

# **FINANCING AGREEMENTS**

## **Common Exceptions Permitted In Loan Agreements**

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES**

*(see definitions that follow)*

Borrower represents and warrants to Lender as follows:

**Section 5.1 Existence and Power.** Borrower is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Washington. Borrower is duly qualified to do business in each other jurisdiction where the failure to so qualify would be likely to have a material adverse effect on the financial condition or operations of Borrower. Borrower has full corporate power, authority and legal right to carry on its business as presently conducted, to own and operate its properties and assets, and to execute, deliver and perform this Agreement and the other Borrower Documents.

**Section 5.2 Borrower Authorization.** The execution, delivery and performance by Borrower of this Agreement and the other Borrower Documents and any borrowing hereunder or thereunder have been duly authorized by all necessary corporate action of Borrower, do not require any shareholder approval or the approval or consent of any trustee or the holders of any Indebtedness of Borrower, except such as have been obtained, do not contravene any law, regulation, rule or order binding on it or its Articles of Incorporation or Bylaws and do not contravene the provisions of or constitute a default under any material indenture, mortgage, contract or other agreement or instrument to which Borrower is a party or by which Borrower or any of its properties may be bound or affected.

**Section 5.3 Guarantor Authorization.** The execution, delivery and performance by each Guarantor of the Guaranty Agreement and the other Guarantor Documents to which it is a party, has been duly authorized by all necessary corporate action of such Guarantor, do not require any shareholder approval or the approval or consent of any trustee or the holders of any Indebtedness of such Guarantor, except such as have been obtained, do not contravene any law, regulation, rule or order binding on it or its Articles of Incorporation or Bylaws and do not contravene the provisions of or constitute a default under any material indenture, mortgage, contract or other agreement or instrument to which such Guarantor is a party or by which such Guarantor or any of its properties may be bound or affected.

**Section 5.4 Government Approvals, Etc.** No Government Approval or filing or registration with any Governmental Authority is required for the making and performance by Borrower of the Borrower Documents or by any Guarantor of the Guarantor Documents or in connection with any of the transactions contemplated hereby or thereby, except such as have been heretofore obtained and are in full force and effect.

**Section 5.5 Binding Obligations, Etc.** This Agreement has been duly executed and delivered by Borrower and constitutes, and the other Borrower Documents when duly executed and delivered will constitute, the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, similar laws affecting creditors' rights generally or general principles of equity (regardless of whether enforcement is sought in equity or at law).

**Section 5.6 Litigation.** Except as specifically disclosed in Schedule 6 attached hereto, there are no actions, proceedings, investigations, or claims against or affecting Borrower or any Subsidiary now pending before any court, arbitrator, or Governmental Authority (nor to the best of Borrower's knowledge has any thereof been threatened nor does any basis exist therefor) which (a) allege a default by Borrower or any Guarantor under this Agreement or any other Loan Document or seek to enjoin enforcement thereof or seek to enjoin the consummation of any of the transactions contemplated hereby or thereby; or (b) could reasonably be expected to (i) have a Material Adverse Effect, or (ii) impair or defeat the Lien of Lender on any material portion of the Collateral or any material rights of Borrower or any Subsidiary therein.

**Section 5.7 Financial Condition.** The consolidated balance sheet of Borrower and its Subsidiaries as at December 31, 2004, and the related statements of income and retained earnings for the period then ended, copies of which have been furnished to Lender, fairly present in all material respects the financial condition of Borrower as at such date (subject to year-end audit adjustments and the absence of footnote disclosures), all determined in accordance with GAAP. Neither Borrower nor any Subsidiary had on such date any material contingent liabilities for Taxes, any material unusual forward or long-term commitments or material unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in the balance sheet and in the related notes. Since the date of such financial statements there has been no material adverse change in the operations, business, properties, condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole.

**Section 5.8 Solvency.** Borrower and each Guarantor is Solvent and each shall be Solvent immediately after the consummation of the transactions contemplated by this Agreement. As used herein, a Person is "Solvent" on a particular date, if, on such date both (i) (a) the then fair saleable value of the property of such Person on a going concern basis is (1) greater than the total amount of liabilities (including contingent liabilities) of such Person as they mature in the ordinary course and (2) not less than the amount that will be required to pay the probable liabilities on such Person's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to such Person; (b) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (c) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (ii) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability in the ordinary course.

