender shall determine, but shall be substantially in accordance with the schedule contained in Schedule C hereto annexed and made a part hereof. The making of an advance or any part of an advance shall not be deemed an approval by the Lender of the work theretofore done. When requested, the Borrower shall exhibit to the Lender satisfactory evidence, by receipts or other vouchers, that there are no outstanding overdue claims and demands for labor and materials used in the Building, before each or any payment shall be due or demandable under this agreement. The title company shall furnish the Lender with a summary of the title before any payment is made. If any notice of lien be filed against the Property, or any part thereof, under the law commonly called the Mechanics' Lien Law, the Lender may suspend further payments under this agreement until such lien shall have been discharged of record, or may satisfy such lien and deduct the amount paid on account thereof from the money in its hands.

No advance shall be due unless, in the judgment of the Lender, all work usually done at the stage of construction when the advance is made payable is done in a good and workmanlike manner, and all material and fixtures usually furnished and installed at this time are furnished and installed, but the Lender may advance parts or the whole of any installments before they become due if the Lender believes it advisable so to do. All such advances or payments shall be deemed to have been made in pursuance of this agreement and not in modification thereof.

The Lender may require _____ (_____) working days notice in writing from the Borrower before an advance shall be requested. All advances are to be made at the office of the Lender or at such other place as it shall designate.

7. Extension of Time for Repayment. The Lender or any holder of the note and Deed of Trust referred to above may extend the time of payment of the principal evidenced and secured by such note and Deed of Trust, and any extension so granted shall be deemed to be made in pursuance of this agreement and not in modification thereof.

8. Installation of Personal Property. On or before the making of the final advance hereunder, the Borrower shall install all furniture and equipment required for the operation of the Building as a Class A transient hotel, including, without limitation, all furniture, furnishings, fixtures, decor, business and service equipment, linen, china, silverware, and glassware. Prior to such final advance, the Borrower shall also exhibit to the Lender the final certificates of approval of the various governmental authorities having jurisdiction, including a final certificate of occupancy or a temporary certificate of occupancy for the entire Building, hotel, restaurant, bar, public assembly, and other operating permits, and the certificate of the board of fire underwriters acting in and for the locality in which the Property is situated, and thereafter the Borrower shall furnish the Lender with photocopies of each such certificate and permit.

9. Fire Insurance. The Borrower shall furnish to the Lender, with premiums prepaid, or the Lender may procure at the expense of the Borrower, in companies and in amounts satisfactory to the Lender, insurance policies insuring the Property against loss or damage by fire and other hazards as the Lender may reasonably require. In any event, the amount of insurance in effect at any time shall be no less than the amount advanced under the loan agreement up to that point in time, or the cost of replacement of the improvements made and on-site materials, whichever amount is greater.

10. Effect of Borrower's Default. If the construction of the Building is at any time discontinued (unless such discontinuance is due to strikes or force majeure) or abandoned for a period of twenty (20) consecutive days, or if the Borrower does not proceed continuously with the erection and completion of the Building in such manner as reasonably to insure completion on or before the date herein specified, the Lender may, at its option, at any time thereafter take possession of the Property together with all materials, equipment, and improvements thereon, whether affixed to the realty or not, and perform any and all work and labor necessary to complete the improvements substantially according

to the plans and specifications referred to in this agreement, and at the Borrower's expense may employ a watchman to protect the Property from theft or injury. For this purpose, the Borrower hereby appoints the Lender its true and lawful attorney-in-fact with full power of substitution in the premises to complete the project in the name of the Borrower and pay all bills and expenses incurred thereby and hereby empowers such attorney-in-fact to use any funds of the Borrower, including any balance which may not have been advanced for the purpose of completing improvements; to make such additions and changes and corrections in the plans and specifications which shall be necessary or desirable to complete the improvements in substantially the manner contemplated in the plans and specifications; to employ such contractor, subcontractors, agents, architects, and inspectors as shall be required for such purposes; to pay, settle, or compromise all existing bills and claims which may be or become liens against the Property or which may be necessary or desirable for the completion of improvements or for the clearance of title; to retain or deposit with the United States District Court for the District of _____ [name] a sum sufficient to discharge any mechanic's lien or other liens that may be filed against the Property; to execute all applications, certificates, or instruments in the name of the Borrower which may be required by any governmental authority or contract; and to do any act which the Borrower might do in its own behalf. This power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. The attorney-in-fact shall also have power to prosecute and defend all actions and proceedings in connection with the construction of the Building and to take such action and require such performance under any surety or other bond or other obligation or to execute in the name of the Borrower such further bonds or obligations as may be reasonably required in connection with construction work. The Borrower hereby assigns and quitclaims to the Lender all sums unadvanced under such Deed of Trust conditioned upon the use of such sums in trust for the completion of the improvements, such assignment to become effective only in case of the Borrower's default. All sums paid or expended in accordance with any of the foregoing provisions shall be deemed advances to the Borrower and secured by such note and Deed of Trust and may be applied at the option of the Lender or any other holder of the note and Deed of Trust to any advances thereafter becoming due. The Lender shall be under no obligation to do any of the things provided in this paragraph, and instead may exercise any of the remedies provided for hereunder or under the Deed of Trust, including, without limitation, the termination of this agreement, in which event the entire indebtedness shall be and become immediately due and payable at the election of the Lender.

11. Assignment by Borrower. In the event the Borrower shall part with or be in any way deprived of title to the Property, the Lender may, at its option, continue to make advances under this agreement, subject to all its terms and conditions, to such persons or corporations as may succeed to the Borrower's title. All sums so advanced by the Lender shall be secured by the note and Deed of Trust.

12. Events of Default. If any of the following events shall occur, all of the Lender's obligations to make the loan or to make any further advance shall, if the Lender so elects, cease and terminate, and the note shall at the option of the holder thereof become immediately due and payable, but the Lender may make advances without becoming liable to make any other advances:

(a) If the Deed of Trust offered by the Borrower shall not give to the Lender a first lien on the Property for the indebtedness to be secured thereby, satisfactory to the Lender's attorney.

(b) If the Property is encumbered in any way without the Lender's consent.

(c) If improvements on the Property shall, in the opinion of the Lender's attorney, materially encroach upon the street or upon adjoining property.

(d) If the Borrower does not take the loan or the advances within thirty (30) days after they are made payable, or the Building is not fully completed and open to the public as an operating hotel by _____ [month] _____ [day], _____ [year].

(e) If the improvements on the Property are, in the Lender's reasonable judgment, materially injured or destroyed by fire

or otherwise.

(f) If the Borrower shall fail to comply with any of the covenants contained in this agreement, the note, or the Deed of Trust.

(g) If a petition in bankruptcy is filed by or against the Borrower, or a receiver or trustee of the property of the Borrower is appointed; or if the Borrower files a petition for reorganization under any provision of the Bankruptcy Law or of any other state or federal law, or makes an assignment for the benefit of creditors, or is adjudged insolvent by any state or federal court of competent jurisdiction.

(h) If the Borrower does not erect the Building in accordance with the plans and specifications initialed by the Lender, the Borrower, and the Long-Term Lender and approved by the governmental authorities having jurisdiction, except as such plans and specifications may be changed by mutual consent.

(i) If the Borrower does not permit the Lender, or the Lender's representatives, to enter upon the Property to inspect the Building thereon at all reasonable times and examine all detailed plans, shop drawings, and specifications which are kept at the work, or fails to furnish to them, when requested, copies of such plans, drawings, and specifications.

(j) If the construction of the Building is not carried on with reasonable dispatch, in the judgment of the Lender.

(k) If the Borrower executes any security agreement, except to the Lender, covering any materials, fixtures, or articles used in the construction of the Building or covering articles of personal property placed in the Building, or grants any security interest in the foregoing, except to the Lender, or if any of such materials, fixtures, or articles is not purchased so that the ownership thereof will vest unconditionally in the Borrower, free from encumbrance, on delivery at the Property.

(l) If the Borrower fails to comply with any requirement of any governmental authority having jurisdiction within _____ (_____) days after notice in writing of such requirement shall have been given to the Borrower, or fails to furnish to the Lender, when requested, departmental searches made by governmental authorities having jurisdiction.

(m) If the Borrower does not disclose to the Lender, upon demand, the names of all persons with whom the Borrower contracted or intends to contract for the construction of the Building or the furnishing of labor or materials therefor.

13. Application of Proceeds. The Borrower shall receive the advances to be made hereunder and to be secured by the Deed of Trust as a trust fund to be applied, first, for the purpose of paying the cost of improvement of the Property before using any part of such advances for any other purposes; provided that nothing herein shall impose upon the Lender any obligation to see to the proper application of such advances by the Borrower.

14. Effect of Agreement on Note and Deed of Trust. The note and Deed of Trust to be executed, acknowledged, and delivered pursuant to this agreement shall be subject to all the conditions, stipulations, agreements, and covenants contained in this agreement to the same extent as if the agreement were fully set forth and made part of such note and Deed of Trust, until this agreement is terminated by the completion of the Building described herein and the making of the final advance hereunder as provided for herein.

15. Affidavits by Borrower's Officers. The Borrower shall deliver to the Lender, and the Long-Term Lender, upon demand, and so often as called upon, an affidavit of the president or the secretary or other principal officer of the Borrower to the effect that all the chattels, fixtures, attachments, and equipment and all other personal and other property now or hereafter delivered upon, attached to, or used in connection with the construction of the Building or the operation thereof, except owned or installed by tenants of the Borrower, are free and clear of all security interests and

from all liens and encumbrances whatsoever, except the security interest given to the Lender, and that the Borrower is the absolute owner of such chattels, fixtures, attachments, and equipment.

16. Discovery of Adverse Environmental Conditions. In the event that an adverse environmental condition is discovered or occurs upon the premises described in Schedule A, annexed hereto, Lender shall be under no obligation to make further advances to Borrower until such time as the adverse condition is satisfactorily remediated by Borrower or its agents. The determination of whether an adverse environmental condition exists shall be made in the sole discretion of Lender. Lender shall have the right to inspect the site and perform any tests Lender or its consultants may deem necessary or appropriate. The determination of whether the adverse condition has been satisfactorily remediated shall be made by Lender, in its sole discretion. Lender shall be entitled to require Borrower to meet all federal, state and local laws, regulations and policies pertaining to remediation.

Borrower shall also have a fiduciary duty to report to Lender any information in the possession of Borrower, its employees or agents, regarding environmental conditions on the real property described in Schedule A, annexed hereto. Failure to report such information shall be an event of default under the terms of this loan agreement.

17. Right to Receive Advances. The obligation of Lender to make advances hereunder shall be subject to the obligation of Borrower to comply with all of the terms of this agreement. In the event that Borrower is in default in any manner, Lender shall be under no obligation to make further advances until the default is fully cured.

18. Amendment to Agreement. This agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

19. Title Insurance. No advance shall be due unless the Borrower furnishes to the Lender before the execution of this agreement title insurance policies in the amount of the loan, issued by title insurance companies satisfactory to the Lender, insuring the interest of the Lender as a valid first lien on the Property, free and clear of all prior liens, encumbrances, and exceptions to title whatsoever, other than those previously approved in writing by the Lender and the Long-Term Lender. It shall be a condition precedent to each advance that such title companies will continue their searches to the date of each advance and shall certify to the Lender in writing that such continuations disclose no liens, encumbrances, or exceptions to title.

20. Application of Agreement. This agreement is made for the sole protection and benefit of the Borrower, the Lender, and the Long-Term Lender, and no other person shall be deemed to have a right of action of any kind hereunder.

21. Architect. The supervising architect for the erection of the Building shall be _____[name] of _____[address] (the "Architect"). If the Architect shall be, or for any reason may become, disqualified or unable to act or to continue to act as supervising architect, the supervising architect to be named in his place, and any succeeding supervising architect, shall be satisfactory to, and approved by, the Lender and the Long-Term Lender.

22. Long-term Loan. The Borrower represents that it has a commitment from the Long-Term Lender to make a long-term loan of _____ Dollars (\$ _____) to the Borrower and the Borrower understands that the Lender is willing to make this loan for the term recited because of such commitment. The Borrower, by its proper officers, shall be present at the closing of the loan provided for in the Long-Term Lender's commitment of _____[month] _____[day], _____[year], and shall execute all such documents and otherwise perform and meet all requirements, conditions, and provisions of such commitment to the end that the loan provided for therein shall be consummated and the proceeds thereof used solely, to the extent required, fully to satisfy and fully to pay the principal and interest of the loan herein provided for. The Borrower shall notify the Lender ten (10) days in advance of the time and place of its closing with the Long-Term Lender.

23. Notice. Notices from the Lender to the Borrower may be given by mailing the same to the Borrower at

_____ [address], and any notice so given shall be deemed to be sufficient for all purposes.

24. Entire Agreement. This agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

25. Non-waiver. No delay or failure by either party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

26. Headings. Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

27. Governing law. This agreement shall be construed in accordance with and governed by the laws of the State of _____ [state].

28. Counterparts. This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

29. Binding Effect. The provisions of this agreement shall be binding upon and inure to the benefit of each of the parties and their respective legal representatives, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be signed in their respective corporate names and to be attested under their respective corporate seals.

"BORROWER"

a(n) _____ [state] _____ [entity]

By: _____

Print Name: _____

Title: _____

"LENDER"

a(n) _____ [state] _____ [entity]

By: _____

Print Name: _____

Title: _____

[Attach Schedule A]



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 4: Loans--Real Property.

37TTT-4 California Legal Forms--Transaction Guide Form T4-3

Form T4-3 Commitment for Permanent Real Estate Loan--Offer By a Mortgage Broker

Description: This form is used to establish a loan commitment for a first mortgage, and sets out terms, security interest, prepayment penalty, and deposit, among other things.

Form T4-3 Commitment for permanent real estate loan--offer by a mortgage broker--includes prepayment penalty

_____ [month] _____ [day], _____ [year]

_____ [name of borrower]

_____ [street address]

_____ [city, state and zip code]

Gentlemen and Ladies:

We have received a commitment from the _____ [name] ("Lender") for a permanent mortgage loan covering the captioned property, containing the following provisions:

1. Amount of Loan. The loan shall be in the total amount of _____ Dollars (\$_____).

2. Borrower. The borrower is _____ [name].

3. Term of Loan and Repayment. The term of the loan shall be _____ (_____) years from the date of final payment to the borrower. The loan shall be repaid in equal monthly installments of _____ Dollars (\$_____) each, beginning on the first day of the _____ (_____) month after the date of final payment to the borrower, and each succeeding month thereafter, to be applied first to interest at the rate of _____ percent (_____%) per year, and the balance on account of principal.

4. Prepayment. The borrower may pay the entire balance of the loan

(a) on the first day of any month commencing _____ (_____) years from the date of the first monthly payment of principal and interest, by giving _____ (_____) days written notice and by paying a surrender charge of _____ percent (_____%), computed on the balance prepaid; and

(b) on the first day of any month commencing _____ (_____) years from the date of the first monthly payment of principal and interest, by giving _____ (_____) days' written notice and by paying a surrender charge of _____ percent (_____%), computed on the balance prepaid, and reducing _____ percent (_____% each year thereafter to a minimum of _____ percent (_____%).

5. Location and Size of Lot. The real property affected by the permanent mortgage loan is located at the south side of _____ [name] on a plan of _____ [name] situated in the _____ [city], _____ [county], _____ [state], as revised _____ [month] _____ [day], _____ [year], and designated Phases I and II and which lies in the southwest corner of the plat consisting of approximately _____ (_____) square feet.

6. Improvements. The improvements on the property shall include 15 two-story, frame, apartment buildings consisting of 376 apartments, and on-lot parking for 562 cars.

7. Insurance Value. The insurance value of the property affected by the permanent mortgage loan shall be _____ Dollars (\$_____), including fixtures valued at _____ Dollars (\$_____). We shall be furnished with original fire insurance policies which must be based on the above insurable value, but in no event is the insurance to be less than _____ Dollars (\$_____).

8. Liability. The note shall provide that the sole remedy of the holder shall be foreclosure of the mortgage on the real property in the event of default.

9. Mortgage. The note shall be secured by a mortgage which shall be a first lien on the unencumbered, marketable, fee simple absolute title to the real property, to easements appurtenant thereto (if any), and to all improvements to the property described in this commitment, free of the possibility of all (a) prior mechanics' liens, (b) prior materialmen's liens, or (c) special assessments for work completed or under construction on the date of the first payment on account of the loan. All title exceptions shall be subject to the approval of the Lender's counsel.

10. Security Interest

(a) The borrower shall grant to Lender a security interest in the personal property located on the property, now owned or hereinafter acquired, including, without limitation, stoves, ranges, microwaves, washers and dryers, and all proceeds of their sale or disposition.

(b) The borrower shall execute alone or together with us or with our designee as the secured party any financing, continuation, or termination statement or other document or procure any document, and pay all connected costs, necessary to protect such security interest against the interest of third persons.

(c) The borrower shall not permit any other security interest to attach to any of such fixtures, permit such fixtures to be

levied upon under any legal process, or permit anything to be done that may impair the value of such fixtures or the security intended to be afforded thereby.

11. Survey. We shall be furnished with an acceptable ALTA survey from a licensed surveyor upon completion of all improvements. The survey shall show the dimensions and total square foot area of the plot, interior lot lines, if any, the dimensions and location of all improvements, parking areas, and easements, and the location of adjoining streets and the distance to and name of the nearest intersecting streets.

12. Title Policy. We shall be furnished with a title policy for the loan amount insuring us as the holder of the mortgage from a title company acceptable to us.

13. Taxes. All taxes and assessments affecting the real property or any part thereof shall be paid when due, and the mortgage shall require the borrower to pay concurrently with each installment of principal and interest payable on the note such amount as in the mortgagee's discretion will enable it to pay (out of moneys so paid to the mortgagee), at least _____ (_____) days before due, all taxes, assessments, and similar charges affecting the real property. No interest shall be payable on such deposits.

14. Certificate of Occupancy. We shall be furnished with a certificate of occupancy and other evidence satisfactory to us indicating that all improvements and their use comply with all applicable zoning, building, and other governmental laws and requirements.

15. Leases. All leases to be executed by tenants will contain no rental concessions, nor will the leases contain any provision which would cut off or impair the lien of the mortgage. This must be certified to by the closing attorney at the time of the closing of the permanent loan. In addition, all leases shall contain a clause, satisfactory to our attorney, subordinating the leases to the mortgage contemplated herein, together with any future advances or modifications thereof.

16. Approval of Documents. Each document required in connection with this loan shall be delivered to, and shall be in form and substance acceptable to, the Lender's counsel.

17. Survival of Representations. Except as may be otherwise required by this commitment, the loan, the rental income of the real property, the credit of the borrower, and all other features of the transaction shall be as represented to us without material, adverse change. No part of the real property shall have been damaged and not repaired to our satisfaction nor taken in condemnation or other like proceeding, nor shall any such proceeding be pending. Neither the borrower nor any tenant nor any assignee of such tenant nor any subtenant, nor any guarantor of the loan or any such lease or sublease, shall be involved in any bankruptcy, reorganization, or insolvency proceeding.

18. Plans and Specifications. The building or buildings and all other improvements contemplated by this commitment (including any grading, seeding, and landscaping and all other on-site and off-site improvements) shall be completed in accordance with plans and specifications to be approved in writing by our architect and shall be equipped and paid for to our satisfaction, and each such building shall be ready for occupancy. The representatives of the Lender shall have the right to inspect all such improvements periodically during and after construction. Periodic inspections during construction shall be made, and construction shall be approved, by the architect of the Lender or its designee. All corrections required by them must be complied with prior to the next construction advance. No changes are to be made in the original plans and specifications without our written approval.

19. Signs. By acceptance of this commitment, permission is granted by the owner for the erection of a sign during the construction period, indicating the source and origination of permanent financing.

20. Adjoining Streets. Evidence is to be submitted that all streets adjoining the real property have been completed,

dedicated, and accepted for maintenance and public use by the appropriate governmental authorities.

21. Conditions of Commitment. The plans and specifications prepared by _____ [name], Architect, must be reviewed and approved by the Lender. In addition to all requirements of its architect, the following, including the use of the specified materials, are conditions of this commitment:

(a) Compliance with all local codes and ordinances.

(b) Lender is to be furnished with final plans and specifications for its review and approval.

22. Utility Lines. The necessary permanent easements, subject to the approval of the Lender's counsel, must be supplied with all utility lines which are necessary for the operation of the project. These utilities shall include, but not be limited to, gas, electricity, water, and sewerage.

23. Zoning Compliance. Evidence, acceptable to Lender's counsel, must be supplied confirming compliance with all local zoning requirements with regard to, but not limited to, the setbacks of all buildings.

24. Swimming Pool. An additional parcel of land at the southerly end of the property shall be encumbered by the mortgage, and shall have constructed upon it a swimming pool of a minimum size of _____ (_____) square feet. At the time of the final disbursement of either section of this loan, we shall require permanent access to the pool.

25. First Phase of Loan. The loan shall be made as Phase I and Phase II, in accordance with the market plot plan dated _____ [month] _____ [day], _____ [year]. We shall not be obligated for the second section until the first section has been satisfactorily completed and occupied in accordance with the rental condition stated below. The following conditions shall apply to Phase I only:

(a) Amount of Loan. _____ Dollars (\$_____).

(b) Improvement. Completion of construction of _____ (_____) buildings consisting of _____ (_____) apartments constructed in accordance with the Plans.

(c) Term. _____ (_____) years after date of final payment to the borrower.

(d) Interest Rate. _____ percent (_____) % per year.

(e) Conditions. Equal monthly payments by the borrower of _____ Dollars (\$_____) each, beginning on the first day of the third month after final payment to the borrower, and each succeeding month thereafter, which are to be applied first to interest and the balance on account of principal.

(f) Mortgage. The note shall be secured by a mortgage upon all of the land heretofore specified.

(g) Insurance Value. _____ Dollars (\$_____). We shall be furnished with the original fire insurance policies which must be based on the insurable policies which must be based on the insurable value, but in no event is the insurance to be less than _____ Dollars (\$_____).

(h) Expiration Date. The commitment in respect of Phase I will expire _____ [month] _____ [day], _____ [year], by which time the final disbursement must be made and the loan assigned to the Lender.

37TTT-4 California Legal Forms--Transaction Guide Form T4-3

26. Second Phase of Loan. The following conditions shall apply to Phase II only:

(a) Amount of Loan. _____ Dollars (\$_____).

(b) Improvement. Completion of _____ (_____) additional buildings consisting of 176 apartments constructed in accordance with the Plans.

(c) Term. _____ (_____) years after date of final payment to the borrower.

(d) Interest Rate. _____ percent (_____) % per year.

(e) Conditions. Equal monthly payments by the borrower of _____ Dollars (\$_____) each, beginning on the first day of the third month after finally payment to the borrower, and each succeeding month thereafter, which are to be applied first to interest and the balance on account of principal.

(f) Mortgage. The note shall be secured by a mortgage upon all of the land heretofore specified.

(g) Insurance Value. _____ Dollars (\$_____). We shall be furnished with the original fire insurance policies which must be based on the insurable value, but in no event is the insurance to be less than _____ Dollars (\$_____).

(h) Rental Condition. The _____ (_____) buildings in Phase I shall have a gross rental income from not more than _____ percent (_____) % of the apartments in the buildings on an unfurnished basis of not less than _____ Dollars (\$_____), and the space rented shall be rented on a basis so that if the building were 100 percent rented, the annual rental would be at least _____ Dollars (\$_____). Such apartments shall be occupied by tenants on a current rent paying basis under written leases or rental agreements. Borrower shall give us a rent roll certified to be correct indicating that apartments and the annual rental therefrom relied upon to satisfy this condition. No rental concession to tenants shall have been made, and the Borrower certificate shall so state.

(i) Consolidation. At the time of the final disbursement on Phase II of this loan, it will be consolidated with the loan made pursuant to Phase I. The consolidated loan must be a first lien on the entire property, and the Lender must be furnished with title insurance, satisfactory to its counsel, to this effect.

(j) Expiration Date. The commitment in respect of Phase II will expire _____ [month] _____ [day], _____ [year], by which time the final disbursement must be made, and the loan assigned to the Lender and consolidated with the loan made pursuant to Phase I.

(k) Interim Subordination. If necessary for construction loan purposes in connection with Phase II of this commitment, only that portion of the land designated as Phase II may be subordinated in order to provide the interim lender with a valid first lien. However, any such subordination shall be in such a manner as not to disturb any easements or other requirements as provided for in other sections of this commitment.

27. Closing. _____ [name] shall be the closing and disbursing attorney in respect of this case and all legal expenses including survey costs, title costs, recording charges, etc., are to be without charge to this company.

28. Deposit. Upon acceptance of this commitment, you shall deposit with us a check in the amount of _____ percent (_____) % of the amount of the mortgage, as pertains to each section, which will be held in escrow until the time of the first construction advance, at which time this deposit will be considered income earned by us for services rendered. If for any reason this loan is not assigned to the Lender pursuant

to the provisions hereof, this deposit must be remitted by us to the Lender as the consideration for the commitment's not having been fulfilled.