**Section 5.9 Title and Liens.** As of the Closing Date, Borrower and each Subsidiary has good and marketable title to each of the material properties and assets reflected in the balance sheet referred to in Section 5.7 except such as have been since sold or otherwise disposed of in the ordinary course of business. No assets or revenues of Borrower or any Subsidiary are subject to any Lien except Permitted Liens and Liens permitted under Section 7.7.

## **Section 5.10 Matters Concerning Collateral.**

(a) The execution and delivery by the Borrower and each Guarantor of the Security Documents to which it is a party, together with the actions taken on or prior to the date hereof pursuant to Section 4.1(j), are effective to create and do create in favor of Lender, as security for the Secured Obligations (as defined in the applicable Security Document in respect of any Collateral), a valid, perfected and enforceable Lien on such Collateral, prior and superior in right to any other Person except for Permitted Liens and Liens specifically disclosed in Schedule 13 attached hereto, and all filings and other actions necessary or desirable to perfect and maintain the perfection and first priority status of such Liens have been duly made or taken and remain in full force and effect, other than the filing of any UCC financing statements and the periodic filing of UCC continuation statements in respect of UCC financing statements filed by or on behalf of Lender.

(b) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required for either (i) the grant by Borrower or any Guarantor of the Liens purported to be created in favor of Lender pursuant to any of the Security Documents to which Borrower or such Guarantor is a party or (ii) the exercise by Lender of any rights or remedies in respect of the Collateral described in any of such Security Documents (whether specifically granted or created pursuant to any of such Security Documents or created or provided for by applicable law), except for filings or recordings contemplated by subsection (a) above.

(c) Except as such as may have been filed in favor of Lender as contemplated by subsection (a) above (including UCC financing statements and fixture filings filed prior to the date hereof naming Borrower or any Guarantor as debtor and Lender as secured party) and in respect of Liens permitted under Section 7.7, no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Collateral described in any of the Security Documents to which Borrower or any Subsidiary is a party is on file in any filing or recording office.

(d) All representations and warranties of Borrower and each Guarantor contained in the Security Documents to which it or such Guarantor is a party are true and correct, and all information supplied to Lender by or on behalf of Borrower with respect to the Collateral is accurate and complete in all material respects.

**Section 5.11 Environmental Laws, Etc.** Except as specifically disclosed in Schedule 7 attached hereto, all properties owned or leased by Borrower or any Subsidiary and its use thereof comply in all material respects with applicable zoning and use restrictions and with applicable laws and regulations (including Environmental Laws) relating to health, safety and the environment, except such non-compliance which (if enforced in accordance with applicable law or regulation and determined adversely to Borrower or such Subsidiary) could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Without limiting the foregoing, except as specifically disclosed in Schedule 7 attached hereto, no Hazardous Substances have been generated, used, handled, transported, stored, treated, released or disposed of, whether by Borrower, any Subsidiary or, to the best of Borrower's knowledge, by any other Person onto, upon, over, beneath or from any real property

owned or leased by Borrower or any Subsidiary or any of the ground water beneath any such premises (collectively, the “Premises”) which could reasonably be expected to result in Borrower, any Subsidiary, Lender incurring or suffering at any time any loss, liability, damages, or obligations, including, without limitation, liability for cleanup and recovery costs and expenses relating to the Premises, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 7 attached hereto, to the best of Borrower’s knowledge, there are no underground storage tanks, whether in current use or not, at any of the Premises that constitute a portion of the Collateral, except for underground storage tanks that are in material compliance with applicable laws and regulations. To the best of Borrower’s knowledge, there are no past or present events, conditions, circumstances, activities, practices, incidents or actions at or in connection with the Premises which could reasonably be expected to (i) interfere with or prevent continued compliance with any laws or regulations pertaining to underground storage tanks or any other laws or regulations relating to the emission, discharge, release or threatened release of Hazardous Substances into the environment or (ii) give rise to any legal liability or otherwise form the basis of any claim, action, suit, proceedings, hearing or investigation against or affecting Borrower or any Subsidiary under the Environmental Laws that could reasonably be expected to give rise to legal liability that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There has been no disposal from the Premises by Borrower or any Subsidiary (or to the best of Borrower’s knowledge, by any other Person) directly or indirectly of any Hazardous Substances to, on or in any site currently listed or formally proposed to be listed on the National Priorities List under Superfund or any site listed on any priority cleanup list compiled by any state department of ecology or environmental quality, except where any of the foregoing could not reasonably be expected to have a Material Adverse Effect. To the best of Borrower’s knowledge, neither Borrower nor any Subsidiary has been involved in any operations at or near the Premises which operations when conducted in accordance with applicable law could lead to the imposition of liability under Environmental Laws on Borrower or any Subsidiary or any subsequent owner of the Premises, the imposition of which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 5.12 Taxes.** Borrower and each Subsidiary has filed all Federal and other material tax returns and reports required of it, has paid all Federal and other material Taxes which are due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. The charges, accruals and reserves on the books of Borrower and each Subsidiary in respect of Taxes for all fiscal periods to date are accurate in all material respects. There are no questions or disputes between Borrower or any Subsidiary and any Governmental Authority with respect to any material Taxes except as disclosed in the balance sheet referred to in Section 5.7 or otherwise disclosed to Lender in writing.

**Section 5.13 Other Agreements.** Neither Borrower nor any Subsidiary is in breach of or default under or with respect to any material agreement to which it is a party or which is binding on it or any of its assets which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect.

**Section 5.14 Federal Reserve Regulations.** Neither Borrower nor any Subsidiary is 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 (within the meaning of Federal Reserve Regulation U), and no part of the proceeds of any Loan will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any other purpose that violates the applicable provisions of any Federal Reserve Regulation. Borrower will furnish to Lender on request a completed Federal Reserve Form U-1 for Lender.

**Section 5.15 Labor and Employee Relations Matters.** Except as specifically disclosed in Schedule 9, (a) no strikes or other material labor disputes against Borrower or any Subsidiary are pending or, to the best of Borrower's knowledge, threatened, (b) hours worked by and payment made to employees of Borrower and each Subsidiary comply with the Fair Labor Standards Act and each other federal, state, local or foreign law applicable to such matters, (c) neither Borrower or any Subsidiary is a party to or bound by any collective bargaining agreement, (d) there is no organizing activity involving Borrower or any Subsidiary are pending or, to the best of Borrower's knowledge, threatened by any labor union or group of employees, (e) there are no representation proceedings pending or, to the best of Borrower's knowledge, threatened with the National Labor Relations Board, and no labor organization or group of employees of Borrower or any Subsidiary has made a pending demand for recognition and (f) Borrower and each Subsidiary are in compliance with applicable laws and regulations relating to labor or labor practices, except, in the case of clauses (b) and (f), where such non-compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 5.16 ERISA.**

(a) The present value of all benefits vested under all Pension Plans did not, as of the most recent valuation date of such Pension Plans, exceed the value of the assets of the Pension Plans allocable to such vested benefits by an amount which if determined to be a liability of Borrower or any Subsidiary could reasonably be expected to have a Material Adverse Effect.

(b) No Plan or trust created thereunder, or any trustee or administrator thereof, has engaged in a "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) which could subject such Plan or any other Plan, any trust created thereunder, or any trustee or administrator thereof, or any party dealing with any Plan or any such trust to the tax or penalty on prohibited transactions imposed by Section 502 of ERISA or Section 4975 of the Code of any material amount.

(c) No Pension Plan or trust has been terminated, except (i) in accordance in all material respects with the Code, ERISA, and the regulations of the Internal Revenue Service and the PBGC as applicable to solvent plans in which benefits of participants are fully protected or (ii) where such termination has not and could not reasonably be expected to have a Material Adverse Effect. No "reportable event" as defined in Section 4043 of ERISA has occurred for which notice has not been waived or for which alternative notice procedures are permitted.

(d) No Pension Plan or trust created thereunder has incurred an “accumulated funding deficiency” (as such term is defined in Section 302 of ERISA) whether or not waived, since the effective date of ERISA of any material amount.

(e) The required allocations and contributions to Pension Plans will not violate Section 415 of the Code.

(f) The aggregate amount of withdrawal liability that Borrower and its Subsidiaries would have to trusts created pursuant to Multiemployer Plans would not exceed One Million Dollars (\$1,000,000) if Borrower and its Subsidiaries withdrew from such plans or if their participation therein were otherwise terminated.