29. Disbursements for Material and Labor. The executed forms of the mortgage and mortgage note, together with the necessary title binder, survey, and other papers, as required, will be returned to us. We shall forward them to the Lender's Counsel, and upon approval, we shall disburse against this mortgage from time to time an amount equal to _____ percent (_____) of the cost of material and labor in place and material on the site as certified by the Architect, and verified by us.

30. Broker's Fee. In consideration of our arranging the construction financing on your behalf, we are to receive a fee of _____ Dollars (\$_____) in respect of each section, payable at the time of our first construction advance on that section.

31. Anticipatory Completion. If at any time before the expiration of this commitment the improvements on the property, in the judgment of the Lender, have been sufficiently completed and you have otherwise complied with the terms of the commitment, the final disbursement is to be made, and amortization is to commence, in accordance with the terms of the commitment.

32. Commencement of Construction. Construction must be started by _____[month]
_____[day], _____[year], or at our option the commitment will be terminated.

33. Assignment. This commitment is not assignable without our express written approval. In order that our records may be complete, we would appreciate your acknowledging your acceptance of the terms and conditions of this commitment on the duplicate copy enclosed.

Very truly yours,

_____ [Lender]

By: _____

Printed Name: _____



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CHAPTER 5: Loans--Charges, Interest, Acceleration, Extension, and Payoff.

37TTT-5 California Legal Forms--Transaction Guide 5.syn

§ 5.syn Synopsis to Chapter 5: Loans--Charges, Interest, Acceleration, Extension, and Payoff.

Form T5-1 Provision for Allocation of Payments to Principal and Interest

Form T5-1 Provision for Allocation of Payments to Principal and Interest

Form T5-2 Late Charge Provision

Form T5-2 Late Charge Provision

Form T5-3 Provision for Interest on Unpaid Interest

Form T5-3 Provision for Interest on Unpaid Interest

Form T5-4 Corporate Note Providing for Payment of Principal and Interest in Installments With Final Balloon Payment

Form T5-4 Corporate Note Providing for Payment of Principal and Interest in Installments With Final Balloon Payment

Form T5-5 Acceleration of Principal and Interest Payments

Form T5-5 Acceleration of Principal and Interest Payments--Acceleration on Default With or Without Notice--Collection and Attorney's Fees

Form T5-6 Acceleration Clause in Note Payable at Definite Time

Form T5-6 Acceleration Clause in Note Payable at Definite Time

Form T5-7 Note in Series of Notes With Provision for Acceleration of All Notes on Default of Any in Series

Form T5-7 Note in Series of Notes With Provision for Acceleration of All Notes on Default of Any in Series

Form T5-8 Provision for Extension of Note Payable at Definite Time

Form T5-8 Provision for Extension of Note Payable at Definite Time

Form T5-9 Payoff Letter (with Indemnity)

Form T5-9 Payoff Letter (with Indemnity)



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CHAPTER 5: Loans--Charges, Interest, Acceleration, Extension, and Payoff.

37TTT-5 California Legal Forms--Transaction Guide Form T5-1

Form T5-1 Provision for Allocation of Payments to Principal and Interest

Description: This form is a provision for use in any interest-bearing installment promissory note to specify how payments are to be allocated between principal and interest. If used, it should be included immediately after any provisions governing repayment of principal and payment of interest.

Form T5-1 Provision for Allocation of Payments to Principal and Interest

Allocation of Payments

Each payment will be credited first to the interest then due. The remainder of each payment will then be credited to the outstanding principal, and interest will cease to accrue against any amounts so credited.



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37TTT-5 California Legal Forms--Transaction Guide Form T5-2

Form T5-2 Late Charge Provision

Description: This form is a note provision that imposes a charge on the maker if payment is made after the due date specified elsewhere in the note.

Form T5-2 Late Charge Provision

Late Charge

If any monthly installment or any part of any monthly installment is not paid when due, _____ [the undersigned or Maker] will pay a sum equal to _____ percent of the monthly installment, or the sum of \$_____ [specify reasonable amount], whichever is greater, as damages for the time the money is withheld, plus administrative costs reasonably related to collecting and accounting for that installment. _____ [The undersigned or Maker] understands that actual damages will be extremely difficult and impracticable to ascertain if any monthly installment or any part of any monthly installment is not paid when due. [Add if applicable: The aggregate of the late charges collected in connection with this loan, including renewal, may not exceed _____ percent of the loan.]



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37TTT-5 California Legal Forms--Transaction Guide Form T5-3

Form T5-3 Provision for Interest on Unpaid Interest

Description: This form is a provision for the accrual of interest on unpaid interest. It may be added to any note other than a discount note.

Form T5-3 Provision for Interest on Unpaid Interest

Provision for Interest on Unpaid Interest

If interest is not paid when specified as due in this Note, the amount of interest unpaid will accrue interest at _____ [the same rate as applicable to the principal sum or the maximum legal rate] per annum. The unpaid interest, so compounded, may not exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law.



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*37TTT-5 California Legal Forms--Transaction Guide Form T5-4***Form T5-4 Corporate Note Providing for Payment of Principal and Interest in Installments With Final Balloon Payment**

Description: This form is a short-form note that provides for repayment in installments of both principal and interest on the unpaid balance and a final payment of the remaining balance (a "balloon payment"). It includes a provision for acceleration on default. This form is drafted to be used between a payee and a corporate maker and includes language indicating the authority of corporate officers to execute the note. However, it may also be used by individuals in transactions other than consumer credit sale transactions.

Form T5-4 Corporate Note Providing for Payment of Principal and Interest in Installments With Final Balloon Payment

PRINCIPAL AND INTEREST IN INSTALLMENTS WITH FINAL BALLOON PAYMENT

_____ [city, state]

_____ [date]

Name of Maker: _____ Corporation.

Loan No.: _____.

Amount Borrowed: \$_____.

Interest Rate: _____ percent per year.

Maturity date: _____.

Installment Note

1. For value received, the undersigned _____ [name] Corporation ("Maker") promises to pay to the order of _____ [name of Payee] ("Payee"), at _____ [address of payee's office], the principal sum of \$_____, with interest at the rate of _____ percent per year

(computed on the basis of a 360-day year) on the unpaid balance of that principal sum until paid. The undersigned further promises to pay that principal sum and interest in installments as follows: the first installment of \$_____ on _____ [date] and _____ [number of installments] successive monthly installments of \$_____ on the _____ [day] of each month, until all installment payments have been made, on which date the entire balance of unpaid principal and interest will be due and payable.

Allocation of Payments

2. Each installment, when paid, will be credited first to the interest then due, and the remainder will be credited to principal. Interest will cease to accrue on the principal so credited.

Acceleration

3. If Maker fails to make any installment payment or portion of a payment when due, all unpaid principal, together with accrued interest, will become immediately due and payable at the option of the Payee of this Note, without notice.

Collection Costs

4. Maker agrees to pay the expenses incurred in any lawful attempt to collect the amount due pursuant to this Note.

Attorneys' Fees

5. Maker agrees that if any [legal action or *specify more limited provision, e.g.,* legal action based in contract law] is necessary to enforce this Note, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. This provision is applicable to the entire Note.

[Optional; use if collateral is given:]

Security Interest

6. A _____ [describe instrument, *e.g.,* deed of trust or financing statement] dated _____ secures the indebtedness evidenced by this Note.

[Continue with the following:]

The undersigned corporation has authorized the officers whose signatures appear below to execute this Note.

MAKER

_____ [name of corporation]

By _____ [signature]

[typed name and title]

By _____ [signature]
[typed name and title]



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CHAPTER 5: Loans--Charges, Interest, Acceleration, Extension, and Payoff.

37TTT-5 California Legal Forms--Transaction Guide Form T5-5

Form T5-5 Acceleration of Principal and Interest Payments

Description: This form is used to accelerate payment of principal and interest upon default, with or without notice; it also provides language on collection and attorney's fees.

Form T5-5 Acceleration of Principal and Interest Payments--Acceleration on Default With or Without Notice--Collection and Attorney's Fees

(1) Acceleration on default at holder's option--short clause

It is understood that in the event of default the entire sum remaining unpaid under this note, together with accrued interest thereon, shall become immediately due and payable at the option of the holder.

(2) Collection costs paid by maker on default--collection costs include attorney fees

If the undersigned shall default in payment of this note and it shall thereafter be put in the hands of an attorney at law for collection, the undersigned agrees to pay, in addition to the principal sum of this note, and the accrued interest, the cost of collection of all amounts due hereunder.

(3) Interest on past due principal and interest installments--attorney fees for collection

All past due installments of principal or interest shall bear interest at the rate of ____:____ percent per annum. In the event this Note is placed in the hand of attorneys for collection, or is collected by suit or through a court of bankruptcy, the Maker shall pay to the Holder of this Note reasonable attorneys' fees for such collection.

(4) Acceleration on default in note or security agreement--security agreement made part of note

IT IS AGREED, that the principal sum of this note and all accrued and unpaid interest shall become due at the option of the holder on the happening of any default or event by which, under the terms of the security agreement securing this note, the principal sum and interest may or shall become due and payable; also, that all of the covenants, conditions, and agreements contained in the security agreement are made a part of this instrument.

(5) Acceleration only after 30 day notice and nonpayment of installment--costs, expenses, and attorney fees

If any monthly installment under this Note is not paid when due and remains unpaid after a date specified by a notice to Borrower, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note holder. The date specified shall not be less than 30 days from the date such notice is mailed. The Note holder may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

(6) Acceleration for nonpayment and other defaults--without notice or demand at holder's option

In the event the maker shall fail to pay any installment of principal or interest under this note as such installment becomes due and payable, or in the event of the appointment of a receiver, trustee, or custodian for any part of the property of the maker, or the assignment for the benefit of creditors by the maker or inability of the maker to meet the maker's obligations as they become due, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the maker, then the holder of this note shall have the option, without notice or demand, to declare the unpaid balance of this note and accrued interest at once due and payable.

(7) Acceleration on payment default--attorney fees plus collection costs and expenses

If default be made in the payment of the principal or interest when due, then all of the principal indebtedness evidenced by this note, together with interest, shall, at the option of the holder, become immediately due and payable without notice, presentment, or demand. Should this note be placed in the hands of an attorney for collection, or should the services of an attorney become necessary in connection with enforcing its provisions, the undersigned agrees to pay a reasonable attorney's fee together with all costs and expenses incident to the collection of this note or the enforcement of its provisions, the amount thereof to be added to the principal indebtedness evidenced by this note.

(8) Acceleration on default in payment--attorney fees not to exceed 10 percent of amount due

If default is made in any of the payments of this note of either principal or interest, then all of the principal indebtedness evidenced by this note, together with interest thereon, shall, at the option of the holder of this note, become forthwith due and payable without notice, and the provisions of this clause shall apply in respect to the individual liability of the maker and any endorser or endorsers of this note. In the event that any part of this note is collected by or through an attorney-at-law, the undersigned agrees to pay a reasonable attorney's fee as may be permitted by law to be charged, not to exceed ten percent of the amount then due and unpaid, together with all cost and expenses incident to collection.

(9) Acceleration on default in payment or related agreements--reasonable attorney or collection fees

IF DEFAULT is made in the payment of any installment of principal or interest as and when due, or default occurs under any instrument securing the payment of this note or executed in connection with this note, the owner and holder

of this note may, without notice or demand, declare all sums owing on this note at once due and payable. If default is made in the payment of this note at maturity (regardless of how its maturity may be brought about) and the note is placed in the hands of an attorney for collection, or suit is filed on this note, or proceedings are had in bankruptcy, probate, receivership, reorganization, arrangement, or other judicial proceedings for the establishment or collection of any amount called for under this note, or any amount payable or to be payable under this note is collected through any such proceedings, the Maker agrees to pay to the owner and holder of this note a reasonable amount as attorneys' or collection fees.

(10) Acceleration on nonpayment, death of maker, termination of maker's business, insolvency, or default in related agreements

In the event of default, the obligee of this note may declare all sums owing on this note, without notice or demand, immediately due and payable. The undersigned shall be in default under this note, and this note and any other obligations of the undersigned to the obligee, at the election of the obligee, shall become immediately due and payable upon the occurrence of any of the following:

- (a) Failure to pay any installment of the principal or interest on this Note within 15 days of the date when the payment is due;
- (b) Death of the undersigned individual, termination of the business of the undersigned or the commencement of any insolvency, bankruptcy or arrangement proceedings by or against the undersigned or any endorser, or if the undersigned or any endorser becomes insolvent or unable to meet obligations as they become due;
- (c) Upon the occurrence of any event of default under the terms of the security agreement, the lease, or the contract of sale, each between the undersigned and the obligee, of even date with this note.

(11) Acceleration on default in payment or any agreement securing note, at holder's option--attorney fees equal to _____ percent of amount due

This note is secured by all security agreements, collateral assignments, deeds of trust, mortgages and lien instruments, if any, executed by the undersigned in favor of the holder, or executed by any other party as security for this note, including any executed with, before, or after execution of this note. This note shall become immediately due and payable at the option of the holder, without presentment or demand or any notice to the undersigned or any other person obligated on this note, upon default in the payment of any of the principal or interest of this note when due, or upon default under the terms of any of the above mentioned security agreements, collateral assignments, deeds of trust, mortgages or lien instruments, if any, or if any event occurs or condition exists which authorizes the acceleration of maturity of this note under any agreement made by the undersigned, or when the holder of this note in good faith believes that the prospect of the payment of this note is impaired.

If this note is collected by suit or through the Probate or Bankruptcy Court, or any judicial proceeding, or if this note is not paid at maturity, however such maturity may be brought about, and it is placed in the hands of an attorney for collection, then the undersigned agrees to pay, as attorney's fees an additional _____ percent of the full amount of principal and interest owing on this note at the time this note is placed in the hands of an attorney.



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37TTT-5 California Legal Forms--Transaction Guide Form T5-6

Form T5-6 Acceleration Clause in Note Payable at Definite Time

Description: This form contains a number of alternative acceleration clauses for use in promissory notes payable at a definite time. The appropriate clause may be substituted for any existing acceleration clause in a promissory note or added to a note that does not contain an acceleration clause.

Form T5-6 Acceleration Clause in Note Payable at Definite Time

Acceleration

[First alternative; unqualified option on part of payee to accelerate at will:]

Payee has the unqualified option to accelerate the due date of this Note at will.

[OR]

[Second alternative; payee's right to accelerate when it deems itself insecure:]

Whenever Payee deems its position as the obligee under this Note to be insecure, it may immediately demand payment of the Note.

[OR]

[Third alternative; acceleration when payee deems prospect of payment to be impaired:]

Payee may accelerate the due date of this Note and demand immediate payment whenever Payee believes in good faith that the prospect of payment is impaired.

[OR]

[Fourth alternative; acceleration on default if elected by payee:]

Payee may accelerate the maturity of this Note to become due immediately, at its option, if it considers the security underlying the Note to be unsatisfactory or insufficient and the Maker does not, on demand, furnish additional collateral or make payment on account that is satisfactory to the Payee.

[OR]

[Fifth alternative; acceleration of all installments on failure to pay single installment:]

On default, Maker must immediately pay the entire amount remaining unpaid under this Note to Payee, if payee so elects.

[OR]

[Sixth alternative; acceleration of all installments on failure to pay single installment:]

All installments will become due and payable, at the option of the payee, if any installment of principal or interest is not paid when due.

[OR]

[Seventh alternative; acceleration of all notes in series of notes on default in payment of any note in series, with waiver of notice:]

On default in the payment of any note in this series, the remaining notes, at the option of the Payee, will become due and payable immediately without notice.

[OR]

[Eighth alternative; acceleration on occurrence of specified events:]

This Note and all other obligations, direct or contingent, of any Maker or endorser of this Note to Payee will become due and payable immediately, without presentment or notice, if:

(1) Maker fails to make the required payment when due.

(2) Maker or any endorser, surety, or guarantor of this Note:

(a) Fails, after demand, to furnish financial information or to permit inspection of any

books or records.

(b) Suspends business.

(c) Becomes insolvent or offers settlement to any creditors.

(d) Files a petition in bankruptcy, either voluntary or involuntary.

(e) Institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors.

(f) Gives notice of any intended bulk sale.

(g) Makes an assignment for the benefit of creditors.

(h) Mortgages, pledges, assigns or transfers any accounts receivable or other property, in trust or otherwise, without the written consent of the Payee.

(i) Makes any false statement or representation orally or in writing, fails to furnish information, or fails to permit inspection of any books or records on demand of the Payee.

(j) Fails to pay any obligation when due.

(k) _____ [*If maker, endorser, surety or guarantor is an individual:
Dies or if Maker, endorser, surety or guarantor is a corporation: Is dissolved or its
capital becomes impaired*].

(3) Payee discovers that any misrepresentation was made to Payee on behalf of Maker to obtain credit or an extension of credit.

(4) Any legal action is commenced against Maker or any endorser, surety, or guarantor, including:

(a) Entry of judgment.

(b) Issuance of a writ of attachment, order of garnishment, order or subpoena in supplementary proceedings, execution, or similar process.

(5) A receiver is appointed for Maker or any endorser, surety, or guarantor.



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*37TTT-5 California Legal Forms--Transaction Guide Form T5-7***Form T5-7 Note in Series of Notes With Provision for Acceleration of All Notes on Default of Any in Series**

Description: This form is a simple time note that is one in a series of notes. Its principal feature is its provision for acceleration of all of the notes in the series on default by the maker on any one note in the series. It also refers to the other notes in the series.

Form T5-7 Note in Series of Notes With Provision for Acceleration of All Notes on Default of Any in Series

SINGLE NOTE AS PART OF A SERIES

_____ [city, state]

\$_____ [amount borrowed] [date]

Time Note

1. On _____ [date], I, the undersigned ("Maker"), promise to pay to the order of _____ [name of payee] ("Payee") the principal sum of \$_____, with interest at the rate of _____ percent per year (computed on the basis of a 360-day year).

Note Part of Series of Notes

2. This Note is No. _____ of a series of _____ [specify number] notes, all in the same principal amount but maturing on successive dates.

Acceleration of All Notes

3. On default in the payment of any note in this series, the remaining notes will, at the option of the Payee, become

immediately due and payable without notice.

MAKER

_____ [signature of maker]

_____ [typed name]



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37TTT-5 California Legal Forms--Transaction Guide Form T5-8

Form T5-8 Provision for Extension of Note Payable at Definite Time

Description: This form is a provision for payment of a note at a definite time subject to extension of the time for payment.

Form T5-8 Provision for Extension of Note Payable at Definite Time

Time Extension

[First alternative; indefinite extension at payee's option:]

The due date of this note may be extended for any period of time at the option of the Payee. If an extension is granted, it must be noted on the reverse side of this Note with the new due date clearly indicated.

[OR]

[Second alternative; extension to specified date at maker's option:]

The date on which this Note is payable may be extended until _____, at the option of the Maker *[add if applicable: by giving written notice to the Payee at least _____ (e.g., five) days before the current due date]*.

[Third alternative; automatic time extension to specified date on occurrence of specified act or event:]

The date on which this Note is payable will be extended until _____, automatically if _____ *[specify act or event]*.



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*37TTT-5 California Legal Forms--Transaction Guide Form T5-9***Form T5-9 Payoff Letter (with Indemnity)**

Description: This form provides a sample payoff letter (with indemnity) from an old lender to a new lender where the borrower has notified the old lender that the borrower is switching lenders for its secured financing.

Form T5-9 Payoff Letter (with Indemnity)

Date: _____, _____,
20____

Re: _____ [Borrower]

Ladies and Gentlemen:

The undersigned, _____ ("Old Lender") has been advised by Borrower that _____ ("Lender") will be engaging in secured financing of Borrower.

It is the understanding of _____ that a portion of the proceeds of said financing will be used to repay the total indebtedness of Borrower to _____. Such repayment (including the Credit Amount as hereafter defined) should be wire transferred to _____ pursuant to the following wire instructions:

Bank _____

ABA #: _____

37TTT-5 California Legal Forms--Transaction Guide Form T5-9

For Credit to: _____

Acct. #: _____

Reference: _____

Based on Old Lender's books and records, the total amount of ["Obligations" (as defined in that certain Loan and Security Agreement dated as of _____) between Borrower and Old Lender, as the same has from time to time been amended, the "Agreement") due Old Lender, if paid on _____ after giving effect to confirmed collections of receivables through _____ is \$_____, which amount includes all principal, interest, fees, costs, expenses and liquidated damages as of such date; provided, however, that if the total amount of _____ [Obligations] due Old Lender are not received by 2:00 p.m. on _____, per diem interest at \$_____ per day shall be due until payment is so received.

In consideration of the payment in full of Borrower's indebtedness to Old Lender as set forth above, and the agreements of Lender and Borrower contained herein, Old Lender hereby (i) acknowledges and agrees that payment of the above amount if paid on _____ in immediately available funds will constitute payment in full of all of Borrower's indebtedness and obligations to Old Lender, except as set forth herein, (ii) represents that it has no other credit arrangements with, loans outstanding to, guaranties by, or interests or liens against Borrower or Borrower's personal or real property, (iii) releases, effective upon the receipt of the payment of the above amount, all security interests and liens which Borrower may have granted to Old Lender, (iv) agrees that it will, at Borrower's or Lender's expense, terminate all of its agreements with Borrower and (v) agrees that Borrower has no further liabilities or obligations thereunder, except for those which by the terms of the Agreement survive the termination thereof and except as set forth herein.

Old Lender further agrees, at Borrower's or Lender's expense, to deliver to Borrower upon payment in full of said indebtedness, such termination statements, releases, cancellations, discharges or other agreements as may reasonably be requested by Borrower or Lender in connection with Old Lender's above-described release of the security interests and liens (collectively, the "Termination Documents"); provided, however, that Borrower or Lender shall supply Old Lender with the forms of any such Termination Documents to be executed by Old Lender.

[In addition, Lender has been informed that from time to time Old Lender has issued or arranged for the issuance of letters of credit ("L/Cs") for the account of Borrower and, in connection therewith, has accepted or is liable in respect of drafts ("BAs"). The L/Cs, and BAs are collectively referred to herein as the "Credits." Such Credits currently outstanding are listed on Schedule "A" which is attached hereto and made a part hereof.

Lender agrees that it will reimburse Old Lender upon demand for any and all amounts paid on or after _____ by Old Lender in respect of the Credits listed on Schedule "A," plus all charges and interest due Old Lender in connection with the foregoing.

Borrower authorizes Old Lender and Old Lender agrees to promptly deliver to Lender, against reimbursement of all amounts paid by Old Lender by reason of such Credits, the applicable shipping and other documents pertaining thereto, if any, which come into Old Lender's possession under the terms thereof and payment may be made and the same may be delivered to Lender without inquiry or investigation on Old Lender's part and without liability to Old Lender and without representations or warranties on Old Lender's part.

It is understood that Old Lender will not issue or cause the issuance of any additional guaranties or acceptances, nor accept or cause the acceptance of any future requests concerning any Credits, including requests for amendments, modifications or extensions of any of the terms thereof, unless such instructions or requests have been given in writing

by Lender, or consented to by Lender, and in any event all such requests shall be subject to Old Lender's discretion.]

Notwithstanding anything to the contrary hereinabove contained, Old Lender hereby reserves all of its rights with respect to any and all checks or similar instruments for payment of money heretofore received by it in connection with its arrangements with Borrower, and all of its rights to any monies due or to become due under said checks or similar instruments and/or all of its claims thereon.

For and in consideration of Old Lender's agreements contained herein, Borrower and Lender jointly and severally agree to indemnify Old Lender from, and hold Old Lender harmless against, all losses, liabilities, charges, expenses and fees (i) which Old Lender may incur as a result of any non-payment, claim or refund or charge back of any checks or other items which have been credited by Old Lender to Borrower's accounts with Old Lender, together with all expenses and other charges incident thereto, and (ii) which Old Lender may have incurred or may now or hereafter incur in connection with the transactions contemplated by this letter which have not as yet been reflected in Borrower's loan account which Borrower is, or may be, required to bear pursuant to the Agreement; provided, that, in either case, such indemnification is sought within [60 days] of the date hereof. The amount of any such losses, charges, fees, expenses or other liabilities for which Old Lender is hereinabove indemnified shall be paid to Old Lender promptly upon Old Lender's demand therefor.

From and after the Bank's receipt of the Payoff Amount in immediately available funds, the Bank agrees to remit to _____ within one (1) business day of receipt thereof any and all collections that the Bank may subsequently receive in respect of the accounts receivable of Borrowers and all proceeds thereof together with any necessary endorsements required on the Bank's behalf.

For and in consideration of Old Lender's agreements contained herein, Borrower hereby releases Old Lender and each of its officers, directors, representatives, employees, agents, attorneys-in-fact and affiliates from any obligations to Borrower for any liabilities, damages, costs or expenses relating to the Agreement or the ["Other Documents"] (as defined in the Agreement) or any of the transactions relating to the Agreement or the [Other Documents] and hereby agrees to indemnify Old Lender from, and hold Old Lender harmless against the same.

This letter may be executed in one or more counterparts each of which taken together shall constitute one and the same agreement.

[OLD LENDER]

By: _____

Name: _____

Title: _____

Acknowledged and agreed to
this _____ day of _____, 20____

[Borrower] _____

By: _____

Name: _____

Title: _____

Acknowledged and agreed to
this _____ day of _____, 20____

[Lender]

By: _____

Name: _____

Title: _____



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37TTT-6 California Legal Forms--Transaction Guide 6.syn

§ 6.syn Synopsis to Chapter 6: Promissory Notes.