(g) To the extent the representations contained in subsections (a) through (e) of this Section 5.16 relate to a Multiemployer Plan, they are made only to the knowledge of Borrower.

**Section 5.17 Subsidiaries.** Schedule 2 attached hereto accurately sets forth as of the Closing Date the jurisdictions of incorporation or organization of each Subsidiary, and (a) in the case of a Subsidiary that is a corporation, the authorized capitalization of each Subsidiary, the number of shares of each class of capital stock issued and outstanding of each Subsidiary and the number and percentage of outstanding shares of each such class of capital stock owned by Borrower or by any Subsidiary, or (b) in the case of a Subsidiary that is a limited liability company or partnership, the number of partnership or membership units of each Subsidiary and the number and percentage of partnership or membership units owned by Borrower or by any Subsidiary. The outstanding shares of each Subsidiary that is a corporation shall have been duly authorized and validly issued and are fully paid and nonassessable. Borrower and each other Subsidiary own beneficially and of record and have good title to all the shares, partnership units and membership units each is listed as owning on Schedule 3, free and clear of any Liens other than Permitted Liens and Liens permitted under Section 7.7.

**Section 5.18 Patents, Licenses, Franchises.** Borrower and each Subsidiary owns or possesses all material patents, trademarks, service marks, trade names, copyrights (collectively, “Intellectual Property”), licenses, franchises, permits and rights with respect to any Intellectual Property necessary to own and operate its properties and to carry on its business as presently conducted and presently planned to be conducted without, to the best of Borrower’s knowledge, conflict with the rights of others. Except as specifically disclosed in Schedule 8 attached hereto, no claim or litigation regarding any Intellectual Property, or any license, franchise, permit or other rights with respect thereto, is pending (nor to the best of Borrower’s knowledge threatened) which if determined adversely to Borrower or any of its Subsidiaries, could reasonably be expected to have a Material Adverse Effect.

**Section 5.19 Representations as a Whole.** This Agreement, the other Loan Documents, the financial statements referred to in Section 5.7, and all other instruments, documents, certificates and statements furnished to Lender in writing by or on behalf of Borrower or any Subsidiary, taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. Borrower

has disclosed to Lender in writing any and all facts which could reasonably be expected to have a Material Adverse Effect.

## **ARTICLE 6 AFFIRMATIVE COVENANTS**

So long as Lender shall have any Commitment hereunder or there shall be any Letter of Credit Usage and, until payment in full of each Loan and performance of all other obligations of Borrower under this Agreement, Borrower agrees to do all of the following unless Lender shall otherwise consent in writing.

**Section 6.1 Use of Proceeds from Loans.** Borrower will use the proceeds of the Loans for the following purposes: (i) the Revolving Loans and Letters of Credit shall be used solely for accounts receivable and inventory financing, capital expenditures and for general working capital purposes; and (ii) the Term Loans shall be used solely to continue loans made under the Existing Credit Agreement (including, without limitation, the conversion of Term Loans (as such term is defined in the Existing Credit Agreement) into Term A Loans and Term B Loans in accordance with Section 2.1) and to pay fees and expenses incurred in connection herewith and therewith.

**Section 6.2 Payment.** Borrower will pay the principal of and interest on the Loans in accordance with the terms of this Agreement and the Notes and will pay when due all other amounts payable by Borrower hereunder and under any other Loan Document.

**Section 6.3 Preservation of Corporate Existence, Etc.** Borrower will, and will cause each Subsidiary to, preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation and qualify and remain qualified as a foreign corporation in each jurisdiction where such qualification is necessary or advisable in view of the business and operations of Borrower or such Subsidiary or the ownership of its properties, except where the failure to be or remain so qualified could not reasonably be expected to have a Material Adverse Effect.

**Section 6.4 Visitation Rights.** Borrower will permit Lender during normal business hours upon reasonable notice, to examine and make copies of and abstracts from the records and books of account of and to visit the properties of Borrower and any Subsidiary and to discuss the affairs, finances and accounts of Borrower with any of its officers or directors. Without limiting the generality of the foregoing, Borrower will permit and will cause each Subsidiary to permit Lender during normal business hours upon reasonable notice, to examine and make copies of and abstracts from the records and books of account of Borrower and its Subsidiaries maintained in respect of the Collateral, and to discuss such records, books of account and the Collateral with the principal officers of Borrower and its Subsidiaries or their respective designees; provided, however, that so long as no Event of Default shall have occurred and be continuing, such collateral examinations shall occur no more often than annually.