Form T6-1 Promissory Note

Form T6-1 Promissory Note

Form T6-2 Promissory Note--Term Loan

Form T6-2 Promissory Note--Term Loan

Form T6-3 Promissory Note--Revolving Loan

Form T6-3 Promissory Note--Revolving Loan

Form T6-4 Simple Negotiable Promissory Notes

Form T6-4 Simple Negotiable Promissory Notes

Form T6-5 Simple Unsecured Promissory Note With Acceleration on Default

Form T6-5 Simple Unsecured Promissory Note With Acceleration on Default

Form T6-6 Promissory Note Referring to Agreement Securing Note

Form T6-6 Promissory Note Referring to Agreement Securing Note

Form T6-7 Secured Installment Note With Interest

Form T6-7 Secured Installment Note With Interest

Form T6-8 Secured Discount Note Subject to Acceleration

Form T6-8 Secured Discount Note Subject to Acceleration

Form T6-9 Collateral Note With Alternative Statements Describing Collateral

Form T6-9 Collateral Note With Alternative Statements Describing Collateral



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*37TTT-6 California Legal Forms--Transaction Guide Form T6-1***Form T6-1 Promissory Note****Description:** This form is a sample promissory note between a borrower and a lender.**Form T6-1 Promissory Note**

PROMISSORY NOTE

Due _____ [date]

_____, _____ [city, state]

Principal Amount.....August _____ [year]

FOR VALUE RECEIVED, on or before _____ [date], the undersigned promises to pay to the order of _____ Bank (the "holder") the principal sum of _____ Dollars and to pay interest on the principal outstanding from time to time at the rate of _____% per annum in excess of the governing rate as defined below. If any installment is not paid within ten days of its due date, the entire amount of the unpaid principal hereunder shall accrue interest at _____% in excess of the governing rate (but in no event more than the highest rate permitted under any applicable law) from the due date until the installment is paid.

Principal shall be payable in _____ installments in accordance with the following schedule:

\$_____ on September _____ [year], and a like sum on the _____th day of each month thereafter until the principal sum shall have been fully repaid, provided however, that the final principal payment shall be in the amount of the unpaid principal then outstanding.

Interest shall be payable monthly on the _____ day of each month, and shall be calculated on the actual number of days elapsed on the basis of a 360-day year.

"Governing rate" shall mean a rate equal to the prime rate publicly quoted by _____ and, if at any time such a rate has not been publicly announced, than such prime rate as is announced by such other major New York

banking institution as may be selected by the holder. The initial governing rate shall be the prime rate in effect on the date hereof and thereafter the governing rate shall be the prime rate in effect on each payment date for the monthly period commencing on such payment date. Notwithstanding the foregoing, at no time shall the governing rate be less than _____%.

The undersigned agrees to pay the reasonable attorneys' fees of the holder if this note is placed in the hands of an attorney for collection after maturity. Upon non-payment of any installment of principal or interest, all remaining installments shall, at the option of the holder, become due and payable forthwith. All exemptions and homestead laws and all rights of the undersigned thereunder are hereby waived. The holder hereof may grant to the maker, any endorsers and any other persons obligated hereon, extensions of time for the payment of this note and/or the maturity of any installment or installments, in whole or in part, without limit as to the number of such extensions, or the period or periods thereof. Presentment, notice of dishonor and protest are hereby waived.

The undersigned has the right to prepay this note, in whole or in part, at any time without penalty. Each payment or prepayment of any part of the principal amount of this Note shall be recorded by the holder, and shall be endorsed hereon prior to any transfer of such Note.

This Note shall be construed in accordance with and governed by the laws of the State of _____.

No provision herein or in any instrument, agreement, or document referred to herein shall require or permit the collection of interest in excess of the maximum lawful rate which a Borrower may stipulate and agree to pay as determined by a court of competent jurisdiction over the holder of the Note. If it is so determined that any excess interest is provided for, then this paragraph shall govern and such excess shall be applied first to any other amounts not constituting interest due or which may become due from such Borrower under this Note or any instrument, agreement or document referred to herein, and the balance, if any, shall be held by, and the Borrower hereby pledges such balance to, the Bank as security for the full and faithful performance by the Borrower of its obligations under this Note and the Security Documents; provided, however, that in no event shall such Borrower be obligated to pay, and the Bank hereby waives payment of, the amount of interest to the extent it is in excess of the amount permitted by applicable law.

Name of Borrower

By _____

Title

Payable at the offices of _____ Bank

_____[Address]

_____[city, state]

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37TTT-6 California Legal Forms--Transaction Guide Form T6-2

Form T6-2 Promissory Note--Term Loan

Description: This form provides a sample term loan promissory note between a borrower and a lender.

Form T6-2 Promissory Note--Term Loan

\$ _____, _____ [city, state]
_____, 20____

This Term Note (this "Note") is executed and delivered under and pursuant to the terms of that certain [Revolving Credit] [Term Loan] [and Security] Agreement dated as of [the date hereof] [_____, 20____] (as amended, modified, supplemented or restated from time to time, the "Loan Agreement") by and between _____, a _____ corporation ("Borrower") and _____ ("Lender"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

FOR VALUE RECEIVED, Borrower promises to pay to the order of Lender at its offices located at _____ or at such other place as the holder hereof may from time to time designate to Borrower in writing:

(i) the principal sum of _____ DOLLARS (\$_____), or if different from such amount, the unpaid principal balance of the Term Loan as may be due and owing from time to time under the Loan Agreement, payable in accordance with the provisions of the Loan Agreement, subject to acceleration upon the occurrence of an Event of Default under the Loan Agreement or earlier termination of the Loan Agreement pursuant to the terms thereof; and

(ii) interest on the principal amount of this Note from time to time outstanding, payable at the applicable [Term Loan Rate][Contract Rate] in accordance with the provisions of the Loan Agreement. Upon and after the occurrence of an Event of Default, and during the continuation thereof, interest shall be payable at the applicable Default Rate. In no

event, however, shall interest hereunder exceed the maximum interest rate permitted by law.

This Note is the Term Note referred to in the Loan Agreement and is secured, inter alia, by the collateral described or referred to in the Loan Agreement and the [Other Documents] [Loan Documents] [Other Agreements], is entitled to the benefits of the Loan Agreement and the [Other Documents] [Loan Documents] [Other Agreements], and is subject to all of the agreements, terms and conditions therein contained.

This Note [is subject to mandatory prepayment and] may be voluntarily prepaid, in whole or in part, on the terms and conditions set forth in the Loan Agreement.

If an Event of Default under Section _____ [refer to bankruptcy default] of the Loan Agreement shall occur, then this Note shall immediately become due and payable, without notice, together with attorneys' fees if the collection hereof is placed in the hands of an attorney to obtain or enforce payment hereof. If any other Event of Default shall occur under the Loan Agreement or any of the [Other Documents] [Loan Documents] [Other Agreements] which is not cured within any applicable grace period, then this Note may, as provided in the Loan Agreement, be declared to be immediately due and payable, without notice, together with attorneys' fees, if the collection hereof is placed in the hands of an attorney to obtain or enforce payment hereof.

This Note shall be governed by and construed in accordance with the laws of the State of _____.

Borrower expressly waives any presentment, demand, protest, notice of protest, or notice of any kind except as expressly provided in the Loan Agreement.

[BORROWER]

By: _____

Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____, to me known, who being by me duly sworn, did depose and say that s/he is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that s/he was authorized to sign her/his name thereto by order of the board of directors of said corporation.

Notary Public



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*37TTT-6 California Legal Forms--Transaction Guide Form T6-3***Form T6-3 Promissory Note--Revolving Loan****Description:** This form provides a sample revolving loan promissory note between a borrower and a lender.**Form T6-3 Promissory Note--Revolving Loan**

REVOLVING NOTE

\$ _____ [city, state]
 _____, 20____

This Revolving Note (this "Note") is executed and delivered under and pursuant to the terms of that certain [Revolving Credit] [Term Loan] [and Security] Agreement dated as of [the date hereof] [_____, 20____] (as amended, modified, supplemented or restated from time to time, the "Loan Agreement") by and between _____, a _____ corporation ("Borrower") and _____ ("Lender"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

FOR VALUE RECEIVED, Borrower promises to pay to the order of Lender at its offices located at _____ or at such other place as the holder hereof may from time to time designate to Borrower in writing:

(i) the principal sum of _____ DOLLARS (\$ _____), or if different from such amount, the unpaid principal balance of Revolving _____ [Advances] _____ [Loans] as may be due and owing from time to time under the Loan Agreement, payable in accordance with the provisions of the Loan Agreement, subject to acceleration upon the occurrence of an Event of Default under the Loan Agreement, or earlier termination of the Loan Agreement pursuant to the terms thereof; and

(ii) interest on the principal amount of this Note from time to time outstanding, payable at the applicable [Revolving Interest Rate] [Contract Rate] in accordance with the provisions of the Loan Agreement. Upon and after the occurrence of an Event of Default, and during the continuation thereof, interest shall be payable at the applicable Default Rate. In no event, however, shall interest hereunder exceed the maximum interest rate permitted by law.

This Note is the Revolving _____ [Credit] Note referred to in the Loan Agreement and is secured, inter alia, by the collateral described or referred to in the Loan Agreement and the [Other Documents] [Loan Documents] [Other Agreements], is entitled to the benefits of the Loan Agreement and the [Other Documents] [Loan Documents] [Other Agreements], and is subject to all of the agreements, terms and conditions therein contained.

This Note may be voluntarily prepaid, in whole or in part, on the terms and conditions set forth in the Loan Agreement.

If an Event of Default under Section _____ [refer to bankruptcy default] of the Loan Agreement shall occur, then this Note shall immediately become due and payable, without notice, together with attorneys' fees if the collection hereof is placed in the hands of an attorney to obtain or enforce payment hereof. If any other Event of Default shall occur under the Loan Agreement or any of the [Other Documents] [Loan Documents] [Other Agreements] which is not cured within any applicable grace period, then this Note may, as provided in the Loan Agreement, be declared to be immediately due and payable, without notice, together with attorneys' fees, if the collection hereof is placed in the hands of an attorney to obtain or enforce payment hereof.

This Note shall be governed by and construed in accordance with the laws of the State of _____.

Borrower expressly waives any presentment, demand, protest, notice of protest, or notice of any kind except as expressly provided in the Loan Agreement.

[BORROWER]

By: _____

Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____, to me known, who being by me duly sworn, did depose and say that s/he is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that s/he was authorized to sign her/his name thereto by order of the board of directors of said corporation.

Notary Public



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*37TTT-6 California Legal Forms--Transaction Guide Form T6-4***Form T6-4 Simple Negotiable Promissory Notes**

Description: This form illustrates a number of simple negotiable promissory notes. These notes may be used in lending transactions ranging from simple intra-family loans to short-term negotiable instruments. The notes illustrated here are the following: 1) A time note, payable to order or to bearer, stating a promise to pay at some future date; 2) A demand note, payable to order or to bearer, stating a promise to pay on demand; 3) An installment note, payable to order or to bearer, with interest payable with each installment on the remaining balance; 4) A discounted note, payable to order or to bearer, payable in installments, that is, a note under which interest is paid in a lump sum in advance with installment payment of the original balance.

Form T6-4 Simple Negotiable Promissory Notes*[EITHER for time note--interest only:]*

INTEREST-ONLY TIME NOTE PAYABLE TO ORDER OR TO BEARER

_____ [city, state]

[If prepayment is to be permitted: On or before _____ (date) or _____ (number) days after the date of this Note or, if prepayment is not to be permitted: _____ (number) days after sight], _____ [I or we jointly] promise to pay _____ [to the order of _____ (name of payee) or to _____ (name of payee), or to order], or to bearer, the principal sum of \$_____, with interest at the rate of _____ percent per year (computed on the basis of a 360-day year), payable _____ [specify how or when payable, e.g., monthly on the _____ day of each month, beginning on the _____ day of _____ (month, year) or together with payment of the principal sum of this Note].

MAKER

_____ [signature of maker]

37TTT-6 California Legal Forms--Transaction Guide Form T6-4

_____ [typed name]

[OR, for demand note--interest only:]

INTEREST-ONLY DEMAND NOTE

_____ [city, state]

\$ _____ [amount borrowed] [date]

_____ [On demand or On sight or On presentation], _____ [I or we jointly] promise to pay _____ [to the order of _____ (name of payee) or to _____ (name of payee), or to order], or to bearer, the sum of \$ _____ together with interest at the rate of _____ percent per year (computed on the basis of a 360-day year) from _____ [date], payable _____ [specify how or when payable, e.g., monthly on the _____ day of each month, beginning on the _____ day of _____ (month, year) or together with payment of the principal sum of this Note].

MAKER

_____ [signature of maker]

_____ [typed name]

[OR, for installment note--interest on unpaid balance:]

INSTALLMENT NOTE WITH INTEREST ON UNPAID BALANCE

_____ [city, state]

\$ _____ [amount borrowed] [date]

For value received, _____ [I or we jointly] promise to pay to the order of _____ [name of payee], or to bearer, the principal sum of \$ _____ in the following manner: \$ _____ on _____ [date], and \$ _____ on the _____ day of each month after that until the entire amount is paid, with interest on the unpaid balance at the rate of _____ percent per year (computed on the basis of a 360-day year), payable with each installment of principal.

MAKER

_____ [signature of maker]

_____ [typed name]

[OR, for discount note payable in installments:]

DISCOUNTED INSTALLMENT NOTE

_____ [city, state]

\$_____ [amount borrowed] [date]

_____ [I or We jointly] promise to pay to the order of _____ [name of payee], or to bearer, the principal sum of \$_____ in the following manner: \$_____ on _____ [date], and \$_____ on the _____ day of each month after that until the entire amount is paid.

MAKER

_____ [signature of maker]

_____ [typed name]



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CHAPTER 6: Promissory Notes.

*37TTT-6 California Legal Forms--Transaction Guide Form T6-5***Form T6-5 Simple Unsecured Promissory Note With Acceleration on Default**

Description: This form is a simple unsecured time note subject to acceleration. It is drafted as an interest-only note; that is, it provides for payment of interest in installments and for payment of principal at maturity. This note may be used when the parties wish to specify a simple obligation to pay a stated sum at a stated time with interest at a stated rate, subject to acceleration under specified conditions. This note should not be used in consumer transactions without substantial modification.

Form T6-5 Simple Unsecured Promissory Note With Acceleration on Default

UNSECURED NOTE SUBJECT TO ACCELERATION

_____ [city, state]

\$_____ [amount borrowed] [date]

Time Note

1. _____ [Period of time] after date, for value received, _____ [name of maker] ("Maker") promises to pay to the order of _____ [name of payee] ("Payee") the principal sum of \$_____, together with interest at the rate of _____ percent per year until maturity and at _____ [specify higher rate, e.g., the maximum legal rate] after maturity payable _____ [specify how or when payable, e.g., monthly on the _____ day of each month, beginning on the _____ day of _____ (month, year) or together with payment of the principal sum of this Note].

Acceleration

2. (a) This Note and all other obligations, direct or contingent, of any Maker or endorser of this Note to the Payee will

become due and payable immediately, without presentment or notice, if:

(1) Maker fails to make the required payment when due.

(2) Maker or any endorser, surety, or guarantor of this Note:

(i) Fails, after demand, to furnish financial information or to permit inspection of any books or records.

(ii) Suspends business.

(iii) Becomes insolvent or offers settlement to any creditors.

(iv) Files a petition in bankruptcy, either voluntary or involuntary.

(v) Institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors.

(vi) Gives notice of any intended bulk sale.

(vii) Makes an assignment for the benefit of creditors.

(viii) Mortgages, pledges, assigns, or transfers any accounts receivable or other property, in trust or otherwise, without the written consent of the Payee.

(ix) Makes any false statement or representation orally or in writing, fails to furnish information, or fails to permit inspection of any books or records on demand of Payee.

(x) Fails to pay any obligation when due.

(xi) _____ [If maker, endorser, surety, or guarantor is an individual: Dies or if maker, endorser, surety, or guarantor is a corporation: Is dissolved or its capital becomes impaired].

(3) Payee discovers that any misrepresentation was made to Payee on behalf of Maker to obtain credit or an extension of credit.

(4) Any legal action is commenced against Maker or any endorser, surety, or guarantor, including:

(i) Entry of judgment.

(ii) Issuance of a writ of attachment, order of garnishment, order or subpoena in supplementary proceedings, execution, or similar process.

(5) A receiver is appointed for Maker or any endorser, surety, or guarantor.

(b) At its option, the Payee may accelerate the maturity of the Note to become due immediately if, in the sole opinion of Payee, the financial responsibility of Maker becomes unsatisfactory or the obligation evidenced by this Note [*add if applicable*: or any other obligation of any Maker, endorser, surety or guarantor] is in jeopardy.

Attorneys' Fees

3. Maker and each endorser agree that if any _____ [legal action *or specify more limited provision, e.g.*, legal action based in contract law] is necessary to enforce or collect this Note for nonpayment at maturity, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. This provision is applicable to the entire Agreement.

Waivers

4. Maker waives the right to interpose any defense, set-off, or counterclaim of any nature or description, which rights are expressly waived except as provided by law.

Governing Law

5. This Note will be governed by the laws of the State of _____, including the Uniform Commercial Code in force in the State of _____.

MAKER

_____ [signature of maker]

_____ [typed name]



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CHAPTER 6: Promissory Notes.

*37TTT-6 California Legal Forms--Transaction Guide Form T6-6***Form T6-6 Promissory Note Referring to Agreement Securing Note**

Description: This form is a note to be used when the parties wish to refer to a separate written agreement affecting the note. A separate written agreement referred to in a promissory note is commonly executed at the same time as the note itself, as part of the same transaction.

Form T6-6 Promissory Note Referring to Agreement Securing Note

THIS NOTE IS SECURED BY A SECURITY AGREEMENT EXECUTED CONTEMPORANEOUSLY WITH THIS NOTE

_____ [city, state]

\$_____ [amount borrowed] [date]

Time Note

1. [Specify time, e.g., 90] days after date, [I or we], the undersigned [{"Maker"} or {"Makers"}], promise to pay to the order of _____ [name of payee] ("Payee") the sum of \$_____ at _____ [place of payment]. [Add if applicable: Makers agree that they will be jointly and severally bound by the terms of this Note.]

Security Agreement

2. A security agreement dated _____ secures the indebtedness evidenced by this Note.

Acceleration

3. (a) All liabilities of the undersigned to the Payee, including this Note, will, at the option of the Payee, mature and

become due and payable immediately without presentment or notice, which rights are expressly waived, if:

(1) Maker fails to make the required payment when due.

(2) Maker or any endorser, surety, or guarantor of this Note:

(i) Fails, after demand, to furnish financial information or to permit inspection of any books or records.

(ii) Suspends business.

(iii) Becomes insolvent or offers settlement to any creditors.

(iv) Files a petition in bankruptcy, either voluntary or involuntary.

(v) Institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors.

(vi) Gives notice of any intended bulk sale.

(vii) Makes an assignment for the benefit of creditors.

(viii) Mortgages, pledges, assigns, or transfers any accounts receivable or other property, in trust or otherwise, without the written consent of the Payee.

(ix) Makes any false statement or representation orally or in writing, fails to furnish information, or fails to permit inspection of any books or records on demand of the Payee.

(x) Fails to pay any obligation when due.

(xi) _____ [If maker, endorser, surety, or guarantor is an individual:
Dies or if maker, endorser, surety, or guarantor is a corporation: Is dissolved or its
capital becomes impaired].

(3) Payee or holder discovers that any misrepresentation was made to payee on or behalf of Maker to obtain credit or an extension of credit.

(4) Any legal action is commenced against Maker or any endorser, surety, or guarantor, including:

(i) Entry of judgment.

(ii) Issuance of a writ of attachment, order of garnishment, order or subpoena in supplementary proceedings, execution, or similar process.

(5) A receiver is appointed for Maker, endorser, surety or guarantor.

(b) At its option, Payee may accelerate the maturity of this Note to become due immediately if it considers the security underlying the Note to be unsatisfactory or insufficient and the Maker does not, on demand, furnish additional collateral or make payment on account that is satisfactory to the Payee.

(c) At its option, Payee may accelerate the maturity of the Note to become due immediately if, in the sole opinion of the Payee, the financial responsibility of the Maker becomes unsatisfactory or the obligation evidenced by this Note [add if applicable: or any other obligation of any maker, endorser, or guarantor] is in jeopardy.

Collection Costs

4. If this Note is not paid in full when it becomes due, Maker agrees to pay all lawful collection costs.

Attorneys' Fees

5. Maker agrees that if any [legal action or *specify more limited provision, e.g.*, legal action based in contract law] is necessary to enforce this Note, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. This provision is applicable to the entire Note.

MAKER

_____ [signature of maker]

_____ [typed name]



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*37TTT-6 California Legal Forms--Transaction Guide Form T6-7***Form T6-7 Secured Installment Note With Interest**

Description: This form is a secured installment note with provisions for payment in equal installments of principal and interest. The form provides two alternatives for providing for the payment of interest. The first alternative provides for interest on the unpaid balance, while the second provides for interest to be aggregated and amortized over all installments.

Form T6-7 Secured Installment Note With Interest

SECURED INSTALLMENT NOTE WITH INTEREST

_____ [city, state]

\$_____ [amount borrowed] [date]

Installment Note*[First alternative; interest on unpaid balance--short form:]*

1. I promise to pay to the order of _____ [name of payee] the sum of \$_____, in the following manner: the first installment of \$_____ on _____ [date], and installments of \$_____ on the _____ day of each successive month until the entire amount is paid, with interest on the unpaid balance at a rate of _____ percent per year, payable with each installment of principal.

[OR]

[Second alternative; interest aggregated and amortized over all installments--long form:]

1. (a) For value received, [I or we], the undersigned [Maker or Makers jointly and severally], promise to pay to the order of _____ [name of payee] ("Payee"), at its office at _____ [address], at the times specified below, the sum of \$ _____ (the "Principal"), together with interest at the rate of _____ percent per year (computed on the basis of a 360-day year).

(b) The Principal and the aggregate of the interest on the Principal will be payable in [number] equal successive monthly installments in the aggregate amount of \$ _____ each. The first installment will be paid on the _____ day of [month, year], and subsequent installments will be paid on the same day of each successive month until all the payments have been made.

[Continue with the following:]

Late Charge

2. Maker agrees that if any installment payment provided for in this Note is [late or in default or unpaid] for at least [e.g., 10] days, it would be impracticable or extremely difficult to fix the actual damages resulting to the Payee. Therefore, Maker agrees to pay to the Payee the sum of \$ _____ on default, as liquidated damages and not as a penalty, to compensate the Payee for the expenses of administering the default. Only one late charge will be collected on any installment, regardless of the period during which it remains in default. [Add if applicable: The aggregate of the late charges collected in connection with this loan, including renewal, will not exceed _____ percent of the loan.]

Acceleration

3. (a) At its option, the Payee of this Note may determine that Maker is in default and may, consequently, accelerate the maturity of all installments, making the unpaid balance of the Note (the total of the unpaid monthly installments and any unpaid fines that have been charged) due immediately without presentment for payment or any notice, if:

(1) Maker fails to pay an installment when due.

(2) Maker or any endorser, surety, or guarantor of this Note:

(i) Fails, after demand, to furnish financial information or to permit inspection of any books or records.

(ii) Suspends business.

(iii) Becomes insolvent or offers settlement to any creditors.

(iv) Files a petition in bankruptcy, either voluntary or involuntary.

(v) Institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors.

(vi) Gives notice of any intended bulk sale.

(vii) Makes an assignment for the benefit of creditors.

(viii) Mortgages, pledges, assigns, or transfers any accounts receivable or other property, in trust or otherwise, without the written consent of the Payee.

(ix) Makes any false statement or representation orally or in writing, fails to furnish information, or fails to permit inspection of any books or records on demand of the Payee.

(x) Fails to pay any obligation when due.

(xi) _____ [If maker, endorser, surety, or guarantor is an individual:
Dies or if maker, endorser, surety, or guarantor is a corporation: Is dissolved or its
capital becomes impaired].

(3) Payee discovers that any misrepresentation was made to Payee on behalf of Maker to obtain credit or an extension of credit.

(4) Any legal action is commenced against Maker or any endorser, surety, or guarantor, including:

(i) Entry of judgment.

(ii) Issuance of a writ of attachment, order of garnishment, order or subpoena in supplementary proceedings, execution, or similar process.

(5) A receiver is appointed for Maker or any endorser, surety or guarantor.

(b) The Payee of this Note, at its option, may accelerate the maturity of all installments to become due immediately if it considers the security underlying this Note to be unsatisfactory or insufficient and the Maker does not, on demand, furnish additional collateral or make payment on account satisfactory to the Payee.

(c) The Payee of this Note, at its option, may accelerate the maturity of all installments to become due immediately if, in the sole opinion of the Payee, the financial responsibility of Maker becomes unsatisfactory.

Disposition of Collateral on Default

4. Any collateral given to the Payee at any time will be deemed security for the payment of this Note [add if applicable: and any other liabilities of the undersigned to the Payee]. In case of default in payment of this Note [add if applicable: or any other notes of the undersigned, whether as maker, co-maker, or endorser, held by the Payee], or in case the collateral declines in value or otherwise becomes unsatisfactory to the Payee, the Payee is authorized to dispose of all or any part of the collateral security property at public or private sale, without advertisement, or notice to the Maker, which rights are expressly waived. At such a sale, the Payee may purchase any or all of the property free of any claim or right of redemption of the Maker, which rights are expressly waived except as provided by law. Neither the sale of the collateral nor the application of its proceeds will prejudice any other rights of Payee against Maker.

Collection Costs

5. Maker agrees to pay the expenses incurred in any lawful attempt to enforce this Note, including the cost of retaking and keeping any collateral or other security property for this Note specified in any agreements.

Attorneys' Fees

6. Maker agrees that if any [legal action *or specify more limited provision, e.g.,* legal action based in contract law] is necessary to enforce this Note for nonpayment at maturity, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief that party may be entitled to. This provision is applicable to the entire Note.

Extension of Time for Payment

7. No extension of time for payment of all or any part of the amount owing on this Note will affect the liability of the Maker or any surety, guarantor, or endorser of this Note. The Maker and all sureties, guarantors, endorsers, severally waive presentment for payment, notice of nonpayment, and notice of dishonor of this Note.

MAKER

_____ [signature of maker]

_____ [typed name]



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*37TTT-6 California Legal Forms--Transaction Guide Form T6-8***Form T6-8 Secured Discount Note Subject to Acceleration**

Description: This form is a secured discount note with provision for acceleration on specified events of default. A discount note is one in which the amount of interest has been precomputed and deducted from the amount borrowed, and which provides for repayment of the full amount borrowed.

Form T6-8 Secured Discount Note Subject to Acceleration

SECURED DISCOUNT NOTE SUBJECT TO ACCELERATION

_____ [city, state]

\$_____ [amount borrowed] [date]

Installment Note

1. (a) [Add if applicable: For value received,] [I or we], the undersigned [("Maker") or ("Makers")] jointly and severally, promise to pay to the order of _____ [name of payee] ("Payee"), at _____ [address of payee], _____ [city, state], the sum of \$_____ (the "Principal"). The proceeds of this Note will be the Principal less a charge computed on that amount for the period from this date to and including the last of the installment payments at a rate of _____ percent per year (computed on the basis of a 360-day year). [Add if applicable: If this Note is signed by more than one maker, the makers will be jointly and severally liable.]

(b) The Principal will be payable in _____ [number] equal successive monthly installments in the aggregate amount of \$_____ each. The first installment will be paid on the _____ day of _____ [month, year], and subsequent installments will be paid on the same day of each successive month until all the payments have been made.

Late Charge

2. The undersigned agrees that if any installment payment provided for in this Note is [late *or* in default *or* unpaid] for at least [*e.g.*, 10] days, it would be impracticable or extremely difficult to fix the actual damages resulting to the Payee. Therefore, Maker agrees to pay to Payee the sum of \$_____ on any default, as liquidated damages and not as a penalty, to compensate the Payee for the expenses of administering the default. Only one late charge will be collected on any installment, regardless of the period during which it remains in default. [*Add if applicable:* The aggregate of the late charges collected in connection with this loan, including renewal, will not exceed _____ percent of the loan.]

Time Extensions

3. Acceptance by Payee of any installment after any default will not operate to extend the time of payment of any amount remaining unpaid, or constitute a waiver of any of the other rights of the Payee under this Note.

Collateral

4. As collateral security for the payment of this Note, Payee will at all times have a lien on and right of offset against [*describe collateral*].

Acceleration

5. (a) At its option, Payee may declare a default on this Note and all liabilities of Maker to Payee under this Note will become due immediately without presentment for payment, notice of nonpayment, or notice of dishonor, which rights are expressly waived, if:

(1) Maker fails to make a payment when due.

(2) Maker or any endorser, surety, or guarantor of this Note:

(i) Fails, after demand, to furnish financial information or to permit inspection of any books or records.

(ii) Suspends business.

(iii) Becomes insolvent or offers settlement to any creditors.

(iv) Files a petition in bankruptcy, either voluntary or involuntary.

(v) Institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors.

(vi) Gives notice of any intended bulk sale.

(vii) Makes an assignment for the benefit of creditors.

(viii) Mortgages, pledges, assigns, or transfers any accounts receivable or other property,

in trust or otherwise, without the written consent of the Payee.

(ix) Makes any false statement or representation orally or in writing, fails to furnish information, or fails to permit inspection of any books or records on demand of the Payee.

(x) Fails to pay any obligation when due.

(xi) _____ [If maker, endorser, surety, or guarantor is an individual:
Dies or if maker, endorser, surety, or guarantor is a corporation: Is dissolved or its
capital becomes impaired].

(3) Payee or holder discovers that any misrepresentation was made to Payee on behalf of Maker to obtain credit or an extension of credit.

(4) Any legal action is commenced against Maker or any endorser, surety, or guarantor, including:

(i) Entry of judgment.

(ii) Issuance of a writ of attachment, order of garnishment, order or subpoena in supplementary proceedings, execution, or similar process.

(5) A receiver is appointed for Maker, endorser, surety or guarantor.

(b) At its option, Payee may accelerate the maturity of this Note to become due immediately if it considers the security underlying the Note to be unsatisfactory or insufficient and the Maker does not, on demand, furnish additional collateral or make payment on account that is satisfactory to the Payee.

(c) At its option, Payee may accelerate the maturity of the Note to become due immediately if, in the sole opinion of the Payee, the financial responsibility of the Maker becomes unsatisfactory or the obligation evidenced by this Note [add if applicable: or any other obligation of any maker, endorser, or guarantor] is in jeopardy.

Disposition of Collateral

6. (a) On the occurrence of any of the events that give rise to default under Paragraph 5 of this Note [add if applicable:, or that give rise to a claim asserted by Payee against Maker, for any reason whatsoever], Payee will have the right to sell all or part of the collateral described in Paragraph 4 at public or private sale, without advertisement or notice to the Maker, which rights are expressly waived, and Payee retains the right to purchase at the sale any collateral security free from any right of redemption on the part of any of Maker.

(b) In the event of a sale of collateral security, Payee may apply the proceeds, after deduction of all expenses, to the payment of the Principal, whether or not due, in proportion and sequence as Payee may determine in its sole discretion, returning any remaining balance to Maker. Neither the sale of that collateral nor the application of its proceeds will prejudice the rights of Payee against Maker with respect to any amounts that remain unpaid on this Note.

[Optional:]

(c) At its option at any time and without notice, Payee may appropriate and apply to the payment of the amount owing on this Note, in proportion and sequence as Payee in its sole discretion may determine, any deposit balances or sums

credited by or due from Payee to the Maker. Maker agrees that Payee may take any of these actions without formal assertion or enforcement of any rights or liens.

[Continue with the following:]

Waiver of Rights by Maker

7. Maker and all sureties, guarantors, and endorser of this Note severally waive presentment for payment, notice of nonpayment, notice of dishonor, and any notices in connection with the delivery, presentment, acceptance, performance, default, or enforcement of this Note, and consent to any extensions of time, renewals, releases of liens, waivers, or modifications that may be made by Payee to any party to this Note.

Waivers or Modifications by Payee

8. No extension of time for payment of any amount owing on this Note will affect the liability of Maker or any surety, guarantor, or endorser of this Note. No delay by the Payee or holder in exercising any right under this Note will operate as a waiver of that right; nor will any single or partial exercise of any right preclude other or further exercise of the right, or the exercise of any other right under this Note or otherwise as permitted by law. No waiver or modification of the terms of this Note will be valid unless in writing, signed by the Payee of this Note. Any waiver or modification will be valid only to the extent set forth in the writing.

Collection Costs

9. Maker agrees to pay the expenses incurred in any lawful attempt to enforce this Note, including the cost of retaking and keeping any collateral or other security property for this Note specified in any agreements.

Attorneys' Fees

10. Maker agrees that if any [legal action *or specify more limited provision, e.g.,* legal action based in contract law] is necessary to enforce this Note for nonpayment at maturity, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. This provision is applicable to the entire Note.

MAKER

_____ [signature of maker]
_____ [typed name]



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*37TTT-6 California Legal Forms--Transaction Guide Form T6-9***Form T6-9 Collateral Note With Alternative Statements Describing Collateral**

Description: This form is a secured note with alternative descriptions of the collateral used to secure the note. This note should be used when the parties wish to include a provision regarding collateral in the note.

Form T6-9 Collateral Note With Alternative Statements Describing Collateral

SECURED NOTE

_____ [city, state]

\$_____ [amount borrowed] [date]

Time Note

1. On _____ [date], I, the undersigned _____ [name] ("Maker"), promise to pay to the order of _____ [name of payee] ("Payee") the sum of \$_____, plus interest at the rate of _____ percent per year (computed on the basis of a 360-day year), at _____ [place or address].

Initial Collateral

2. To secure payment of this Note [*add if applicable*; and of any past, present, or future liabilities of Maker to the Payee, regardless of how acquired by the Payee], Maker has _____ [given a secured interest in or given a secured interest in and delivered to Payee] the following property: _____ [*describe collateral*] ("collateral"), the market value of which is agreed to be \$_____ on the date this Note is executed.

Additional Collateral

3. (a) In case of a decline in the market value of all or any part of the collateral, the holder may demand that additional collateral of quality and value satisfactory to the holder be provided and delivered to the holder to secure payment of this Note. Failure on the part of Maker to deliver that additional collateral on demand will cause this Note to become due and payable on demand.

(b) Any deposit or other sums at any time credited by or due from the holder to Maker, and any securities or other property of Maker in the possession of the holder, may at all times be treated as additional collateral for the payment of this Note and any other liabilities of Maker referred to in this Note, and may at any time be applied against the amount due or to become due.

Collection or Protection of Collateral

4. The Payee has no duty with respect to the collection or protection of the collateral held under this Note or of any income from the collateral, or with respect to the preservation of any rights pertaining to that collateral beyond the safe custody of it.

Rights of Payee on Default

5. In case of default in payment of this Note, Payee will have all rights in the collateral given by the _____ [state] Commercial Code. The waiver of any default, or the remedying of any default in a reasonable manner, will not operate as a waiver of any other default or of the default remedies available to the Payee.

Execution of Documents

6. If any collateral delivered by Maker to Payee is released to Maker before full payment of the Note, Maker agrees to execute any documents required to continue the Payee's security interest in the collateral.

Acceleration

7. Payee may accelerate the due date of this Note and demand immediate payment at any time Payee, in good faith, believes that the prospect of payment is impaired.

Waiver of Certain Rights by Maker

8. Maker and all sureties, guarantors, and endorsers of this Note severally waive presentment for payment, notice of nonpayment, notice of dishonor, and any notices in connection with the delivery, presentment, acceptance, performance, default, or enforcement of this Note, and consent to any extensions of time, renewals, releases of liens, waivers, or modifications that may be made by Payee to any party to this Note.

Assent to Extensions, Substitutions, and Releases

9. Each party to this Note, whether as Maker, endorser, surety, or otherwise, assents to any extension or postponement of the time of payment or other indulgence and to any substitution, exchange, or release of collateral permitted by the

Payee. In addition, each party agrees that any collateral deposited with Payee in connection with this Note may be held as collateral security for any other direct or indirect liability of Maker to Payee, due or to become due or that may later be contracted.

Collection Costs

10. If this Note is not paid in full when it becomes due, Maker agrees to pay all lawful collection costs.

Attorneys' Fees

11. Maker agrees that if any [legal action or *specify more limited provision, e.g., legal action based in contract law*] is necessary to enforce this Note, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. This provision is applicable to the entire Note.

[*Optional:*]

Security Interest

12. A [*describe instrument, e.g., deed of trust or security agreement*] dated _____ secures the indebtedness evidenced by this Note.

[*Continue with the following:*]

MAKER

_____ [signature of maker]

_____ [typed name]



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CHAPTER 7: Letters of Credit.

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§ 7.syn Synopsis to Chapter 7: Letters of Credit.

Form T7-1 Application for a Letter of Credit

Form T7-1 Application for a Letter of Credit

Form T7-2 Application and Agreement for Commercial Letter of Credit

Form T7-2 Application and Agreement for Commercial Letter of Credit

Form T7-3 Security Agreement for a Letter of Credit

Form T7-3 Security Agreement for a Letter of Credit

Form T7-4 Irrevocable Standby Letter of Credit

Form T7-4 Irrevocable Standby Letter of Credit

Form T7-5 Confirmed Irrevocable Credit

Form T7-5 Confirmed Irrevocable Credit

Form T7-6 Commercial Documentary Letter of Credit

Form T7-6 Commercial Documentary Letter of Credit

Form T7-7 Revocable Letter of Credit

Form T7-7 Revocable Letter of Credit

Form T7-8 Application for Amendment to Letter of Credit

Form T7-8 Application for Amendment to Letter of Credit

Form T7-9 Transfer of a Letter of Credit

Form T7-9 Transfer of a Letter of Credit

Form T7-10 Guaranty Letter of Credit--Conditioned on Default in Promissory Note

Form T7-10 Guaranty Letter of Credit--Conditioned on Default in Promissory Note--Customer Credit Agreement

Form T7-11 Standby Letter of Credit--Conditioned on Default in Loan Agreement

Form T7-11 Standby Letter of Credit--Conditioned on Default in Loan Agreement--Notice of Default Documentation Required

Form T7-12 Assignment of a Letter of Credit

Form T7-12 Assignment of a Letter of Credit

Form T7-13 Form of Assignment of Letter of Credit Proceeds

Form T7-13 Form of Assignment of Letter of Credit Proceeds



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.
CHAPTER 7: Letters of Credit.

*37TTT-7 California Legal Forms--Transaction Guide Form T7-1***Form T7-1 Application for a Letter of Credit****Description:** This form is used to apply for a letter of credit.**Form T7-1 Application for a Letter of Credit***(1) Application for a letter of credit***Letter of Credit Application**

Please arrange the issuance of an IRREVOCABLE LETTER OF CREDIT substantially in accordance with the following instructions. The letter of credit will be in favor of _____ [name and address of the beneficiary] for the account of _____ [name and address of the applicant] up to the aggregate amount of \$ _____ available by _____ [tenor] drafts drawn, at your option, on you or any of your correspondents for _____ percent of the invoice value when accompanied by the following documents as checked:

☐ Full set "On Board" _____ bills of lading freight _____ drawn to the order of THE BANK or to shippers order blank endorsed marked notify _____ [name and address] and evidencing shipment from _____ [city and country] to _____ [city, state, and country].

☐ Commercial invoice in _____ [number] stating that it covers _____ [specify commodity, but omit details such as price, quality, sales terms, contract number, etc.].

☐ Insurance policy or certificate for _____ percent of invoice to be effected by

_____ covering _____ [state specific risks].

☐ Special customs invoice.

☐ Other documents _____ [specify].

Partial shipments and transshipments permitted unless stated otherwise.

Bills of lading to be dated not later than _____ [date].

Bills of exchange to be negotiated not later than _____ [date].

Additional Requirements to be Included in the Credit

AFTER OPENING THE CREDIT, PLEASE BE GUIDED BY THE FOLLOWING AS CHECKED:

☐ Forward the original credit instrument by _____ [specify means of delivery, courier, mail, etc.] to _____ [name and address], directly or through your correspondent at your option, unless otherwise indicated herein.

☐ Cable or teletransmit the terms and conditions of the credit to your correspondent requesting that the beneficiary be notified of the opening of the credit, unless otherwise indicated herein.

☐ Notify the beneficiary by cable through your correspondent that you are forwarding the original credit instrument by air mail, unless otherwise indicated herein.

Shipping documents for custom house entry are to be sent by you to _____ [name and address].

Issuance of the letter of credit requested hereby, and all matters relating to such letter of credit shall be on the terms and conditions contained in the Continuing Letter of Credit Agreement previously executed and delivered to _____ [issuer] by applicant.

Date

Applicant

By: _____

Title: _____

In consideration of _____ (hereinafter called "Applicant") making the above application and any action taken pursuant thereto by _____ (issuer) (hereinafter called "Bank"), the undersigned agrees with the Applicant and with the Bank, to furnish to the Applicant, as and when required, any and all funds and collateral as may be necessary to fulfill the obligations of the Applicant under said application and the Continuing Letter of Credit Agreement, and to indemnify and save harmless the Applicant from all liabilities incurred by it under or by virtue of this application, also to join with Applicant, if requested by Bank, in the execution of any document, security agreement

or financing statement which may issue or be required from the applicant. Furthermore, undersigned hereby unconditionally guarantees to the Bank the due and punctual payment and performance by Applicant in connection with the Credit. Notice of the acceptance of this undertaking and promptness in making any demand or claim hereunder are hereby waived. _____

By: _____

Title: _____

(2) Application for a letter of credit-alternate form

_____ [date]

To: _____ [name of issuer]

_____ [issuer's address]

From: _____ [applicant's name]

_____ [applicant's address]

Please issue a letter of credit, to be transmitted by teletransmission, as follows:

1. *Obligation of issuer.* The credit is to be irrevocable.

2. *Transferability.* The credit is to be nontransferable.

3. *Beneficiary.* The beneficiary is _____ [name of beneficiary].

4. *Drafts.* Drafts are to be sight, drawn, at your option, on you or on your Correspondent and negotiated on or before _____ [expiration date].

5. *Total.* The sum or sums of all drafts drawn under the credit must not exceed in total \$_____ [dollar amount].

6. *Purpose.* To cover 100 percent of the invoice value of certain _____ [description of goods] described in the covering invoice to be shipped from _____ to _____ during the month of _____ [date].

7. *Insurance.* Marine and war risk insurance is to be effected by the buyer.

8. *Documents.* The required documents are as follows:

(a) Commercial invoice;

(b) Customs invoice;

(c) Marine and war risk insurance policies or certificates covering not less than full invoice value;

(d) Full set of on board bills of lading to the order of _____ [name of issuer], marked "notify buyer," and dated on or before _____ evidencing shipment from _____ to _____

_____.

9. *Applicable law.* Except as otherwise provided, the credit is to be governed by the Uniform Commercial Code in force in the State of _____ on the date of its issuance.

This application and the issuance of your letter of credit are subject to the terms of the Security Agreement set forth on the reverse side.

_____ [name of applicant]

Secretary of Applicant
.....

Bank Officer



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37TTT-7 California Legal Forms--Transaction Guide Form T7-2

Form T7-2 Application and Agreement for Commercial Letter of Credit

Description: This form is an application for a commercial letter of credit. The application must be completed by the applicant (or "customer") and turned in to the issuing bank to obtain issuance of the letter of credit. This application and agreement of a letter of credit is reprinted with the permission of the copyright owner, Bank of America N.T. & S.A.

Form T7-2 Application and Agreement for Commercial Letter of Credit

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37TTT-7 California Legal Forms--Transaction Guide Form T7-3

Form T7-3 Security Agreement for a Letter of Credit

Description: This form is used a security agreement for a letter of credit; the issuer may require applicant to execute a security agreement which provides the issuer with an interest in the goods being purchased with the letter of credit proceeds.

Form T7-3 Security Agreement for a Letter of Credit

(1) Short Version of a Security Agreement

In order that you may open a commercial letter of credit (the "Letter of Credit") for me, I agree to the following:

1. The Letter of Credit will substantially agree with the terms in the Application for Commercial Letter of Credit shown on the reverse. In this Agreement, "Letter of Credit" includes any sight or time drafts drawn in connection with the Letter of Credit.

2. I will pay you on demand in U.S. dollars all the money you pay in connection with the Letter of Credit. If the Letter of Credit is issued in a foreign currency, I will pay you on demand the U.S. dollar equivalent of the foreign currency amounts of all drawings under this Letter of Credit. The foreign currency amount of each drawing will be converted to U.S. dollars at the rate of exchange you apply to that drawing. I will also pay you all related interest, commission, and customary charges. I authorize you to charge any of my accounts at the bank for all money due you, or for which you may become liable, under the Letter of Credit.

I will provide you enough money to meet all payments concerning the Letter of Credit at least one day before the payments are due.

3. I grant you a security interest in the following:

(a) All goods and documents that come into my possession or control, or in which I may acquire an interest, in

connection with the Letter of Credit;

(b) All goods and documents that come into your possession or control, or that of any of your correspondents, in connection with the Letter of Credit; and

(c) All property of mine, including deposit accounts, that comes into your possession or control.

The security will protect the payment of the following:

(a) All payments by you or your correspondents under the Letter of Credit;

(b) Any interest, commission or other customary charges relating to the Letter of Credit; and

(c) Any other of my obligations to you.

4. Any sum not paid when due under this agreement will bear interest from the due date until the date of payment at the annual rate of _____ percent (_____ %) of the sum of:

(a) the interest rate that is publicly announced from time to time in _____ [city], _____ [state] as your reference rate, plus

(b) _____ percentage points. Any change in your reference rate will take effect at the opening of a change in your business on the date specified in your public announcement of a reference rate. Interest will be computed on the basis of a three hundred sixty-five (365) day year and actual days elapsed.

5. If I default in any promise in this Security Agreement, you may sell any goods or documents covered by the security interest granted above. The sale of secured goods or documents will be governed by the _____ [state] Uniform Commercial Code. If the sale does not pay for the whole amount due, I will pay the shortage to you immediately. If the sale results in more than the amount due, you will pay the surplus to me or those who have a right to it. If the value of the secured goods declines, I will deliver to you on your demand more collateral that is acceptable to you.

6. I or a third party, will obtain insurance on all goods described in the Letter of Credit. The insurance will cover fire and other usual risks and any additional risks you may request. I authorize you to collect the proceeds of the insurance and apply it against any of my obligations to you under the Letter of Credit.

7. I have obtained any import or export licences required for the Letter of Credit.

8. Neither you nor your correspondents will be in any way responsible for the beneficiary's performance of its obligations to me, nor for the form, sufficiency, correctness, genuineness, falsification or legal effect of authority of person signing, any documents called for under the Letter of Credit if these documents appear on their face to be in order.

9. Subject to the laws, customs and practices of the trade in the area where the beneficiary is located, the Letter of Credit will be subject to, and performance under the Letter of Credit by you, your correspondents, and the beneficiary will be governed by the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600, or by later Uniform Customs and Practice fixed by later Congresses of the International Chamber of Commerce as in effect on the date the Letter of Credit is issued.

10. I agree that all directions and correspondence regarding the Letter of Credit will be sent at my risk. You are not

37TTT-7 California Legal Forms--Transaction Guide Form T7-3

responsible for any inaccuracy, interruption, error or delay in transmission or delivery by Post, courier, or teletransmission, or for any inaccuracy in translation.

11. I agree to pay all costs and expenses you may incur because of any dispute in connection with the Letter of Credit, including attorneys fees for independent counsel and for your in-house counsel.

12. If the cost to you of issuing or maintaining the Letter of Credit increases because of any reverses, special deposits, FDIC assessments or similar requirements imposed on you, I agree to pay you on demand an additional amount sufficient to compensate you for the increased cost as determined by you.

_____ [Date]

_____ [Signature of appropriate officer of applicant]

(2) Long Version of a Security Agreement

AGREEMENT made this _____ [date], by and between _____ [name of applicant] ("Customer") and _____ [name of issuer] ("Bank").

At the request of the Customer the Bank will open the Bank's Commercial Letter of Credit ("Credit"), and

The Customer and the Bank agree:

1. *Drafts payable in United States currency.* As to drafts payable in United States currency drawn or purporting to be drawn under the Credit, the Customer agrees:

(a) in case of each sight draft to pay to the Bank at its main office in United States currency the amount paid on the draft with interest at a rate equal to _____ percent plus the then prime rate of the Bank from the date of payment of the draft by the Bank; or

(b) in case of each time draft, to pay to the Bank at its main office the amount of the draft on demand, but in any event, not later than one business day prior to its maturity, or, if the draft is payable elsewhere, in sufficient time to reach the place of payment in the usual course of the mails not later than one business day prior to maturity.

2. *Drafts payable in other than United States currency.* As to drafts payable in currency other than United States currency drawn or purporting to be drawn under the Credit, the Customer agrees:

(a) in case of each sight draft to pay the Bank at its main office in United States currency the equivalent of the amount paid on each draft at the Bank's then selling rate for electronic transfers to the place where and in the currency in which the draft is payable and interest at a rate equal to _____ percent plus the then prime rate of the Bank from the date of payment of the draft by the Bank; and

(b) in case of each time draft to furnish to the Bank at its main office, sufficiently in advance to reach the place of payment in the usual course of the mails not later than one business day prior to maturity, with first class bankers' demand bills of exchange to be approved by the Bank for the amount and in the currency of the draft and bearing the unqualified indorsement of the Customer. If the Bank so requests, the Customer will pay to the Bank on demand at the main office of the Bank in United States currency the equivalent of the amount of the draft at the Bank's then selling rate for electronic transfers to the place where and in the currency in which the draft is payable. If at the time payment is

to be made by the Customer, there exists no rate of exchange generally current in _____ [state] for electronic transfers the Customer agrees to pay on demand in United States currency the actual cost to the Bank of settlement of its obligation to the payor of the draft or to any holder, as the case may be, and however and wherever settlement shall be made by the Bank, including interest on the dollar amount payable by the Customer from the date of payment of the draft to the date of the payment to you. The Customer agrees to pay the Bank on demand in United States currency such amounts as the Bank may be required to expend to comply with any and all governmental exchange regulations now or then applicable to the purchase of foreign currency.