**Section 6.5 Keeping of Books and Records.** Borrower will keep adequate records and books of account in which complete entries are to be made reflecting business and financial transactions, in accordance with GAAP in all material respects.

**Section 6.6 Maintenance of Property, Etc.** Borrower will, and will cause each Subsidiary to, maintain and preserve all of its property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted and make all necessary repairs thereto and renewals and replacements thereof, except where Borrower or such Subsidiary determines in good faith that the failure to repair or replace such equipment will not be detrimental to the business of Borrower or such Subsidiary. Borrower will, and will cause each Subsidiary to, not take or fail to take any action, nor permit any action to be taken by others that are subject to Borrower's or such Subsidiary's control which would affect the validity and enforcement of its and their Intellectual Property, or impair the value of such Intellectual Property, except where taking or failing to take such action could not reasonably be expected to have a Material Adverse Effect.

**Section 6.7 Compliance With Laws, Etc.** Borrower will, and will cause each Subsidiary to, comply in all material respects with all laws, regulations, rules, and orders of Governmental Authorities applicable to Borrower, any Subsidiary or to its operations or property, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

**Section 6.8 Other Obligations.** Borrower will pay and discharge and will cause each Subsidiary to pay and discharge before the same shall become delinquent all Indebtedness, Taxes, and other obligations for which Borrower or any Subsidiary is liable or to which its income or property is subject and all claims for labor and materials or supplies which, if unpaid, might become by law a Lien upon assets of Borrower or any Subsidiary, except any thereof whose validity, applicability or amount is being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP.

**Section 6.9 Insurance.** Borrower will, and will cause each Subsidiary to, keep in force upon all of its properties and operations policies of insurance carried with responsible insurance companies in such amounts and covering all such risks as shall be customary in the industry and as shall be reasonably satisfactory to Lender. Without limiting the generality of the foregoing, Borrower will, and will cause each Subsidiary to, maintain or cause to be maintained all insurance required under the terms of any Security Document. Each such policy of insurance shall (a) name Lender as an additional insured thereunder as its interests may appear and (b) in the case of each business interruption and casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Lender that names Lender as the loss payee thereunder and provides for at least thirty (30) days prior written notice to Lender of the cancellation of such policy. Borrower will, and will cause each Subsidiary to, from time to time, on written request, furnish to Lender certificates of insurance evidencing the coverage described in this Section, and, as often as Lender may reasonably request (but not more often than annually), a report of a reputable insurance broker with respect to such insurance.

**Section 6.10 Borrower Financial Information.** Borrower will deliver to Lender:

(a) **Annual Audited Financial Statements.** As soon as available, and in any event within ninety (90) days after the end of each fiscal year of Borrower, the consolidated and

consolidating financial statements of Borrower as of the end of such fiscal year, accompanied by an audit report thereon by Acme Accountants LLP or such other independent certified public accountants selected by Borrower and reasonably satisfactory to Lender (which report shall be prepared in accordance with GAAP and shall not be qualified by reason of restricted or limited examination of any material portion of the records of Borrower and shall contain no disclaimer of opinion or adverse opinion).

**(b) Quarterly Unaudited Financial Statements.** As soon as available, and in any event within forty-five (45) days after the end of the first three fiscal quarters of Borrower and within sixty (60) days after the end of the fourth fiscal quarter of Borrower, company prepared unaudited consolidated and consolidating financial statements of Borrower as of the end of such fiscal quarter (including the fiscal year to the end of such fiscal quarter), accompanied by an Officer's Certificate of Borrower certifying that such unaudited financial statements have been prepared in conformity with GAAP (subject to year-end audit adjustments and the absence of footnote disclosures) and, in all material respects, present fairly the consolidated financial position and the results of operations of Borrower as at the end of and for such fiscal quarter (subject to year-end audit adjustments and the absence of footnote disclosures).

**(c) Quarterly Compliance Certificates.** Together with the delivery of the financial statements referred to in subsections (a) and (b) above (other than the company prepared unaudited financial statements for the fourth fiscal quarter), a certificate executed and delivered on behalf of Borrower by the Chief Financial Officer, the Vice President-Finance or the Treasurer of Borrower (i) stating that as of the close of such fiscal quarter no Default or Event of Default had occurred and was continuing and (ii) demonstrating Borrower's compliance as at that date with the provisions of Section 6.14 and 7.9.