3. *Commissions, charges, and interest.* The Customer agrees to pay to the Bank on demand a commission at such rate as the Bank determines to be proper and any and all expenses, obligations, charges and liabilities paid or incurred by the Bank in connection with the Credit and the within agreement, together with interest where chargeable.

4. *Authorization to accept and pay drafts.* The Customer authorizes the Bank and/or its correspondents to accept and pay drafts drawn under the Credit provided the documents presented are at the time deemed sufficient in the Bank's or the correspondent's absolute discretion and agrees to reimburse the Bank in the manner aforesaid even if such documents should in fact prove to be insufficient, defective, or forged.

5. *Documents.* Except as written instructions expressly to the contrary have been received by the Bank, from the Customer, in application or prior to the opening of the Credit and incorporated in the Credit, the undersigned agrees:

(a) that the Bank and any of its correspondents may receive and accept as a "bill of lading" under the Credit any document issued or purporting to be issued by or on behalf of any carrier which acknowledges receipt of property for transportation, whatever the specific provision of such document;

(b) that part shipments may be made under the Credit and that the Bank may honor the relative drafts without inquiry, regardless of any apparent disproportion between the quantity shipped and the amount of the relative draft, and the total amount of the Credit and the total quantity to be shipped under the Credit;

(c) If shipment in installments within stated periods is specified, and there is a failure to ship in any designated period, shipments of subsequent installments, made in their respective designated periods may be drawn against and drafts accepted and paid;

(d) that the Bank may accept or pay, as complying with the terms of the Credit, any drafts or other documents otherwise in order which may be signed or issued by the administrator, executor, trustee in bankruptcy, debtor in possession, custodian, assignee for benefit of creditors, liquidator, receiver or other legal representative of the party who is authorized under the Credit to draw or issue any drafts or other documents;

(e) that without limiting any other provisions of this agreement, the Bank and any of its correspondents may accept documents of any character which comply with the provisions, definitions, interpretations and practices contained in "The Uniform Customs and Practice for Commercial Documentary Credits" of the International Chamber of Commerce, and any amendments or revisions, or which comply with the laws or regulations in force in, and customs and usages of, the place of negotiation;

(f) that in the event of any extension of the maturity or time for negotiation or presentation of drafts, acceptances or documents or any other modification of the terms or provisions of the Credit at the request or with the consent of the Customer or in the event of any increase in the amount of the Credit at the request of the Customer, this agreement shall be binding upon the Customer with regard to

(1) the Credit as increased or otherwise modified,

(2) drafts, documents and property covered by the Credit, and

(3) any action taken by the Bank or any of its correspondents in accordance with the extension, increase or other modification;

(g) that the Bank and/or any of its correspondents may accept or pay any draft dated on or before the expiration of any time limit expressed in the Credit, regardless of when drawn and when or whether negotiated, provided the other required documents are dated prior to the expiration date of the Credit.

6. *Responsibility of issuer.* That neither the Bank nor any of its correspondents shall be responsible for, and the Customer's obligation to reimburse the Bank shall not be affected by:

(a) the existence, character, quality, quantity, condition, packing, value or delivery of the property purporting to be represented by the documents;

(b) any difference in character, quality, quantity, condition or value of the property from that expressed in the documents;

(c) the validity, sufficiency or genuineness of documents or of any indorsements, even if any documents should in fact prove to be in any and all respects invalid, insufficient, fraudulent or forged;

(d) the time, place, manner or order in which shipment is made;

(e) the character, adequacy, validity or genuineness of any insurance or any other risk connected with insurance;

(f) any deviation from instructions, delay, default or fraud by the shipper and/or anyone else in connection with the property or the shipping;

(g) the solvency, responsibility or relationship to the property of any party issuing any documents in connection with the property;

(h) delay in arrival or failure to arrive of either the property or any of the documents;

(i) delay in giving, or failure to give, notice of arrival or any other notice;

(j) any breach of contract between the shipper or vendor and the consignee or buyer or the Customer or any of them;

(k) failure of any draft to bear any reference or adequate reference to the Credit;

(l) failure of documents to accompany any draft at negotiation;

(m) failure of any person to note the amount of any draft on the reverse side of the Credit or to surrender or take up the Credit or to send forward documents apart from drafts as required by the terms of the Credit each of which provisions, if contained in the Credit itself, it is agreed may be waived by the Bank;

(n) errors, omissions, interruptions or delays in transmission or delivery of any message by mail, cable, telegram, telex, messenger service, teletransmission, or otherwise, whether or not they be in cipher or scrambled;

(o) errors in translation or errors in interpretation of technical terms;

(p) any act, error, neglect or default, omission, insolvency or failure in business of any correspondent or for any consequences arising from causes beyond your control.

(q) In furtherance and extension of these specific provisions the Customer agrees that any action taken or omitted by the Bank or its correspondent under or in connection with the Credit or the relative drafts, documents or property if done in good faith, shall be binding on the Customer and shall not put the Bank or its correspondent under any resulting liability to the Customer.

In case of any variation between the documents called for by the Credit or instructions of the Customer and the documents accepted by the Bank or its correspondents, the Customer shall be conclusively deemed to have waived any right to object to such variation with respect to any action of the Bank or its correspondents relating to such documents and to have ratified and approved such action as having been taken on the direction of the Customer, unless the Customer immediately upon receipt of such documents or acquisition of knowledge of such variation files objection with the Bank in writing. The Bank and its correspondent shall not be liable for any failure by the Bank or anyone else to pay or accept any draft or acceptance under this Credit or for any loss or damage resulting from any censorship, law, control or restriction rightfully or wrongfully exercised by any de facto or de jure domestic or foreign government or agency thereof, declared or undeclared war, or from any other cause beyond the Bank's or its correspondent's, agent's or sub-agent's control, and the Customer agrees to indemnify and hold the Bank harmless from any claim, loss, liability or expense arising by reason thereof.

7. License, compliance, and insurance.

(a) The Customer agrees to procure promptly any necessary import, export, or other license for the importing, exporting, shipping or warehousing of any property shipped under, pursuant to or in connection with the Credit or covered by any document held by the Bank or its correspondent relative to any draft(s) accepted by the Bank or included in the Collateral, and to comply with all foreign and domestic laws and governmental regulations in regard to the shipment and/or warehousing and/or the financing of the Collateral, and to furnish such instruments in that respect as the Bank may at any time require.

(b) Unless the Credit provides for presentation of insurance policy(ies) or certificate(s) in negotiable form covering property shipped under, pursuant to or in connection with the Credit, the Customer agrees to keep the property, and, in any event, to keep all property covered by documents released by the Bank to the Customer in trust, or included in Collateral, and the Bank's interest therein, fully insured against loss by fire, theft, damage or any other risk to which the property may be subject, by policies or insurance certificates which shall provide that the loss, if any, shall be payable to the Bank or to the Bank's order as its interest may appear and to deposit the insurance certificates or policies with the Bank upon the Bank's demand. If any of the policies or certificates procured by the Customer fail to provide for payment of a loss which the parties intend to be covered, the Customer shall, and by this agreement does, make the loss payable to the Bank under any of the policies or certificates, and assigns to the Bank all the claims and proceeds of any and all of the policies or certificates, and agrees to accept the claims and proceeds of all insurance policies and certificates as the Bank's agent and to hold same in trust for the Bank, and to forthwith deliver the same to the Bank in the exact form received, with the Customer's indorsement where necessary, and the Bank or any of its officers are irrevocably empowered, with power of substitution and revocations, to indorse any check in the name of the Customer received in payment of any loss or adjustment.

(c) The Customer agrees to reimburse the Bank upon demand in the event that the Bank or its correspondent pay for or incur any expense or liability in connection with any of the foregoing matters.

(d) The Customer agrees to reimburse the Bank for all costs and expenses of every kind incurred or incidental to the care, safekeeping or otherwise of any and all property shipped under, pursuant to, or in connection with the Credit.

8. *Obligations.* The Customer recognizes and admits the Bank's unqualified right to the possession and disposition of all property shipped under or pursuant to or in connection with the Credit or in any way relative to it or to the drafts drawn under it, and in and to all shipping documents, warehouse receipts, policies or certificates of insurance and other documents or instruments accompanying or relative to drafts drawn under the Credit and in and to the proceeds of each and all of the foregoing, all to be held by the Bank subject to all terms of this agreement as collateral security for the prompt and unconditional payment of any and every obligation and liability of the Customer to the Bank and its claims of every nature and description against the Customer, whether or not represented by negotiable instruments or other writings, whether now existing or hereafter incurred, originally contracted with the Bank and/or with another or others and now or hereafter owing to or acquired in any manner by the Bank, whether contracted by the Customer alone or jointly or severally with another or others, direct or indirect, absolute or contingent, secured or not secured, matured or not matured (all of the foregoing being called "Obligations").

9. *Trust receipts.* In the event that any property and/or documents held by the Bank or for the Bank's account is released by the Bank to or upon the order of the Customer in trust, the Customer will sign and deliver to the Bank trust receipts and/or statements of trust receipt financing and will pay all required filing fees, and upon the Customer's failure to do so the Bank is authorized as the agent of the Customer to sign any such receipts and/or statements. Upon any transfer, delivery, surrender or indorsement to the Customer, or upon the Customer's request, of any bill of lading, warehouse receipt or other documents at any time held by the Bank or held for account of the Bank by any of its correspondents relative to any drafts drawn hereunder, the Customer will indemnify and hold the Bank harmless from and against claims, demands or actions which may arise against the Bank or any correspondent by reason thereof.

10. *Collateral.* In order to further secure the payment of the Obligations, the Customer agrees to pledge, transfer and deposit with the Bank such property or to make such payment as shall be satisfactory to the Bank. The Bank is given and granted a continuing security interest, to secure payment of all Obligations, in any and all property of the Customer in the Bank's actual or constructive possession or in transit to the Bank or its correspondents or agents from or for the Customer and in proceeds, whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into the Bank's possession in any way, or placed in any safe deposit box leased by the Bank to the Customer. The Bank is also granted and given a continuing security interest and/or right of set-off for the amount of the Obligations upon or with respect to any and all deposits (general or special) and credits of the Customer with, and any and all claims of the Customer against the Bank at any time existing; and the Bank is authorized at any time or times, without prior notice, to apply such deposits or credits, or any part of them, to the Obligations and in such amounts as the Bank may select, although contingent and although unmatured, and whether the collateral security is deemed adequate or not. (All of the foregoing, together with the property described in paragraphs 7 and 8, as well as any property now or hereafter pledged, assigned and transferred to or deposited with the Bank or its agents by the Customer to secure the Obligations are collectively called "Collateral.") If the Customer, as registered holder of Collateral, shall become entitled to receive or does receive any stock certificate, option or right, whether as an addition to, in substitution of, or in exchange for, the Collateral, or otherwise, the Customer agrees to accept same as the Bank's agent and to hold same in trust for the Bank, and to forthwith deliver the same to the Bank in the exact form received, with the Customer's indorsement when necessary, to be held by the Bank as Collateral.

11. *Dealings with obligations and collateral.* The Customer consents that, without the necessity for any reservation of rights against the Customer and without notice to or further assent by the Customer, the liability of any party for or upon Obligations or Collateral may from time to time, in whole or in part, be renewed, extended, modified, accelerated, compromised, settled for cash, credit or otherwise and upon any terms or conditions the Bank may deem advisable and that the Bank may discharge or release any other party from all liabilities and that any collateral security for any of the Obligations may from time to time, in whole or in part, be exchanged, sold or surrendered by the Bank all without in any way affecting or releasing the liability of the Customer on the Obligations. The Bank shall not be liable for any failure to collect or demand payment of or protest or give any notice of nonpayment of Collateral or any part of it or for any delay in so doing, nor shall the Bank be under any obligation to take any action whatsoever with respect to Collateral or any part of it. The Bank shall have no obligation to comply with any recording, re-recording, filing,

re-filing or other legal requirement necessary to establish or maintain the validity, priority or enforceability of, or the Bank's rights in and to, Collateral, or any part of it.

12. *Right to collateral.* The Bank may exercise any right of the Customer with respect to any Collateral. In any statutory or nonstatutory proceeding, affecting the Customer or Collateral, the Bank or its nominee may, whether or not a default exists and regardless of the amount of Obligations, file a proof of claim for the full amount of any Collateral and vote such claim for the full amount thereof:

(a) for or against any proposal or resolution;

(b) for a Trustee or Trustees, a Custodian or Custodians, or for a Committee of Creditors;

(c) for the acceptance or rejection of any proposed arrangement, plan of reorganization, wage earners' plan, composition or extension. The Bank or its nominee may receive any payment or distribution and give a release and may exchange or release Collateral. Any Collateral held by the Bank, may without notice and whether or not a default exists, be registered and held in the Bank's or its nominee's name. The Bank may indorse the Customer's name on any and all notes, checks, drafts, bills of exchange, money orders or commercial paper included in the Collateral or its proceeds.

13. *Default and acceleration.* If the Customer shall fail to perform any agreement contained in this agreement or contained in any security document or other agreement delivered by the Customer to the Bank or if the Customer defaults in the punctual payment of any sum payable upon Obligations or Collateral, or upon the happening with respect to the Customer, an indorser or guarantor, or any of them of any of the following: the commencement of any proceeding, suit or action (at law or in equity) for reorganization, dissolution or liquidation; inability to meet obligations of any kind as they become due; suspension or liquidation of their usual business; insolvency; the filing of a petition under any of the provisions of the Bankruptcy Act or amendments thereto; dissolution (if the Customer is a partnership or corporation); application for, or appointment of, a conservator, trustee, custodian, or receiver of any of them or their property in any jurisdiction; death; issuance of an injunction or a warrant of attachment; entry of a judgment; failure to pay any tax when due; the making of any tax assessment by the United States or any state; the calling of a meeting of creditors; appointment of a committee of creditors or liquidating agent; offering a composition or extension to creditors; assignment for benefit of creditors; making or sending notice of an intended bulk sale; failure after demand to furnish any financial information or to permit the inspection of books or records of account; the making of any misrepresentation to the Bank for the purpose of obtaining credit or an extension of credit; or if at any time in the Bank's sole opinion the financial responsibility of any of them shall become impaired or unsatisfactory to the Bank, then in any of those events all of the Obligations, although not yet due, shall, without notice or demand, forthwith become and be immediately due and payable, notwithstanding any time or credit otherwise allowed under any of the Obligations or under any instrument evidencing the same.

Upon the happening of any of the events of default, the Bank may, without demand of performance, advertisement or notice of intention to sell or of the time or place of sale or to redeem or other notice of demand whatsoever to or upon the Customer or any other person (all and each of which are waived), forthwith collect, receive, appropriate and realize upon the Collateral or any part thereof and/or sell, assign, give option or options to purchase and deliver the Collateral or any part of it in one or more parcels at public or private sale or sales, at any exchange, broker's board or at your offices or elsewhere, at such prices as the Bank may deem best, for cash, or credit, or for future delivery, without assumption of any credit risk, with the right of the Bank upon any such sale or sales, public or private, to purchase the whole or any part of the Collateral so sold, free from any right or equity of redemption in the Customer, which right or equity is waived and released.

The Bank may apply the net proceeds of any collection, receipt, appropriation, realization or sale after deducting all costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of the Collateral or in any way relating to the Bank's rights hereunder, including counsel fees, to the payment in whole or in part, in such

order as the Bank may elect, of one or more of the Obligations, whether then due or not due, absolute or contingent, and accounting for the surplus, if any, to the Customer who shall remain liable to the Bank for the payment of any deficiency with current interest.

14. *Notices and demands.* Any notice to or demand on the Customer shall be deemed effective if not first otherwise made or given when forwarded by mail, telegraph, telex, messenger service, telephone or otherwise to the last address or telephone number of the Customer appearing on the Bank's books with the same effect as if the same were actually delivered to and received by the Customer in person.

15. *Waiver.* The Bank shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies and no waiver shall be valid unless in writing, signed by the Bank, and then only to the extent set forth. A waiver by the Bank of any right or remedy on any one occasion shall not be construed as a bar to any right or remedy which the Bank would otherwise have on any future occasion.

16. *Prohibition against oral changes or modifications.* No term or provision of this agreement can be changed orally and no executory agreement shall be effective to change or modify or to discharge in whole or in part this agreement unless such executory agreement is in writing and signed by the Bank.

17. *Rights and remedies.* All rights and remedies of the Bank shall be cumulative and may be exercised singly or concurrently.

18. *Acceptances.* In the event that the Bank or its correspondent, at the request of the Customer, extends, renews or refinances any of the obligations of the Customer to the Bank, arising under paragraphs 1 and 2, by means of (a) Bankers Acceptances created by the acceptance of drafts drawn by the Customer on the Bank or its correspondent, (b) drafts, drawn by the beneficiary of the Credit, accepted by the Bank or its correspondent, (c) notes made by the Customer, or (d) in the event that the Bank further extends, renews, or refinances, from time to time, any such Bankers Acceptance, draft or note, the Customer agrees to pay to the Bank the amount of each Bankers Acceptance or draft in the manner provided in paragraphs 1 and 2 for the payment of time drafts drawn under the Credit, or, if a note is involved, then in the manner provided in the note. The Customer further agrees that with respect to any such extension, renewal or refinancing, all of the terms, conditions, agreements and obligations contained in this agreement shall apply and that the Bank shall have all the rights and remedies set forth in this agreement as well as those set forth in any other document signed by or on behalf of the Customer.

19. *Definition of property.* The word "property," as used in this agreement, includes goods, merchandise, documents, securities, funds, choses in action and any and all forms of property, whether real, personal or mixed, and any right or interest therein and the proceeds thereof. Property in the Bank's possession shall include property in possession of any one for the Bank in any manner whatsoever.

20. *Joint and several agreements.* If the Customer is a partnership, the members shall be individually bound and liable hereunder. If this agreement is signed by two or more parties, it shall be the joint and several agreement of such parties.

21. *Presentation of drafts.* If the Credit issued by the Bank will provide that it will be available by presentation to the Bank or to its correspondents of the documents described in the application, unaccompanied by drafts, the Customer agrees that all reference herein to drafts, documents relative to drafts, and the presentation, acceptance for payment or payment of drafts shall refer to documents presented for payment without drafts, their presentation and acceptance, and payment upon such presentation, and that the Customer's obligations and the Bank's rights, privileges and remedies shall be the same as though payments had been made upon presentation of drafts drawn under the Credit accompanied by the said documents.

22. *Enforcement expenses.* The Customer will bear and pay all expenses of every kind for the enforcement of any of the

Bank's rights herein mentioned or of any claim or demand by the Bank against the Customer and the Customer will pay to the Bank any such expenses incurred by the Bank. If an attorney is used to collect or enforce the Obligations or to enforce, declare or adjudicate any rights or obligations under this agreement, or with respect to the Obligations or Collateral, whether by suit or any other means whatsoever, an attorney's fee of _____ percent of the principal and interest then due shall be payable by the Customer. The Customer, in any litigation (whether or not arising out of or relating to this agreement or to any Obligations) in which the Bank and the Customer shall be adverse parties, waives trial by jury and the right to interpose any defense, set-off or counterclaim of any nature or description.

23. Definition of Bank and Customer. The term "Bank," as used throughout this agreement shall be deemed to include the _____ [name of issuer] and all its branches and departments and any individual, partnership or corporation acting as nominee or agent for the _____ [name of issuer] and any corporate subsidiary of the _____ [name of issuer], the stock of which is owned directly or indirectly by the _____ [name of issuer]. The term "Customer," as used throughout this agreement, shall include the individual or individuals, association partnership or corporation named herein as "Customer," and including:

- (a) any successor individual or individuals, association, partnership or corporation to which all or substantially all of the business or assets of the Customer shall have been transferred,
- (b) in case of a partnership, any new partnership which may be created by reason of the admission of any new partner or partners or the dissolution of the existing partnership by death, resignation or other withdrawal of any partner, and
- (c) in the case of a corporation, any other corporation into or with which the Customer may be merged, consolidated, reorganized or absorbed.

24. Construction. This agreement shall be construed in accordance with the laws of the State of _____.

25. Additional rights. The Bank's rights specified in this agreement are in addition to those otherwise existing or created.

26. Certification. The Customer certifies that the merchandise to be shipped under this Credit is not prohibited under the regulations of the United States Treasury Department and that any importation covered by this agreement conforms in every respect with all existing United States Government regulations.

27. Separability of provisions. Any provision of this agreement which may prove unenforceable under any law shall not affect the validity of any other provision.

THIS CREDIT SHALL BE SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 600.

Secretary of Applicant

.....

Bank Officer



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37TTT-7 California Legal Forms--Transaction Guide Form T7-4

Form T7-4 Irrevocable Standby Letter of Credit

Description: This form is an irrevocable standby letter of credit. A "standby" letter of credit, also known as a "bank guarantee," is used to secure the obligation of a party in a transaction. This form is based on an irrevocable standby letter of credit provided with the permission of the copyright owner, Bank of America N.T. & S.A.

Form T7-4 Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

_____ [name of issuing bank] Bank

L/C No. _____

Place of Issuance: _____

Date of Issuance: _____

Applicant

_____ [name]

_____ [address]

_____ [city, state, zip, country]

Advising Bank

_____ [name]

_____ [address]

_____ [city, state, zip, country]

Reference No. _____

Beneficiary

_____[name]
_____[address]
_____[city, state, zip, country]

Date and Place of Expiration: _____

Amount: _____

Sir or Madam:

As the request of _____[name and address of applicant], we hereby establish our Irrevocable Letter of Credit in your favor up to an aggregate amount of _____[amount], U.S. DOLLARS, to expire at our counters on _____[date]. This letter of credit is available for payment against your draft(s) at sight drawn on _____[name of issuing bank], accompanied by this original Standby Letter of Credit and the following documents:

[*E.g.*, A letter from beneficiary certifying that applicant has failed to perform as required under contract.]

We agree with you that all draft(s) drawn under and in compliance with this letter of credit will be honored on presentation to us as specified in this letter.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600. The number and the date of the credit and the name of our bank must be quoted on all drafts required.

Please examine this instrument carefully. If you are unable to comply with the terms or conditions, please communicate with your buyer to arrange for an amendment. This procedure will facilitate prompt handling when documents are presented.

_____[signature]

Authorized signature

_____[signature]

Authorized countersignature



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*37TTT-7 California Legal Forms--Transaction Guide Form T7-5***Form T7-5 Confirmed Irrevocable Credit**

Description: This form is often used extensively in commercial transactions where the buyer and seller operate in markets foreign to each other a business loan; it sets out the terms between borrower and lender.

Form T7-5 Confirmed Irrevocable Credit

_____ [name of confirmer]
 _____ [confirmer's street address]
 _____ [confirmer's city, state, and zip code]
 _____ [date]

Confirmed Letter of Credit No. _____ [issuer's reference number for the letter of credit]

Confirmed Credit No. _____

Available in: _____ [city], _____ [state or province], _____
 [country] _____ [city of issuer], _____ [country of issuer]

To: _____ [name of beneficiary]
 _____ [beneficiary's street address]
 _____ [beneficiary's city, state, zip code]

Gentlemen and Ladies:

_____ [name of issuer], _____ [issuer's city], _____ [issuer's country], has instructed us to advise you that it has opened its irrevocable Letter of Credit in your favor available in the following manner and on the following terms:

1. *Drafts.* Your drafts drawn on us at sight which must be negotiated on or before _____ [date], and each of which must state upon its face, "Drawn under Letter of Credit No. _____ [issuer's reference number for this letter of credit] dated _____ [date of the letter of credit] of _____ [name of issuer]," and "under Confirmed Credit of the _____ [name of

confirmer] No. _____ [confirmer's number for this confirmation], dated _____ [date of confirmation]."

2. *Total.* The sum or sums of all drafts drawn under the Letter of Credit must not exceed in total \$_____ .

3. *Purpose.* The Credit is available and drafts must be drawn under it for the account of _____ [name of applicant], _____ [applicant's city], _____ [applicant's country], for _____ [goods purchased by the applicant from the beneficiary] with an invoice cost of \$_____ to be shipped from _____ [city] to _____ [city], _____ [country], with insurance to be effected by the buyer.

4. *Documents.* Drafts when presented for negotiation must be accompanied by commercial invoices, special customs invoices, and bills of lading which are made to the order of _____ [name of confirmer] and dated on or before _____ [date].

5. *Rules applicable.* The Letter of Credit and this Confirmation, except as otherwise expressly provided, incorporate the provisions of the "Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Pamphlet No. 600."

6. *Confirmation.* We confirm the Letter of Credit and undertake that all drafts drawn and presented as specified will be duly honored by us.

Very truly yours,

_____ [name of confirmer]
_____ [title]



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37TTT-7 California Legal Forms--Transaction Guide Form T7-6

Form T7-6 Commercial Documentary Letter of Credit

Description: This form is a commercial documentary letter of credit. The form is a typical letter of credit for an import-export transaction involving the sale of goods. This form is based on a letter of credit provided with the permission of the copyright owner, Bank of America N.T. & S.A.

Form T7-6 Commercial Documentary Letter of Credit

_____ [IRREVOCABLE *or* REVOCABLE] LETTER OF CREDIT

_____ [name of issuing bank] Bank

L/C No. _____

Place of Issuance: _____

Date of Issuance: _____

Applicant

_____ [name]

_____ [address]

_____ [city, state, zip, country]

Advising Bank

_____ [name]

_____ [address]

_____ [city, state, zip, country]

Reference No. _____

Beneficiary

37TTT-7 California Legal Forms--Transaction Guide Form T7-6

_____ [name]
 _____ [address]
 _____ [city, state, zip, country]

Date and Place of Expiration: _____

Amount: _____

Credit available with any bank by: [e.g., negotiation, sight payment, deferred payment, or acceptance] against presentation of the documents listed below and your drafts at sight, drawn on _____ [name of bank].

Partial Shipment:

_____ Allowed _____ Not Allowed

Transshipments:

_____ Allowed _____ Not Allowed

Shipment from _____ [originating port] for transportation to _____ [destination port].

Shipment latest _____ [date]

Merchandise Description:

[100,000 lbs. Almond Nuts, packed in 50 lb. new gunnybags, 1993 crop @ U.S. \$1.00 per lb.
 CIF San Francisco/Bay Area, California, USA]

Documents Required:

1. Signed Commercial Invoice in triplicate.
2. Marine and War Insurance Policy or Certificate for 110 percent invoice value in duplicate.
3. Certificate of origin, Form A where applicable or beneficiary's certificate that none is required.
4. Packing List.
5. Full set original clean on board vessel Ocean Bill of Lading, to order of shipper, blank endorsed, marked: "Notify _____ [name and address of buyer and customs clearing agent] and freight prepaid."

Documents must be presented within 5 days after the date of issuance of the shipping document(s) but within the validity of the credit.

We hereby issue this documentary credit in your favor. It is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600, and engages us in accordance with its terms. The number and the date of the credit and the name of our bank must be quoted on all drafts required. If the credit is available by negotiation, each presentation must be noted on the reverse of this advice by the bank where the credit is available.

All documents are to be forwarded in one cover, by airmail, unless otherwise stated above. Negotiation bank charges, if any, are for account of beneficiary. The advising bank is requested to notify the credit to the beneficiary without adding

their confirmation.

Please examine this instrument carefully. If you are unable to comply with the terms or conditions, please communicate with your buyer to arrange for an amendment. This procedure will facilitate prompt handling when documents are presented.

This document consists of _____ [number] signed pages.

_____ [signature]

Authorized signature

_____ [signature]

Authorized countersignature



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37TTT-7 California Legal Forms--Transaction Guide Form T7-7

Form T7-7 Revocable Letter of Credit

Description: This form illustrates a revocable letter of credit, with language discussing drafts, the underlying contract, documents, issuer's obligations, and applicable rules.

Form T7-7 Revocable Letter of Credit

FORM

_____ [name of issuer]
 _____ [issuer's street address]
 _____ [issuer's city, state, zip code]
 _____ [date]

Revocable Credit No. _____
 [issuer's reference number for this letter of credit]

Not transferable

_____ [beneficiary's name]
 _____ [beneficiary's street address]
 _____ [beneficiary's city, state, zip code]

Ladies and Gentlemen:

We hereby open our revocable credit in your favor available on the following terms and in the following manner:

1. *Drafts.* Your drafts drawn on _____ [name of issuer] at 60 days' sight, for any sum or sums not

exceeding in total \$ _____, each of which must state upon its face, "Drawn under Letter of Credit No. _____ [issuer's reference number for this letter of credit] dated _____ [date of the letter of credit] of _____ [name of issuer]."

2. *Underlying contract.* This Credit is made available and drafts hereunder must be drawn for the account of the _____ [name of applicant], _____ [applicant's city], _____ [applicant's state] for the invoice cost of _____ [type of goods purchased by the applicant from the beneficiary] shipped from _____ [city], _____ [state] to _____ [city], _____ [state] during the month of _____ [date] with insurance to be effected by you.

3. *Documents.* Drafts when presented for negotiation must be accompanied by bills of lading and warehouse receipts which are drawn to the order of _____ [name of issuer] and dated not later than _____.

4. *Issuer's obligation.* This is a revocable Credit and may be modified or revoked at any time without your consent. We agree with any person authorized to honor or negotiate drafts under this Credit to reimburse that person for drafts duly honored or negotiated before that person receives notice of any modification or revocation; and we agree with any drawer, endorser, and good faith holder to duly honor drafts properly drawn and negotiated under this Credit in compliance with its original terms or, if modified, only with its modified terms, but not revoked in either case.

5. *Rules applicable.* This Credit, except as otherwise expressly provided, is governed by the Uniform Commercial Code on the date hereof in the State of _____.

Yours truly,

_____ [name of issuer]

by

_____, Title

_____ [date]



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*37TTT-7 California Legal Forms--Transaction Guide Form T7-8***Form T7-8 Application for Amendment to Letter of Credit**

Description: This form is an application for an amendment of a letter of credit. It may be used to amend an error in the original letter of credit.

Form T7-8 Application for Amendment to Letter of Credit

APPLICATION FOR AMENDMENT TO _____ [COMMERCIAL *or* STANDBY] LETTER OF CREDIT

Location: _____; _____ [date]

To: _____ [name of issuing bank]

I request you to amend by Airmail Teletransmission the [irrevocable *or* revocable] Documentary Letter of Credit No. _____.

For Account of (Applicant)

_____ [name]

_____ [address]

_____ [city, state, zip, country]

In Favor of (Beneficiary)

_____ [name]

_____ [address]

_____ [city, state, zip, country]

Please amend this credit as follows: [*give complete and precise details of desired amendment*].

I understand that this amendment is subject to acceptance by the beneficiary. All other terms and conditions of the Letter of Credit remain unchanged.

The issuer agrees to the amendment described above.

_____ [name of issuer]
By _____ [signature]
_____ [typed name and title]
_____ [name of applicant]
By _____ [signature]
_____ [typed name and title]



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37TTT-7 California Legal Forms--Transaction Guide Form T7-9

Form T7-9 Transfer of a Letter of Credit

Description: This form is used to transfer the beneficiary's right to draw or demand payment under the letter of credit.

Form T7-9 Transfer of a Letter of Credit

Transfer of a letter of credit

For valuable consideration, receipt acknowledged, the assignor and Beneficiary transfers to _____ [name of transferee], _____ [transferee's address], the attached irrevocable Letter of Credit No. _____ [issuer's reference number] issued by the _____ [name of the issuer] dated _____ [date of the letter of credit], in accordance with an agreement of _____, _____ [date of the transfer agreement]. _____ [name of transferee] agrees to fulfill the terms and conditions of the letter of credit to the extent provided in that agreement.

Dated: _____ [city], _____ [state]
 _____ [date]

 Beneficiary/Transferor



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*37TTT-7 California Legal Forms--Transaction Guide Form T7-10***Form T7-10 Guaranty Letter of Credit--Conditioned on Default in Promissory Note**

Description: This form provides that payment will be made upon submission of specified written evidence that the bank's customer is in default on the underlying obligation.

Form T7-10 Guaranty Letter of Credit--Conditioned on Default in Promissory Note--Customer Credit Agreement

(1) Customer agreement with the issuer for a letter of credit

AGREEMENT made _____ [date], by and between _____ [name of applicant], a business corporation organized under the laws of the State of _____, and _____ [name of issuer], a national banking association organized and existing under the laws of the United States (the "Bank").

The parties agree as follows:

Article I. General Terms

1.01. *Amount of credits.* _____ [name of applicant] has requested that the Bank issue letters of credit ("Credits") in the form attached as Exhibit A, in a total amount outstanding not to exceed \$_____ at any one time (the "Bank's Commitment") plus the total amount, not to exceed \$_____, of all Participating Bank Commitments, and the Bank has agreed to issue the Credits subject to all the terms and conditions of this agreement. Each Credit shall be attached to certain commercial paper of _____ [name of applicant] known as documented discount notes (the "Discount Notes"), which shall be issued through _____ [name of note issuer] of _____ [city and state] in denominations of not less than \$_____ and with maturities at the time of issuance not exceeding 270 days (exclusive of days of grace). Upon issuance by the Bank, the Credits shall be irrevocable and transferable. The obligation of the Bank to issue Credits in excess of a total of \$_____ outstanding at any time is subject to the condition that there shall

be in effect at the time of such issuance, Participation Agreements between the Bank and other banks or lending institutions (the "Participating Banks") substantially in the form of Exhibit B attached, pursuant to which each Participating Bank agrees to participate up to a specified amount (the "Participating Bank's Commitment") in each Credit and loan to be made under this agreement.

1.02. *Payment on credits.* The Bank shall pay on sight any draft drawn in the principal amount of any Credit attached to the Discount Note upon presentation of it by any holder to the Bank of the following documents:

- (a) the Credit;
- (b) the Discount Note attached to the Credit; and
- (c) the signed statement of the drawer of the draft to the effect that he is the holder of the Discount Note, that the Discount Note was duly presented for payment and was not paid when due, that there is due and payable to the holder an amount not less than the amount of the draft, and that the Discount Note accompanying the draft is the Discount Note described in the accompanying Credit. Drafts must also specify the identification number of the accompanying Credit.

1.03. *Examination of drafts and documents.* The Bank will examine drafts and any documents called for by this agreement and by the Credits so as to ascertain that on their face they appear to comply with the terms of this agreement. The Bank assumes no liability or responsibility for the genuineness, falseness, falsification, or effect of any document, signature or endorsement which appears on such examination to be regular on its face.

1.04. *Expiration of credits.* Drafts drawn under any Credit must be presented at the Bank no later than the fifth business day after maturity of the accompanying Discount Note, after which time the Credit related to the Discount Note shall expire.

1.05. *Termination of letter of credit agreement.* The obligation of the Bank to issue Credits shall continue in effect until:

- (a) the Bank has given notice to _____ [name of applicant] terminating its obligations on account of the occurrence of any event of default described in Article VI;
- (b) in the absence of any such event of default, 180 days after notice by the Bank to _____ [name of applicant] of its desire to terminate this agreement, which notice shall not be given prior to the expiration of one year from the date of this agreement; or
- (c) _____ [name of applicant] has given notice to the Bank of its intention to terminate this agreement (which notice shall not be given prior to the expiration of one year from the date of this agreement).

In no event shall the termination of the Bank's obligation to issue Credits affect its liability under issued and outstanding Credits or _____ [name of applicant] obligations to issue Notes pursuant to Section 1.08.

1.06. *Reduction of amount of credits available.* During the term of this agreement, the Bank's obligation to issue Credits up to a total amount in excess of \$_____ outstanding at any time shall be reduced by the amount and at the time described below:

(a) By the amount of any Participating Bank's Commitment:

(i) Upon the termination by such Participating Bank of its Participation Agreement with the Bank as a result of a default by _____ [name of applicant] under this agreement;

(ii) 180 days after notice of the termination of the Participating Bank's Participation Agreement with the Bank shall have been given by either the Bank or the Participating Bank to the other party to the Participation Agreement, which notice shall not be given until after the expiration of one year from the date of this agreement; or

(iii) Upon the breach by the Participating Bank of any of its obligations under its Participation Agreement with the Bank.

The Bank shall give prompt notice to _____ [name of applicant] of any event described in this Section 1.06 giving rise to a reduction in the amount of Credits available under this agreement. Nothing contained in this Section 1.06 shall in any way affect the Bank's liability under issued and outstanding Credits.

1.07. *Fees.* Within five business days following the end of each calendar month, as long as any Credits shall be issued and outstanding, _____ [name of applicant] shall pay to the Bank at its Main Office a fee calculated at the rate of 1 percent per annum on the average daily amount of Credits outstanding during the preceding month.

1.08. *Issuance of notes, interest.* On the date of each payment which the Bank shall make or cause to be made to the holder of any Discount Note pursuant to any Credit, _____ [name of applicant] shall issue to the Bank a demand promissory note (the "Note" or "Notes"), in the principal amount of the payment in the form of Exhibit C attached, bearing interest at an annual rate (the "Interest Rate") equal to _____ percent of the large corporation prime rate of interest of the Bank from time to time applicable to commercial loans which Interest Rate shall change when and as said large corporation prime rate changes. Interest payable on the Notes shall be in addition to the fees payable with respect to outstanding Credits.

Article II. Representations and Warranties

_____ [name of applicant] represents and warrants to the Bank (which representations and warranties shall survive the execution and delivery of this agreement) that:

2.01. *Audit.* _____ [name of applicant] has furnished to the Bank a statement of financial condition of _____ [name of applicant] as of _____ [date] and _____ [date] and related statements of income, shareholders' equity and changes in financial position for the period from _____ [date] (date operations commenced) through _____ [date], audited by _____, Certified Public Accountants. These statements have been prepared in accordance with generally accepted principles of accounting applied on a basis consistent with that of preceding periods and are complete and correct and fairly present the financial condition of _____ [name of applicant] and the results of its operations for the period shown. To the best of _____ [name of applicant]'s knowledge and belief, _____ [name of applicant] does not have any contingent obligations, liabilities for taxes or unusual forward or long-term commitments except as specifically mentioned in the financial statements. Since _____ [date], there has been no material adverse change in the financial condition of _____ [name of applicant].

2.02. *Powers.* _____ [name of applicant] (a) is duly organized, validly existing and in good standing and is a duly established corporation under the laws of the State of _____, (b) has the power and authority to own its properties and to carry on business as now being conducted and is qualified to do business in every jurisdiction where qualification is necessary and (c) has the power to execute and deliver this agreement and to borrow under it and to execute and deliver the Notes.

2.03. *Validity.* The execution and performance by _____ [name of applicant] of the terms and provisions of this agreement and any borrowing under it and the execution and delivery of the Notes have been duly authorized by all requisite action, and neither the execution and performance of this agreement, nor any borrowing under it and the execution and delivery of the Notes will violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation or By Laws of _____ or any indenture, agreement or other instrument to which it is a party, or by which it is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this agreement, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of _____ [name of applicant] pursuant to, any such indenture agreement or instrument.

2.04. *Suits.* Except as set forth in Schedule A attached, there is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of _____ [name of applicant], threatened against or affecting _____ [name of applicant] which, adversely determined, would have a material adverse effect on the business operations, properties, assets or condition, financial or otherwise, of _____ [name of applicant].

2.05. *Defaults.* _____ [name of applicant] is not a party to any agreement or instrument or subject to any charter or other restriction adversely affecting its business, properties or assets, operations or conditions, financial or otherwise. _____ [name of applicant] is not in default in the performance, observance or fulfillment of any obligation, covenant or condition contained in any agreement or instrument to which it is a party.

2.06. *Taxes.* _____ [name of applicant] has duly filed all tax returns and reports required by law to be filed, and all taxes, assessments, fees, and other governmental charges upon the corporation, its properties, assets, income, or franchises, which are due and payable, have been paid, other than those presently payable without penalty or interest. The charges, reserves, and accruals on the books of the corporation with respect to taxes for all fiscal periods to date are adequate. The corporation knows of no unpaid assessments for additional taxes.

Article III. Conditions of Issuing the Credits

The obligation of the Bank to issue Credits is subject to the following conditions precedent:

3.01. *Conditions.* The representations and warranties set forth in Article II shall be true and correct on and as of the date of this agreement.

3.02. *Certifications.* _____ [name of applicant] executed and delivered to the Bank, upon the execution of this agreement, the following:

(a) A certificate of the Secretary of _____ [name of applicant] certifying to the resolution of the Board of Directors of _____ [name of applicant] authorizing the execution and delivery of this agreement and the Notes.

(b) The Articles of Incorporation and By Laws of _____ [name of applicant] certified by the Secretary

of _____ [name of applicant] as being true and complete on and as of the date of this agreement.

(c) A signed copy of a certificate of a duly authorized officer of _____ [name of applicant] which shall certify the names of the officers of _____ [name of applicant] authorized to sign this agreement and the Notes, together with the true signature of such officers.

(d) Such other supporting documents as the Bank may reasonably request.

3.03. *Experts.* The Bank shall have received the favorable written opinion of _____ [name of applicant], dated the date of this agreement, satisfactory to the Bank and its counsel, in scope and substance, (i) with respect to the matters set forth in Section 2.02; and further to the effect that (ii) this agreement has been duly authorized, executed and delivered by _____ [name of applicant] and constitutes the legal, valid and binding obligation of _____ [name of applicant] enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally; (iii) the Notes have been duly authorized and when and if executed and delivered pursuant to this agreement will constitute the legal, valid and binding obligation of _____ [name of applicant] enforceable in accordance with their terms, except as enforcement may be limited by applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally; and (iv) _____ [name of applicant] is a business corporation duly organized and validly existing and in good standing under the laws of the State of _____ with all requisite corporate powers and authority to own and operate its properties and to carry on its business as now conducted, and the corporation is duly qualified and in good standing as a foreign corporation in each jurisdiction in which it owns or leases substantial properties or where the conduct of its business requires qualification. In rendering its opinion, counsel may rely upon the opinion or opinions of local counsel satisfactory to the Bank.

3.04. *Counsel.* All legal matters incident to the transactions contemplated by this agreement shall be reasonably satisfactory to counsel for the Bank.

3.05. *No default.* No event of default as specified in Article VI, nor any event which upon notice or lapse of time or both would constitute an event of default, shall have occurred.

Article IV. Affirmative Covenants

_____ [Name of applicant] covenants and agrees that, from the date of this agreement and until this agreement has terminated and there are no Credits or Notes outstanding, unless the Bank shall otherwise consent in writing, _____ [name of applicant] will:

4.01. *Status.* (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all laws and regulations applicable to it, and keep its insurable properties adequately insured at all times, by financially sound and reputable insurers, and maintain liability and such other insurance, to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customarily maintained by companies engaged in similar business.

(b) Comply with all applicable laws and regulations, whether now in effect or subsequently enacted or promulgated by any governmental authority having jurisdiction over its assets or properties, noncompliance with which would have a material adverse affect on the condition, financial or otherwise, of _____ [name of applicant].

4.02. *Taxes, liens, etc.* Pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges or levies imposed upon it or upon its respective income and profits or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default, as well as all lawful claims for labor, materials

and supplies or otherwise, which, if unpaid, might become a lien or charge upon such properties or any part thereof; provided that _____ [name of applicant] shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, charge, levy or claim, contested by it in good faith; and provided, further, that payment with respect to any such tax, assessment, charge, levy or claim shall be made before any of its property shall be seized and sold in satisfaction thereof.

4.03. *Notices.* Give prompt written notice to the Bank of any proceedings instituted against it by or in any federal or state court or before any commission or other regulatory body, federal, state or local, which, if adversely determined, would have an adverse effect upon its business, operations, properties, assets, or condition, financial or otherwise.

4.04. *Reports.* (a) *Annual statements.* Within 90 days of the end of each fiscal year, (i) balance sheets and statements of income, changes in shareholders' equity and changes in financial position, together with footnotes, certified by _____ or other independent certified public accountant selected by it and acceptable to the Bank, as fairly presenting the financial position of _____ [name of applicant] at the date shown and the results of its operations for the period shown, in conformity with generally accepted accounting principles applied on a consistent basis, showing its financial condition at the close of such fiscal year and the results of operations during such year, and (ii) a letter from the accountants to the effect that the accountants have examined the provisions of this agreement and that none of the events of default, as specified in Article VI, nor any event which upon notice or lapse of time or both would constitute such an event of default, has occurred.

(b) *Quarterly statements.* Within 45 days after the end of each quarter in each fiscal year, balance sheets and statements of income and surplus, together with supporting schedules, prepared by it, and certified by the Chief Accounting Officer of _____ [name of applicant]. The balance sheets shall be as of the close of the quarter and statements of income and surplus shall be for the period from the beginning of the then current fiscal year to the end of the quarter, in each case subject to audit and year-end adjustments. The certificate of the Chief Accounting Officer shall contain statements to the effect that none of the events of default, as specified in Article VI, nor any event, which upon notice or lapse of time or both, would constitute an event of default has occurred, or if there has been such an event, it shall disclose the nature of the default.

(c) *Real estate loans.* At the same time as the quarterly financial statements, _____ [name of applicant] further agrees to supply to the Bank a report, certified by the Chief Accounting Officer of _____ [name of applicant], of the mortgage or construction loans or loan participations owned by _____ [name of applicant] at the end of such quarter, which report shall include for each loan or loan participation having an original principal amount greater than \$_____, the name of the obligor or the _____ [name of applicant] loan number for the loan, the principal amount and the rate of interest and/or other fees due from the obligor and the maturity or due date on which the loan or loan participation is due and payable.

(d) *Corporate filings.* Promptly after the sending or filing, copies of all proxy statements, financial statements and reports which _____ [name of applicant] sends to its shareholders, and copies of all regular, periodic and special reports, and all registration statements under the Securities Act of 1933, as amended, which _____ [name of applicant] shall file with the Securities and Exchange Commission or any governmental authority which may be substituted for it, or with any national securities exchange.

(e) *Requested information.* Promptly, from time to time, such other information regarding its operations, assets, business affairs and financial condition, as the Bank may reasonably request.

4.05. *Loan defaults.* Notify the Bank within 20 days of the close of each fiscal quarter as to all loans in its portfolio which are in default and/or are 60 days or more delinquent in payment.

4.06. *Notes.* Upon the issuance of each Discount Note, cause its issuing agent to report the following information to the

Bank:

- (i) the date, principal amount and identification number of the Discount Note and attached Credit;
- (ii) the name of the registered payee of the Discount Note and the beneficiary of the Credit; and
- (iii) the date upon which the Discount Note is due and payable.

4.07. *Inspection.* Permit agents or representatives of the Bank to inspect, at reasonable hours and upon reasonable notice, its books and records and to make abstracts or reproductions.

4.08. *Changes.* Promptly advise the Bank of any material adverse change in its condition, financial or otherwise, or of any default by _____ [name of applicant] of the type described in Article VI.

4.09. *Accounting.* Maintain a standard system of accounting in accordance with generally accepted accounting principles.

Article V. Restrictions

_____ [name of applicant] agrees that, from the date of this agreement and until this agreement has terminated and there are no Credits or Notes outstanding, unless the Bank shall otherwise consent in writing, it will not, directly or indirectly:

5.01. *Liens, etc.* Create, incur, assume or suffer to exist any mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of its assets, now or hereafter owned, other than:

(a) liens securing the payment of taxes, either not yet due or the validity of which is being contested in good faith by appropriate proceedings, and as to which it shall have set aside on its books adequate reserves;

(b) deposits under workmen's compensation, unemployment insurance and social security laws, or to secure the performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or to secure statutory obligations or surety or appeal bonds, or to secure indemnity, performance or other similar bonds in the ordinary course of business; and

(c) liens imposed by law, such as carriers', warehousemen's or mechanics' liens, incurred by it in good faith in the ordinary course of business, and liens arising out of a judgment or award against it with respect to which it shall currently be prosecuting an appeal, a stay of execution pending such appeal having been secured;

5.02. *Debt.* Permit the ratio of its senior indebtedness to the sum of its subordinated indebtedness, senior subordinated indebtedness and shareholders' equity to exceed 2.5 to 1, all as determined in accordance with generally accepted accounting principles applied on a consistent basis, provided that "subordinated indebtedness" or "senior subordinated indebtedness" of _____ [name of applicant] shall mean indebtedness of _____ [name of applicant] which shall have been subordinated, on terms the form and substance of which are satisfactory to the Bank, to any and all senior indebtedness of _____ [name of applicant] now existing or subsequently arising.

5.03. *Merger.* Dissolve, liquidate, consolidate with, or merge with, or otherwise acquire all or substantially all of the assets or properties of, any other corporation, firm or entity.

5.04. *Discount.* Issue any documented discount paper other than the Discount Notes.

5.05. *Limits.* Issue or cause to be issued or permit to be outstanding Discount Notes, the aggregate principal value of which maturing in any period of five consecutive business days shall exceed \$_____.

5.06. *Termination.* In the event that the Bank shall give notice to _____ [name of applicant] of its decision to terminate this agreement pursuant to Section 1.05(b), issue, or cause or suffer to be issued, any Discount Notes which shall mature after the expiration of 210 days from the date of notice.

5.07. *Reduction.* In the event the Bank shall give notice to _____ [name of applicant] of the reduction of the Bank's Commitment as a result of the decision of any Participating Bank to terminate its participation pursuant to Section 1.06(a)(ii), issue, or cause or suffer to be issued any Discount Notes which, if issued, would cause the total amount of Credits outstanding, after the expiration of 210 days from the date of the Participating Bank's decision to terminate, to exceed the amount of the Bank's reduced commitment.

Article VI. Defaults

6.01. *Events of Default.* In each case of happening of any of the following events (each called an "Event of Default"):

(a) *Misrepresentation.* Any representation or warranty made in this agreement, or in any report, certificate, financial statement or other instrument furnished in connection with this agreement, or the borrowing under this agreement, shall prove to be false or misleading in any material respect;

(b) *Payment default.* Default in the payment of the principal of, or interest on, any of the Notes for more than five days after the date when the payment is due and payable;

(c) *Terms of agreement.* Default in the due observance or performance of any covenant, condition or agreement on the part of _____ [name of applicant] to be observed or performed pursuant to the terms of this agreement or contained in any of the Notes;

(d) *Other loans.* Default with respect to any evidence of indebtedness of _____ [name of applicant] (other than the Notes), if the effect of the default is to accelerate the maturity of the indebtedness or to permit the holder to cause the indebtedness to become due prior to the stated maturity, or if any indebtedness of _____ [name of applicant] is not paid, when due and payable, whether at the due date or a date fixed for prepayment or otherwise;

(e) *Insolvency, bankruptcy.* _____ [name of applicant] shall (i) apply for or consent to the appointment of a receiver, trustee, custodian, or liquidator of it or any of its property, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegation of a petition filed against it in any proceeding under any such law or if corporate action shall be taken for the purpose of effecting any of the foregoing;

(f) *Involuntary reorganization.* An order, judgment or decree shall be entered without the application, approval or consent of _____ [name of applicant] by any court of competent jurisdiction, approving a petition seeking reorganization of either _____ [name of applicant] or appointing a receiver, trustee, custodian, or liquidator of _____ [name of applicant] or of all or a substantial part of the assets of

_____ [name of applicant], and such order, judgment or decree shall continue unstayed and in effect for a period of 60 days;

(g) *Judgments*. Final judgment for the payment of money in excess of an aggregate of \$_____ shall be rendered against _____ [name of applicant], which remains undischarged for a period of 30 consecutive days, during which execution shall not be effectively stayed;

(h) *Attachments*. The occurrence of any attachment of any deposits or other property of _____ [name of applicant] in the hands or possession of the Bank, or the occurrence of any attachment of any other property of _____ [name of applicant] in an amount exceeding \$_____ which is not discharged within 30 days of the date of attachment; or

Then and in every Event of Default and at any time during the continuance of any Event of Default, the Bank may, by written notice to _____ [name of applicant], terminate any obligation it may have under this agreement to issue or allow to be issued any additional Credits. Termination shall not in any way affect the Bank's liability under prior outstanding Credits.

Article VII. Miscellaneous

7.01. *Term*. This agreement and all covenants, agreements, representations and warranties made in this agreement and in the certificates delivered pursuant to it, shall survive the issuance by the Bank of the Credit, and shall continue in full force and effect so long as any Note or Credit is outstanding and unpaid. The rights and obligations of either party may not be assigned or transferred without the prior written consent of the other party.

7.02. *Costs*. _____ [name of applicant] shall pay all costs and expenses incurred by the Bank in connection with the preparation, execution, delivery, administration and enforcement of this agreement, including legal fees.

7.03. *Governing law*. This agreement and the Notes shall be construed in accordance with and governed by the laws of the State of _____.

7.04. *Written consent*. No modification or waiver of any provision of this agreement, or any of the Notes, nor consent to any departure by _____ [name of applicant] from them, shall be effective unless in writing, and then any waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. No notice to, or demand, on _____ [name of applicant], in any case, shall entitle _____ [name of applicant] to any other or future notice or demand in the same, similar or other circumstances.

7.05. *No waiver*. Neither any failure nor any delay on the part of the Bank in exercising any right, power or privilege under this agreement, or under any of the Notes, shall operate as a waiver, nor shall a single or partial exercise thereof preclude any other or future exercise, or the exercise of any other right, power or privilege.

7.06. *Interest computation*. Interest and fees shall be computed on the basis of the actual number of days using a 360-day year factor.

7.07. *Holidays*. Whenever any payment is due on a Saturday, Sunday, or a public holiday under the laws of the jurisdiction in which payment is to be made, the payment may be made on the next succeeding business day and the extension of time shall be included in computing interest in connection with the payment.

7.08. *Severability*. Any provision of this agreement which is prohibited or unenforceable in any jurisdiction shall, as to

that jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction.

7.09. *Notices.* All notices, requests, demands and other communications provided for hereunder shall be in writing and, if to _____ [name of applicant], mailed or delivered to it, addressed to it at its office at _____ [address], Attention: _____, Title, if to the Bank, mailed or delivered to it, addressed to _____ [name of issuer], _____ [issuer's address], Attention: _____, Title, or as to each party, at such other address as shall be designated by the party in a written notice to the other party complying as to delivery with the terms of this Section. All notices, requests, demands and other communications shall be effective when deposited in the mails or delivered to the telegraph, telex, or messenger company, addressed as aforesaid.

Whenever _____ [name of applicant] is required to deliver notices, certificates, opinions, statements, documents or other information to the Bank, it shall do so in the number of copies as the Bank shall reasonably specify.

In witness whereof _____ [name of applicant] and the Bank have caused this agreement to be duly executed by their duly authorized officers, on the day and year first above written.

Secretary of Applicant

.....

Bank Officer

(2) Irrevocable letter of credit

_____ [name of issuer]
_____ [issuer's city, state, and zip code]

.....

IRREVOCABLE LETTER OF CREDIT

Irrevocable Letter of Credit Date: _____

No. _____

Amount \$ _____

Beneficiary:

Ladies and Gentlemen:

We authorize you to draw on us for account of _____ [name of applicant], _____ [applicant's address] up to an aggregate amount of U.S. Dollars \$ _____ available by your drafts on us at sight accompanied by:

(1) Promissory Note Number _____ of _____ [name of applicant] of even date herewith in the amount of U.S. Dollars \$ _____ payable to _____ on _____.

(2) Beneficiary's signed and acknowledged statement certifying that it is the holder of the note referenced in paragraph

(1), that the note was duly presented for payment and was not paid when due, and that there is due and payable to the holder an amount not less than the amount of the draft drawn under this credit.

(3) The original of this letter of credit.

Drafts must be drawn and presented for negotiation at our counters not later than a date which is five business days after maturity of the note referenced in paragraph (1) Drafts must be marked "Drawn under _____ [name of issuer] Letter of Credit No. _____ dated _____."

We agree that the draft drawn in compliance with the terms and conditions of this credit will be duly honored upon presentation and delivery of documents specified above, if presented as aforesaid, and we waive any right to defer honor of such draft.

This letter of credit is transferable and assignable.

Bank Officer

(3) Demand promissory note--variable interest rate

_____, 20____ [date]

For value received, _____ [name of applicant], a business corporation duly organized and existing under the laws of the State of _____, promises to pay to the order of _____ [name of the issuer], the Bank, at its offices situated at _____ [issuer's address], UPON DEMAND, the principal sum of \$_____ payable in lawful dollars of the United States together with interest on the unpaid principal amount from this date until paid at a rate per annum, the Interest Rate, equal to _____ percent of the large corporation prime rate of interest of _____ [name of issuer] from time to time applicable to commercial loans, which Interest Rate shall change when and as said large corporation prime rate changes. Interest shall be calculated on the basis of a 360-day year counting the actual number of days elapsed. In no event shall the amount of interest payable under this note, together with all amounts reserved, charged or taken by the Bank as compensation for services or expenses incidental to the making, negotiating or collection of the loans evidenced by this note, exceed the maximum rate of interest on the unpaid balance allowable by the laws of the State of _____ presently in effect.

This Note is one of the Notes referred to in that certain Letter of Credit Agreement between _____ [name of applicant] and _____ [name of issuer] dated _____ [date of the letter of credit agreement]. This Note shall be governed by, and construed in accordance with, the laws of the State of _____.

If this Note shall not be paid when due and shall be placed by the holder in the hands of any attorney for collection, through legal proceedings or otherwise, _____ [name of applicant] will pay a reasonable attorney's fee to the holder together with reasonable costs and expenses of collection.

Secretary of Applicant



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 7: Letters of Credit.

37TTT-7 California Legal Forms--Transaction Guide Form T7-11

Form T7-11 Standby Letter of Credit--Conditioned on Default in Loan Agreement

Description: This standby letter of credit supports a promissory note.

Form T7-11 Standby Letter of Credit--Conditioned on Default in Loan Agreement--Notice of Default Documentation Required

(1) Standby irrevocable letter of credit

_____ [name of issuer]

_____ [issuer's street address]

_____ [issuer's city, state, and zip code]

_____ [date]

_____ [name of beneficiary]

_____ [beneficiary's street address]

_____ [beneficiary's city, state, and zip code]

Re: Irrevocable Letter of Credit

Non-Transferable

Gentlemen and Ladies:

We hereby open our irrevocable credit in your favor, available in the following manner and on the following terms:

1. *Transferability.* The credit is non-transferable.

2. *Drafts.* Your single draft drawn on _____ [name of issuer], at ten days' sight, in the amount of the unpaid principal, interest and attorneys' fees then due and payable after default, pursuant to the terms of a certain Promissory Note executed _____ [date of the promissory note], by _____ [name of applicant and maker of the promissory note], payable to the order of _____ [name of the beneficiary], which draft must state upon its face: "Drawn under Letter of Credit of the _____ [name of the issuer], dated _____ [date of the letter of credit]."

3. *Total.* The draft must not exceed \$_____.

4. *Purpose.* To be applied to the balance remaining on a certain loan evidenced by a certain Promissory Note executed _____ [date of the promissory note], by _____ [name of applicant and maker of the promissory note], payable to the order of _____ [name of beneficiary], secured by a security interest in and upon the inventory of _____ [name of applicant and maker of the promissory note].

5. *Documents.* The required documents are:

(a) Original Promissory Note, executed _____, _____ by _____, payable to the order of _____.

(b) Copy of letter advising _____ of default in the payment of the said note executed _____ [date of promissory note], said advice letter being addressed to _____ [name of applicant and maker of the promissory note], showing receipt and being dated not less than 20 days in advance of the date of Sight Draft.

(c) Copy of letter advising _____ [name of third parties] of default in the payment of the said Note executed _____ [date of the promissory note], said advice letter being addressed in care of _____, attorneys for the issuer, _____ [attorney's address], and being dated not less than 20 days in advance of the date of Sight Draft.

(d) Copy of letter which advised owners of property held or leased by _____ [name of applicant and maker of the promissory note] of default in payment and resulting acceleration of the said Promissory Note dated _____ [date of the promissory note], said letter being dated not less than 20 days prior to the date of Sight Draft.

6. *Obligation of issuer.* _____ [name of issuer] agrees with _____ [name of beneficiary], and/or its successor to duly honor a proper draft drawn and negotiated in compliance with the terms of this Letter of Credit upon presentation to the office of the bank.

7. *Rules applicable.* The Credit, except as otherwise provided, is to be governed by the Uniform Commercial Code in force in the State of _____ on the date of its issuance.

Yours very truly,

_____ [name of issuer]

by:

[Authorized Signature]

[Title]

(2) Standby irrevocable letter of credit--alternate form

_____ [date]

_____ [name of beneficiary]

_____ [beneficiary's street address]

_____ [beneficiary's city, state, and zip code]

All documents must indicate Credit No. _____ [issuer's reference number for this letter of credit].

Dear Mr./Mrs./Ms. _____ [name of beneficiary],

We hereby establish our Irrevocable Letter of Credit in your favor for the account of _____ [name of applicant] of _____ [applicant's address], up to the aggregate amount of US \$ _____ (_____) [written amount of the letter of credit] U.S. DOLLARS ONLY), available by your drafts drawn at sight on us marked Drawn Under _____ [name of the issuer] Credit No. _____ [issuer's internal reference number for this letter of credit], and accompanied by the Documents specified below:

Your signed statement that a default has occurred on note or security deed dated _____ [date of the underlying obligation].

PARTIAL DRAWINGS PROHIBITED

We hereby undertake to honor all drafts drawn under and in compliance with the terms of this Credit, when accompanied by Documents as specified, if presented to us on or before _____ .

Yours very truly,

_____ [name of issuer]

by:

[Authorized Signature]

[Title]

(3) Non-Transferable standby irrevocable letter of credit--alternate form

_____ [date of the letter of credit]

_____ [name of the issuer]

_____ [issuer's street address]

_____ [issuer's city, state, and zip code]

IRREVOCABLE LETTER OF CREDIT

Non-Transferable

_____ [name of the beneficiary]

_____ [beneficiary's street address]

_____ [beneficiary's city, state, and zip code]

Gentlemen and Ladies:

We hereby open our irrevocable credit in your favor, available in the following manner and on the following terms:

1. *Transferability.* The credit is nontransferable.

2. *Drafts.* Your single draft drawn on _____ [name of issuer], at ten (10) days' sight, in the amount of the unpaid principal, interest and attorneys' fees then due and payable after default, pursuant to the terms of a certain Promissory Note executed _____ [date of the underlying obligation], by _____ [maker of the underlying obligation], payable to the order of _____ [name of the beneficiary], which draft must state upon its face: "Drawn under Letter of Credit of _____ [issuer's name], dated _____ [date of the underlying obligation]."

3. *Total.* The draft must not exceed _____ (written amount) and 00/100 Dollars (\$_____).

4. *Purpose.* To be applied to the balance remaining on a certain loan evidenced by a certain Promissory Note executed _____ [date of the underlying obligation], by _____ [maker of the underlying obligation], payable to the order of _____ [name of the beneficiary], secured by a security interest in and upon the inventory of _____ [maker of the underlying obligation].

5. *Documents.* The required documents are:

(a) Original Promissory Note, executed _____ [date of the underlying obligation], by _____ [name of the maker of the underlying obligation], payable to the order of _____ [name of the beneficiary].

(b) Copy of letter advising _____ [name of the maker of the underlying obligation] of default in the payment of the said note executed _____ [date of the underlying obligation], said advice letter being addressed to _____ [name of the maker of the underlying obligation], showing receipt and being dated not less than twenty (20) days in advance of the date of Sight Draft.

(c) Copy of letter advising _____ [name of third party/parties] of default

in the payment of the said Note executed _____ [date of the underlying obligation], said advice letter being addressed in care of _____, Attorneys, _____ [address], and being dated not less than twenty (20) days in advance of the date of Sight Draft.

(d) Copy of letter which advised owners of _____ [name of maker of the underlying obligation] property of default in payment and resulting acceleration of the said Promissory Note dated _____, said letter being dated not less than twenty (20) days prior to the date of Sight Draft.

6. *Obligation of Issuer.* _____ [name of issuer] agrees with _____ [name of beneficiary], to duly honor a proper draft drawn and negotiated in compliance with the terms of this Letter of Credit upon presentation to the office of the bank.

7. *Rules Applicable.* The Credit, except as otherwise provided, is to be governed by the Uniform Commercial Code in force in the State of _____ on the date of its issuance.

Yours very truly,

_____ [name of issuer]

By: /s/ _____

Title

(4) Standby irrevocable letter of credit--alternate form

_____ [name of the issuer]

_____ [date]

LETTER OF CREDIT

TO: _____ [name of beneficiary]

_____ [beneficiary's street address]

_____ [beneficiary's city, state, and zip code]

Gentlemen and Ladies:

We hereby establish our irrevocable standby letter of credit number _____ [issuer's reference number for this letter of credit] in your favor at the request and for the account of _____ [name of applicant], for a sum not exceeding in all U.S. dollars \$_____, available by your claim sight draft drawn on us.

All drafts so drawn must be marked "Drawn Under _____ [name of issuer], Letter of Credit No. _____ [issuer's reference number for this letter of credit] Dated _____ [date of the letter of credit]."

This credit expires at our counters on _____ [date].

The original of this letter of credit must accompany all drawings.

We engage with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored by us.

This credit is subject to the "Uniform Customs and Practice for Documentary Credit (2007 revision) International Chamber of Commerce Publication Number 600."

Sincerely,

/s/ _____

Title

(5) Standby irrevocable letter of credit--alternate form

Issuer's Letterhead

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ [issuer's reference number for this letter of credit].

Date: _____

Beneficiary: _____ Applicant: _____

[beneficiary's name and address][applicant's name and address]

AMOUNT: \$ _____ (_____ [written amount] U.S. Dollars)

EXPIRATION: _____ [expiration date of the letter of credit] at our counters

Gentlemen and Ladies:

We hereby issue our Clean Irrevocable Standby Letter of Credit in your favor available by your draft on us at sight bearing the clause "Drawn under _____ [name of issuer] Letter of Credit No. _____ [issuer's reference number for this letter of credit] dated _____ [date of the letter of credit]," accompanied by this original Letter of Credit.

Special Instructions: Negotiations restricted to _____ [name of issuer]. PARTIAL DRAWINGS ARE NOT PERMITTED.

This letter of credit is for _____ [reference to the underlying obligation].

We hereby agree with you that the draft drawn under and in compliance with the terms of this letter of credit shall be duly honored on due presentation to us.

Except as otherwise expressly stated herein, this Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication 600.

Very truly yours,

/s/ _____

Title

(6) Standby irrevocable letter of credit--alternate form

(Issuer's Letterhead)

APPLICANT: _____ [name and address]

BENEFICIARY: _____ [name and address]

AMOUNT: USD _____, (_____ [written amount] AND 00/100 UNITED STATES DOLLARS)

ATTENTION: _____ [name]

GENTLEMEN AND LADIES:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ [issuer's reference number for this letter of credit], IN YOUR FAVOR, FOR ACCOUNT OF THE ABOVE-NAMED APPLICANT, FOR A SUM OR SUMS NOT EXCEEDING THE ABOVE-MENTIONED AMOUNT, EXPIRING ON _____ [date], _____:00 P.M. CENTRAL STANDARD TIME, AT OUR COUNTERS, AVAILABLE FOR PAYMENT AGAINST YOUR DRAFT(S) DRAWN ON US AT SIGHT, MARKED: "DRAWN UNDER _____ [name of issuer] IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ [issuer's reference number for this letter of credit], DATED _____ [date of the letter of credit]", ACCOMPANIED BY:

1. BENEFICIARY'S MANUALLY SIGNED STATEMENT ON ITS LETTERHEAD READING EXACTLY AS FOLLOWS:

"I, THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF _____ [name of beneficiary], HEREBY CERTIFY THAT _____ [name of applicant], HAS FAILED TO MAKE THE PAYMENT DUE ON _____ [DATE], IN THE AMOUNT OF \$250,000.00, AND THAT PAYMENT HAS BEEN REQUESTED AND NOT RECEIVED BY _____ [name of beneficiary]."

PARTIAL DRAWINGS ARE ALLOWED.

IT IS A CONDITION THAT IF THIS LETTER OF CREDIT IS NOT DRAWN AGAINST ON THE FOLLOWING DATES, THE LETTER OF CREDIT AMOUNT SHALL BE AUTOMATICALLY DECREASED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

ON (DATE) AMOUNT OF DECREASE

On _____, this letter of credit will decrease by \$_____ if the beneficiary has failed to make a drawing against this letter of credit.

If the beneficiary has failed to make a drawing against this letter of credit during the period of _____ [date of first automatic decrease in the event of a lack of drawing] and _____ [date of second automatic decrease], on _____, [date of second automatic decrease], this letter of credit will decrease by \$_____.

THIS LETTER OF CREDIT EXPIRES AT OUR COUNTERS ON _____ [date].

ALL BANKING CHARGES OTHER THAN OURS ARE FOR THE APPLICANT'S ACCOUNT.

THE ORIGINAL OF THIS LETTER OF CREDIT AND SUBSEQUENT AMENDMENTS, IF ANY, MUST ACCOMPANY ALL DRAWINGS.

WE HEREBY ENGAGE WITH YOU THAT ALL DRAFT(S) DRAWN AND PRESENTED IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED ON DUE PRESENTATION AND DELIVERY OF DOCUMENT(S) TO US, ATTENTION: DOCUMENTARY SERVICES DIVISION, _____ [address].

UNLESS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 600.

PLEASE CONTACT US AT (_____) _____-_____) OR (_____) _____-_____ IF YOU HAVE ANY QUESTIONS CONCERNING THIS LETTER OF CREDIT.

Sincerely,

/s/ _____

(7) Beneficiary's letter accompanying a sight draft drawing upon a standby irrevocable letter of credit

_____ [date]

_____ [name of issuer]

_____ [appropriate department of issuer]

_____ [issuer's street address]

_____ [issuer's city, state, and zip code]

Re: Irrevocable Letter of Credit No. _____ [issuer's reference number for this letter of credit]

Gentlemen and Ladies:

Attached is a sight draft in the amount of \$_____, together with the original Irrevocable Letter of Credit No. _____ [issuer's reference number for this letter of credit].

A default has occurred on the note or security deed dated _____.

Yours very truly,

/s/ [signature of the beneficiary]

(8) Draft drawing upon a standby irrevocable letter of credit

Drawn Under/Through _____ [city and state], _____ [date]

Re: Irrevocable Letter of Credit No. _____ [issuer's reference number for this letter of credit]

At sight of this First Bill of Exchange

Pay to the Order of _____ [name of beneficiary] \$_____ the Sum of:
_____ [written amount of the draft]

Value received and charge same to account of _____ [name of applicant]

To: _____ [name of applicant]

/s/ _____ [signature of beneficiary]



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 7: Letters of Credit.

37TTT-7 California Legal Forms--Transaction Guide Form T7-12

Form T7-12 Assignment of a Letter of Credit

Description: This form is used for an assignment of a letter of credit, outlining assignment of right to proceeds and notice of assignment.

Form T7-12 Assignment of a Letter of Credit

(1) Assignment of right to proceeds of a letter of credit

_____ [date]

1. *Assignment.* _____ ("Beneficiary") assigns to _____ ("Secured Party") his rights to proceeds under Letter of Credit, No. _____ [issuer's reference number for the letter of credit] issued by the _____ [name of issuer] and dated _____ [date of the letter of credit], pursuant to the Security Agreement between the Beneficiary and the Secured Party executed on _____ [date of the security agreement].

2. *Warranty.* The Beneficiary warrants that:

(a) The full sum of \$_____ remains due on the letter of credit;

(b) No partial payments have been made;

(c) The credit is in full force;

(d) No one other than the Beneficiary has any interest or lien upon the credit; and

(e) There have been no amendments or modifications to the credit.

3. *Other documents.* The Beneficiary agrees to furnish _____ [name of the assignee] with all drafts and other documents necessary to enable the Beneficiary to obtain the proceeds of the letter of credit.

_____ [name of assignor/beneficiary]

(2) Notice of assignment

_____ [date]

To: _____ [name of issuer]
_____ [issuer's city and state]

The rights to proceeds under your Letter of Credit No. _____ [issuer's reference number for the letter of credit] dated _____, 20____ [date of the letter of credit], in favor of _____ [beneficiary of the letter of credit] have been assigned to the undersigned who is in possession of the letter of credit. The assignment of the right to proceeds has been duly signed by _____ [name of beneficiary], the beneficiary under your letter of credit.

You may honor complying drafts when negotiated to us by the beneficiary and other demands for payment only when accompanied by the letter of credit or by our written release.

_____, Assignee
_____ [assignee's street address]
_____ [assignee's city, state, and zip code]



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CHAPTER 7: Letters of Credit.

37TTT-7 California Legal Forms--Transaction Guide Form T7-13

Form T7-13 Form of Assignment of Letter of Credit Proceeds

Description: This form provides for an assignment of a letter of credit's proceeds.



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CHAPTER 7: Letters of Credit.

37TTT-7 California Legal Forms--Transaction Guide Form T7-13

Form T7-13 Form of Assignment of Letter of Credit Proceeds

[Date]

_____ [Name of Letter of Credit Issuer]
_____ [Address of Letter of Credit Issuer]

Re: Letter of Credit No. _____ issued by _____ (the "Credit")

To Whom It May Concern:

The undersigned hereby assigns to the hereinafter named Assignee the proceeds of each drawing payable to the undersigned under the Credit, and instructs you to remit the proceeds of each such drawing, if and when hereafter honored, to:

Name of Assignee: _____

Address of Assignee:

The amounts or portion of the Credit assigned and to be paid to Assignee are as follows:

(a) _____ All drawings; or

(b) _____ The sum of \$_____ in the aggregate of the next drawing(s) until such sum has been paid; or

(c) _____ % of the amount of each drawing, but not exceeding \$_____ in the aggregate; or

(d) _____ At the rate of \$_____ per _____ shipped not exceeding \$_____ in the aggregate; or

(e) _____ Other: _____.

In the event this Assignment does not apply to the full proceeds of the Credit, the balance of the proceeds, if any, shall be paid to the undersigned.

The undersigned requests your consent to this Assignment, and in consideration thereof, the undersigned agrees that this Assignment is irrevocable and shall not be cancelled or amended without the prior written consent of Assignee and you.

The undersigned transmits to you herewith the original Credit (including all amendments, if any) and requests that you note thereon the foregoing Assignment and return the Credit to the undersigned.

The undersigned authorizes you to pay in order of your receipt of or consent to any multiple assignments.

The undersigned herewith encloses a check for \$_____ to cover your fees in connection with this Assignment.

This Assignment, and your consent hereto (i) does not constitute a transfer or assignment of the Credit, (ii) does not give Assignee any interest in the Credit or any documents presented thereunder or any right to draw under the Credit or to consent or refuse to consent to amendments to the Credit or to the cancellation thereof and (iii) does not affect the undersigned's right to draw under the Credit, or transfer its right to draw under the Credit or the undersigned's or your right to consent or to refuse to consent to amendments to the Credit or to the cancellation thereof.

The undersigned represents and warrants to you that: (i) other than as set forth above, the undersigned has not and will not, by transfer or assignment of the Credit, by negotiation of drafts, by drawing drafts to a third party, or otherwise, assign the right to receive the whole or any portion of the above proceeds of the Credit or give any other authorization or direction to make any payment thereof to any other party; (ii) the undersigned has not and will not present to anyone but you any documents under the Credit; (iii) this Assignment has been duly executed and delivered by the undersigned and constitutes the undersigned's legal, valid, and binding obligation enforceable in accordance with its terms; and (iv) the transactions underlying the Credit and this Assignment do not violate any applicable United States or other law, rule, or regulation.

The undersigned shall immediately return to you any assigned proceeds of the Credit inadvertently paid to the undersigned.

The undersigned hereby indemnifies and holds you harmless from and against any and all claims, liabilities and expenses (including reasonable attorneys' fees) in any way related to, arising out of or in connection with this Assignment or any action taken or not taken pursuant hereto (except to the extent caused by your gross negligence or willful misconduct), and the undersigned shall pay you, on demand, for any and all such liability or expense.

This Assignment is made subject to the practice rules to which the Credit is subject and shall be governed by the laws of the State of _____.

SIGNATURE GUARANTEED:

Very truly yours,

_____ (Name of Bank Guaranteeing Beneficiary's Signature)	_____ (Name of Beneficiary)
_____ (Authorized Signature)	_____ (Authorized Signature)
_____ (Print or Type Signer's Name and Title)	_____ (Print or Type Signer's Name and Title)
_____ (Address of Bank)	_____ (Address of Beneficiary)
_____ (Telephone Number of Bank)	_____ (Telephone Number of Beneficiary)

**ISSUER'S CONSENT TO ASSIGNMENT OF
LETTER OF CREDIT PROCEEDS**

The undersigned, as issuer of the captioned Credit, hereby consents to the foregoing Assignment of Letter of Credit Proceeds to _____ ("Assignee"). The undersigned warrants to Assignee that the undersigned has not previously consented to the assignment of such proceeds to any other party and covenants that it shall not consent to the assignment of such proceeds to any other party.

Dated: _____

Very truly yours,

[Name of Issuer]

[Authorized Signature]

[Name and Title of Signatory]



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CHAPTER 8: Financing Statements.

37TTT-8 California Legal Forms--Transaction Guide 8.syn

§ 8.syn Synopsis to Chapter 8: Financing Statements.

Form T8-1 UCC-1 Financing Statement

Form T8-1 Financing Statement UCC-1

Form T8-2 UCC-1 Addendum--Fixture Filing

Form T8-2 UCC-1 Addendum--Fixture Filing

Form T8-3 UCC-1 Exhibit--Descriptions of Collateral

Form T8-3 UCC-1 Exhibit--Descriptions of Collateral

Form T8-4 UCC-3 Financing Statement Amendment

Form T8-4 UCC-3 Financing Statement Amendment

Form T8-5 Accountant's Access Letter

Form T8-5 Accountant's Access Letter

Form T8-6 UCC-11 National Information Request

Form T8-6 UCC-11 National Information Request



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CHAPTER 8: Financing Statements.

37TTT-8 California Legal Forms--Transaction Guide Form T8-1

Form T8-1 UCC-1 Financing Statement

Description: This form is a UCC-1 financing statement used to secure an interest in collateral within a secured transaction.

Form T8-1 Financing Statement UCC-1

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CHAPTER 8: Financing Statements.

37TTT-8 California Legal Forms--Transaction Guide Form T8-2

Form T8-2 UCC-1 Addendum--Fixture Filing

Description: This form provides an addendum to a UCC-1 financing statement describing any fixtures related to the secured transactions' collateral.

Form T8-2 UCC-1 Addendum--Fixture Filing

[Click here to view image.](#)

Debtor:

EXHIBIT 1
(Description of Collateral)

The Collateral shall include:

A. All of the right, title and interest of Debtor in and to the buildings and improvements (hereinafter, collectively, together with all building equipment, the "Improvements") now or hereafter located on that certain lot, piece or parcel of land (the "Real Property") more particularly described as on Schedule A hereof, and all of its right, title and interest, if any, in and to the streets and roads abutting the Real Property, to the center lines thereof, and strips and gores within or adjoining the Real Property, the air space and right to use said air space above the Real Property, all rights of ingress and egress by motor vehicles to parking facilities on or within the Real Property, all easements now or hereafter affecting the Real Property or the Improvements, all royalties and all rights appertaining to the use and enjoyment of the Real Property or the Improvements, including, without limitation, alley, drainage, crop, timber, agricultural, horticultural, mineral, water, oil and gas rights;

B. All of the right, title and interest of Debtor in and to all fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements thereof, now or hereafter attached to, or contained in, the Real Property and/or the Improvements or placed on any part thereof, though not attached thereto, including, but

not limited to, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerator and/or compacting and elevator plants, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings and fixtures, and the trade name, good will and books and records relating to the business operated on the Real Property and/or the Improvements. Without limiting the foregoing, Debtor hereby grants to Secured Party a security interest in all of its present and future "equipment" and "general intangibles" (as said quoted terms are defined in the Uniform Commercial Code of the State of _____) and Secured Party shall have, in addition to all rights and remedies provided in the Mortgage (as hereinafter defined), and in any other agreements, commitments and undertakings made by Debtor to Secured Party, all of the rights and remedies of a "secured party" under the said Uniform Commercial Code;

C. All of the right, title and interest of Debtor in and to all leases, lettings and licenses of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed by the Mortgage, or any part thereof, now or hereafter entered into and all right, title and interest of Debtor thereunder, including, without limitation, cash and securities deposited thereunder, the right to receive and collect the rents, issues and profits payable thereunder and the right to enforce, whether by action at law or in equity or by other means, all provisions, covenants and agreements thereof;

Debtor:

D. All right, title and interest of Debtor in and to all unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Debtor and all proceeds of the conversion, voluntary or involuntary, of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed by the Mortgage, or any part thereof, into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed by the Mortgage by any governmental or other lawful authority for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed by the Mortgage or any easement therein, including, but not limited to, awards for any change of grade of streets; and

E. All right, title and interest of Debtor in and to all extensions, improvements, betterments, renewals, substitutions and replacements of and all additions and appurtenances to the Real Property, the Improvements and/or any other property or rights encumbered or conveyed by the Mortgage, hereafter acquired by or released to Debtor or constructed, assembled or placed by Debtor on the Real Property, the Improvements and/or any other property or rights encumbered or conveyed by the Mortgage, and all conversions of the security constituted thereby which, immediately upon such acquisition, release, construction, assembling, placement or conversion as the case may be, and in each such case without any further mortgage, conveyance, assignment or other act by Debtor, shall become subject to the lien of the Mortgage as fully and completely, and with the same effect, as though now owned by Debtor and specifically described in the Mortgage.

The term "Mortgage" as used herein shall mean that certain Mortgage, Assignment of Rents and Security Agreement, dated as of _____, 20____ by Debtor as mortgagor in favor of Secured Party as mortgagee, encumbering the Real Property.

Debtor:

SCHEDULE A
(Legal Description)



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CHAPTER 8: Financing Statements.

37TTT-8 California Legal Forms--Transaction Guide Form T8-3

Form T8-3 UCC-1 Exhibit--Descriptions of Collateral

Description: This form provides an exhibit to a UCC-1 financing statement, describing the secured transactions' collateral.

Form T8-3 UCC-1 Exhibit--Descriptions of Collateral

EXHIBIT A to UCC-1

Debtor:

Secured Party:

The collateral ("Collateral") consists of all of the Debtor's personal property, as more particularly described below, and (except for Commercial Tort Claims), whether now existing or after-arising:

(a) Accounts and all Goods whose sale, lease or other disposition by Debtor has given rise to Accounts and have been returned to, or repossessed or stopped in transit by Debtor;

(b) Chattel Paper, whether Tangible Chattel Paper or Electronic Chattel Paper, Instruments, Documents and General Intangibles (including, without limitation, all patents, patent applications, trademarks, trademark applications, tradenames, trade secrets, goodwill, copyrights, copyright applications, registrations, licenses, software, franchises, customer lists, tax refund claims, claims against carriers and shippers, guarantee claims, contract rights, payment intangibles, security interests, security deposits and rights to indemnification);

(c) Inventory;

(d) Goods (other than Inventory), including, without limitation, Equipment, vehicles and Fixtures;

(e) Deposit Accounts, and money;

(f) Letter-of-Credit Rights and Supporting Obligations;

(g) The following Commercial Tort Claims: _____;

(h) Investment Property;

(i) any other personal property of Debtor now or hereafter in the possession, custody or control of Secured Party, any lender or any agent or any parent, affiliate or subsidiary of Secured Party or such lender or any participant with Secured Party or such lender in the loans for any purpose (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise); and

(j) all additions and accessions to, substitutions for, and replacements, products and Proceeds of the foregoing property, including, without limitation, proceeds of all insurance policies insuring the foregoing property, and all of Debtor's books and records relating to any of the foregoing.

For the purposes of this financing statement, "Account", "Chattel Paper", "Commercial Tort Claims", "Deposit Accounts", "Documents", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter of Credit Rights", "Proceeds", "Supporting Obligations" and "Tangible Chattel Paper", and Electronic Chattel Paper shall have the respective meaning assigned to such terms in the _____ [state] Uniform Commercial Code, as the same may be in effect from time to time.



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CHAPTER 8: Financing Statements.

37TTT-8 California Legal Forms--Transaction Guide Form T8-4

Form T8-4 UCC-3 Financing Statement Amendment

Description: This form provides a form to amend a UCC-3 financing statement.

Form T8-4 UCC-3 Financing Statement Amendment

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CHAPTER 8: Financing Statements.

37TTT-8 California Legal Forms--Transaction Guide Form T8-5

Form T8-5 Accountant's Access Letter

Description: This form provides a means for borrower to authorize lender to request information directly from the borrower's accountants.

Form T8-5 Accountant's Access Letter

_____, _____,
20_____

Via Certified Mail -
Return Receipt Requested

[Accountant's name and address]

Ladies and Gentlemen:

Please be advised that in connection with a [Revolving Credit] [Term Loan] [and Security] Agreement and related agreements (as each may be amended, modified, restated or supplemented from time to time, collectively the "Agreements") between the undersigned and _____ ("Lender"), we have agreed, among other things, that Lender may, from time to time, confer directly with you with respect to our business and financial affairs and that we would direct you, which we hereby do, to answer questions with respect to our business and financial affairs, directly as and when requested. If and when such requests are made, please advise us of the nature of the request and your response thereto.

The instructions given by this letter shall be irrevocable so long as we have any obligations to Lender under the

Agreements.

Very truly yours,

[BORROWER].....

By:_____

Name:

Title:



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CHAPTER 8: Financing Statements.

37TTT-8 California Legal Forms--Transaction Guide Form T8-6

Form T8-6 UCC-11 National Information Request

Description: This form is an information request form related to a security interest in a secured transaction.

Form T8-6 UCC-11 National Information Request

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CHAPTER 9: Senior Secured Credit Facilities.

37TTT-9 California Legal Forms--Transaction Guide 9.syn

§ 9.syn Synopsis to Chapter 9: Senior Secured Credit Facilities.

Form T9-1 Commitment Letter--Senior Secured Credit Facility

Form T9-1 Commitment Letter



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CHAPTER 9: Senior Secured Credit Facilities.

37TTT-9 California Legal Forms--Transaction Guide Form T9-1

Form T9-1 Commitment Letter--Senior Secured Credit Facility

Description: This form provides a commitment letter outlining a senior secured credit facility to be provided to a borrower by a lender.

Form T9-1 Commitment Letter

_____, 20____

Attention: _____

I. Re: Credit Facility for _____

Ladies and Gentlemen:

_____[Lender] ("Lender") is pleased to outline the terms of a senior secured credit facility to be provided to Borrower (defined below) in the aggregate principal amount of \$_____ (the "Credit Facility"). If consummated, the Credit Facility would be used to [provide a portion of the funds required to finance the acquisition of substantially all of the assets and liabilities of _____ (the "Acquisition") and] provide for ongoing working capital and capital expenditure needs of the Borrower.

The terms and conditions upon which Lender would offer the Credit Facility are as follows:

Borrower: _____.

Guarantor(s): As determined by Lender but will include parent of Borrower and all of the domestic subsidiaries of the Borrower.

Lender: [Lender]

Credit Facility: A \$ _____ Senior Secured Credit Facility comprised of:

- 1) \$ _____ Revolving Credit, governed by a borrowing base consisting of [85%] of eligible accounts receivable, plus [60%] of eligible raw material and finished goods inventory.
 Eligible accounts and inventory would consist of accounts and inventory that satisfy Lender's eligibility and reserve requirements. The Revolving Credit Facility would include a \$ _____ sub-limit for letters of credit and advances against inventory outstanding at any time would not be permitted to exceed \$ _____. Any letters of credit outstanding would be reserved against availability under the Revolving Credit Facility.
- 2) \$ _____ Term Loan. The Term Loan would amortize in quarterly installments beginning with the end of the first full fiscal quarter following closing. The Amortization schedule would be as follows:

Loan Year	Aggregate Reduction For Loan Year
Year One	\$ _____
Year Two	\$ _____
Year Three	\$ _____
Year Four	\$ _____
Year Five	\$ _____

All outstanding Term Loan balances shall be due and payable upon the Final Maturity Date of the Credit Facility.

Borrowing Base

Monitoring: Borrower's accounts receivable and inventory would be monitored by Lender to enable determination of the Borrowing Base from time to time. Borrower would deliver borrowing base reports on a monthly basis or more frequently as required by the Lender.

Final Maturity

Date: The Credit Facility would terminate and all amounts outstanding thereunder would be due and payable on the earlier of (x) the _____ anniversary of the closing date and (y) such earlier date as the Credit Facility shall terminate as the result of a default or otherwise.

Collateral: A first priority perfected security interest in all presently owned and hereafter acquired assets (personal property and real estate) of the Borrower and the Guarantor(s). A first priority perfected pledge of all outstanding capital stock or other be-

neficial interest of the Borrower and each of its direct and indirect domestic subsidiaries. Liens on the assets and stock by other parties would be prohibited.

Interest Rate: The interest rates (determined by adding the Rate Basis plus the Margin) would be as follows:

	Rate Basis	Margin
Revolving Credit Facility	Prime Rate	_____ %
	LIBOR	_____ %
Term Loan	Prime Rate	_____ %
	LIBOR	_____ %

Interest would be payable monthly in arrears on Prime Rate loans, and at the end of the applicable interest period (but not less frequently than every three months) on LIBOR loans and would be calculated daily on the basis of a 360-day year for the actual number of days elapsed. The maximum number of LIBOR loans outstanding at any time shall not exceed three (3).

Default Rate: 2% above stated interest rate.

Representations and Warranties:

Standard for transactions of this type as Lender may require.

Covenants: Standard for transactions of this type as Lender may require, designed to provide the Borrower with adequate operating flexibility. Financial and other reporting requirements would be as set forth in the documentation. Preliminarily, financial covenants shall include: (i) Maximum Ratio of Senior Debt to EBITDA; (ii) minimum EBITDA; (iii) maximum annual capital expenditures; (iv) minimum Fixed Charge Coverage and (v) minimum undrawn availability.

Defaults: Standard for transactions of this type as Lender may require including, but not limited to, payment defaults, covenant defaults, breaches of representations and warranties, material adverse change, cross-default and bankruptcy.

Fees & Expenses:

Closing Fee: _____ % of the commitment amount, payable, non-refundable, and fully earned at closing.

Letters of Credit: Borrower would pay a fee equal to _____ % per annum on the average undrawn face amount of letters of credit, payable monthly in arrears. In addition, Borrower would pay any fees, costs or expenses (including fronting fees) due to banks for any bank letters of credit issued for Borrower's account.

Unused Line Fee: _____ % per annum, on the average daily balance of the unused portion of the Revolving Credit Facility, payable monthly in arrears.

Prepayment Fee: The Credit Facility may be prepaid in full or the Term Loan in part, and Lenders' commitments thereunder terminated at any time, subject to payment of a prepayment fee on the total committed Credit Facility or in the case of a partial prepay-

ment of the Term Loan on the amount prepaid equal to _____ % in the first and second year of the term of the Credit Facility.

Audit Fee: The out-of-pocket fees, costs and expenses paid to third party auditors shall be paid by Borrower. The timing and frequency of such audits are to be determined by Lender. If no default shall be in existence under the Credit Facility, Borrower shall be responsible to reimburse Lender for no more than two (2) audits per calendar year.

Conditions Precedent to Closing of the Credit Facility:

Conditions Precedent to closing may include, but not be limited to, the following:

- 1) The Credit Facility would be subject to formal loan documentation and opinions of counsel fully acceptable to Lender and its counsel. The documentation would contain such terms, conditions, representations, warranties, covenants and events of default customary for loans of this type as Lender may require.
- 2) The Lender shall have received insurance policies or binders for insurance in types and amounts and under terms and conditions that are customary for Borrower's industry, with appropriate endorsements naming Lender as loss payee and/or additional insured, as appropriate. Lender shall also have received title insurance policies in form and substance satisfactory to Lender with respect to its lien on that portion of the collateral consisting of real property owned by Borrower. Lender may also require UCC insurance covering attachment, perfection, and priority of its security interest.
- 3) All terms and conditions of the contemplated Acquisition shall be acceptable to Lender.
- 4) The Lender shall have received a business plan and financial and other information as it shall reasonably require with respect to the Borrower, the foregoing to be in form and substance satisfactory to the Lender.
- 5) There shall have been no material adverse change in the business, operations, assets, properties, liabilities, profits, prospects or financial position of the Borrower, as determined by the Lender in its sole discretion.
- 6) Each Borrower and Guarantor would be required to satisfy Lender on the closing date that after giving effect to the Acquisition and transactions contemplated by the Credit Facility, it is solvent, able to meet its obligations as they mature and has sufficient capital to enable it to operate its business.
- 7) Borrower will have not less than \$_____ in excess availability under the Revolving Credit Facility on the closing date, after giving effect to the initial borrowings under the Credit Facility, the payment of all fees, costs and expenses associated with the transaction and any trade accounts payable outstanding beyond trade terms.
- 8) Lender shall have received such third party agreements (e.g. landlord waivers and consents) as deemed necessary by Lender.
- 9) All filings, recordations and other acts necessary to have provided

Lender with a first priority perfected security interest in the Collateral shall have been accomplished.

- 10) [An environmental audit report in scope and substance satisfactory to Lender prepared by an environmental engineering firm acceptable to Lender. Lender shall be satisfied that there are no existing environmental liabilities that may have a material adverse impact on the financial condition or prospects of the Borrower, in Lender's sole discretion.]

Assignments: Lenders shall have the right at any time to sell, assign or transfer any portion of the Credit Facility to one or more other lenders in minimum tranches of \$_____ each. If no default shall be in existence, Borrower shall have the right to consent to such sale, assignment or transfer (which consent shall in any event not be unreasonably withheld).

By signing this letter, Borrower agrees to pay on demand all reasonable costs, fees and expenses incurred or to be incurred by Lender in connection with the consideration, examination, review, documentation, syndication and/or closing of the Credit Facility, including but not limited to auditor fees, counsel fees, appraisers' fees and all other out-of-pocket expenses relating to any of the foregoing, whether or not the financing transaction contemplated by this letter shall be approved or closed, and whether or not any terms, conditions, and/or requirements herein are modified by any commitment, should one be provided.

Regardless of whether the Acquisition or the Credit Facility closes, Borrower, shall indemnify and hold harmless Lender and its affiliates, and the directors, officers, employees, agents, attorneys and representatives of any of them (each, an "Indemnified Person"), from and against all suits, actions, proceedings, claims, damages, losses, liabilities and expenses (including, but not limited to, attorneys' fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal), which may be instituted or asserted against or incurred by any such Indemnified Person in connection with, or arising out of, this Commitment Letter, the Credit Facility or the Acquisition under consideration, the documentation related thereto, any other credit facility related thereto, any actions or failures to act in connection therewith, and any and all environmental liabilities and legal costs and expenses arising out of or incurred in connection with any disputes between or among any parties to any of the foregoing, and any investigation, litigation, or proceeding related to any such matters. Notwithstanding the preceding sentence, indemnitors shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that Indemnified Person's gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction. Under no circumstances shall Lender or its affiliates be liable to you or any other person for any punitive, exemplary, consequential or indirect damages which may be alleged to result from this Commitment Letter, the Acquisition, the Credit Facility, the documentation related thereto or any other Credit Facility, regardless of whether the Acquisition or the credit facility closes.

This letter will be governed by the laws of the State of _____ (without regard to the conflicts of laws thereof). **THE PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF THIS LETTER.**

Our commitment is subject to the negotiation, execution and delivery prior to _____, 20____ of definitive documentation with respect to the Credit Facility and the Acquisition which are satisfactory to Lender and its counsel, which date may be extended by Lender in its sole discretion.

This letter has been issued in reliance upon the accuracy of all information furnished to Lender by or on behalf of Borrower and is delivered to you on the condition that neither it nor its substance will be disclosed to any third party

except those in a confidential relationship to you and in connection with submitting an offer in connection with the Acquisition, or your accountants, attorneys, and financial advisors. No disclosure shall be made to any other financial institution or intermediary. In addition, no portion of this letter may be relied upon by any third party nor is the commitment hereunder with respect to the Credit Facility assignable, in whole or in part, to any third party.

If you would like to accept this Commitment Letter and for us to proceed with our due diligence and legal documentation process please sign and return the enclosed copy of this letter on or before _____, 20____ along with a deposit of \$ _____. Any unused portion of deposits received will be either credited to the Closing Fee upon closing or refunded after all reimbursable expenses incurred by Lender in connection with the proposed financing have been reimbursed.

We look forward to working with you and would be happy to discuss this letter with you at your convenience.

Very truly yours,

[LENDER].....

By: _____

Name: _____

Title: _____

Agreed:,

[BORROWER]

By: _____

Name: _____

Title: _____

Date: _____



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California Legal Forms--Transaction Guide

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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 10: Credit Cards.

37TTT-10 California Legal Forms--Transaction Guide 10.syn

§ 10.syn Synopsis to Chapter 10: Credit Cards.

Form T10-1 General Notification of Action Taken--Credit Denial, Termination, or Change

Form T10-1 General Notification of Action Taken--Credit Denial, Termination, or Change



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.
CHAPTER 10: Credit Cards.

37TTT-10 California Legal Forms--Transaction Guide Form T10-1

Form T10-1 General Notification of Action Taken--Credit Denial, Termination, or Change

Description: This form is for use by a creditor to notify a consumer that his or her application for credit has been denied, or that his or her existing credit has been terminated or changed in some manner.

Form T10-1 General Notification of Action Taken--Credit Denial, Termination, or Change

STATEMENT OF CREDIT DENIAL,
TERMINATION, OR CHANGE

.....Date: _____, _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

Description of Action Taken:

PART I-- PRINCIPAL REASON(S) FOR CREDIT
DENIAL, TERMINATION, OR OTHER ACTION
TAKEN CONCERNING CREDIT

This section must be completed in all instances.

- _____ Credit application incomplete
- _____ Insufficient number of credit references
- _____ Unacceptable type of credit references provided
- _____ Unable to verify credit references
- _____ Temporary or irregular employment
- _____ Unable to verify employment
- _____ Length of employment
- _____ Income insufficient for amount of credit requested
- _____ Excessive obligations in relation to income
- _____ Length of residence
- _____ Temporary residence
- _____ Unable to verify residence
- _____ No credit file
- _____ Limited credit experience
- _____ Poor credit performance with us
- _____ Delinquent past or present credit obligations with others
- _____ Garnishment, attachment, foreclosure, repossession, collection action, or judgment suit
- _____ Bankruptcy
- _____ Other (specify): _____

**PART II-- DISCLOSURE OF USE OF INFORMATION
OBTAINED FROM AN OUTSIDE SOURCE**

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

_____ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you.

Name: _____
Address: _____
Phone: _____

_____ Our credit decision was based in whole or in part on information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's Name: _____
Creditor's Address: _____

Creditor's Telephone Number: _____

NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (providing the applicant has the capacity to enter into a binding contract); because all or a part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is _____ *[specify name and address of appropriate agency from list of federal enforcement agencies in 12 C.F.R. Part 202, Appendix A].*



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 11: Stop Payment.

37TTT-11 California Legal Forms--Transaction Guide 11.syn

§ 11.syn Synopsis to Chapter 11: Stop Payment.

Form T11-1 Stop-Payment Order

Form T11-1 Stop-Payment Order



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PART I: Transactions in Turbulent Times - Financing - Loans - Letters of Credit - Notes.

CHAPTER 11: Stop Payment.

37TTT-11 California Legal Forms--Transaction Guide Form T11-1

Form T11-1 Stop-Payment Order

Description: This form may be used to require a bank to stop payment on a check or other item.

Form T11-1 Stop-Payment Order

TO: _____ [name and address of bank]

FROM: _____ [name and address of customer]

DATED: _____

STOP-PAYMENT ORDER

Affecting Bank Account No. _____

PLEASE STOP PAYMENT ON THE FOLLOWING CHECK:

Check. No. _____

Amount of Check: \$ _____

Date of Check: _____

Payee: _____

Account No. _____

Account Name: _____

Thank you for your prompt action. If you have any questions, please contact me immediately at _____

[*e.g.*, telephone number and e-mail address].

_____ [typed name]

_____ [signature]