**(c) Management Letters; Etc.** Promptly after receipt thereof, copies of any final management letters submitted to the board of directors (or the audit committee of the board of directors) of Borrower by Borrower's independent certified public accountants in connection with the accounts or books of Borrower or any of its Subsidiaries, or any audit of any of them.

**(d) Other.** All other statements, reports and other information as Lender may reasonably request concerning the financial condition and business affairs of Borrower or any Subsidiary.

**Section 6.11 Notification.** Promptly after learning thereof, Borrower shall notify Lender of (a) any action, proceeding, investigation or claim against or affecting Borrower or any Subsidiary instituted before any court, arbitrator or Governmental Authority or, to Borrower's knowledge threatened to be instituted, which if determined adversely to Borrower or such Subsidiary, could reasonably be expected to (i) have a Material Adverse Effect, (ii) impair or defeat the Lien of Lender on any material portion of the Collateral or any material rights of Borrower or any Subsidiary therein or (iii) result in a judgment or order against Borrower or any Subsidiary (in excess of insurance coverage) for more than Five Hundred Thousand Dollars (\$500,000) or, when combined with all other pending or threatened claims, more than One Million Dollars (\$1,000,000); (b) any substantial dispute between Borrower or any Subsidiary and any Governmental Authority which could reasonably be expected to have a Material

Adverse Effect; (c) any labor controversy which has resulted in or, to Borrower's knowledge, threatens to result in a strike **which could reasonably be expected** to have a Material Adverse Effect; (d) if Borrower or any member of a Controlled Group gives or is required to give notice to the PBGC of any "reportable event" (as defined in subsections (b)(1), (2), (5) or (6) of Section 4043 of ERISA) with respect to any Plan (or the Internal Revenue Service gives notice to the PBGC of any "reportable event" as defined in subsection (c)(2) of Section 4043 of ERISA and Borrower obtains knowledge thereof) which might constitute grounds for a termination of such Plan under Title IV of ERISA, or knows that the plan administrator of any Plan has given or is required to give notice of any such reportable event, a copy of the notice of such reportable event given or required to be given to the PBGC; (e) the occurrence of any Default or Event of Default; and (f) the occurrence of any event, condition circumstance **which could reasonably be expected** to have a Material Adverse Effect. In the case of the occurrence of an Event of Default or Default or the occurrence of an event which results in a material adverse change in Borrower's consolidated financial condition or operations, Borrower will deliver to Lender an Officer's Certificate specifying the nature thereof, the period of existence thereof, if applicable, and what action Borrower proposes to take with respect thereto.

**Section 6.12 Payment of Expenses.** Borrower will, on demand pay to Lender all **reasonable** out-of-pocket costs, expenses and fees, including, without limitation, reasonable attorneys' fees (including allocated costs of in-house counsel), (a) incurred by Lender in connection with (i) the negotiation, preparation and execution of this Agreement and the other Loan Documents and any other document, agreement, opinion or certificate related to the foregoing and (ii) any and all amendments, waivers, consents and similar documents pertaining to the Loan Documents and (b) incurred by Lender in connection with collateral examinations made pursuant to Section 6.4.

**Section 6.13 Additional Payments; Additional Acts.** From time to time, the Borrower will (a) pay or reimburse Lender on request for all Taxes (other than Taxes imposed on the net income or gross revenues of Lender) imposed on this Agreement or any other Loan Document or payment and for all **reasonable** out-of-pocket expenses, including **reasonable** legal fees (including allocated costs of in-house counsel), incurred by Lender in connection with the making, issuance or administering of the Loans and Letters of Credit; (b) pay or reimburse Lender for all **reasonable** out-of-pocket expenses, including **reasonable** legal fees, incurred by Lender in connection with the enforcement by judicial proceedings or arbitration or other alternative dispute resolution proceeding or otherwise of any of the rights of Lender under the Loan Documents (including, without limitation, all such costs and expenses incurred during any "workout" or restructuring in respect of the Loans and during any legal proceeding, including, without limitation, any proceeding under any applicable bankruptcy, insolvency or other similar law affecting the rights of creditors generally of the United States of America or any State thereof); (c) upon the **reasonable** request of Lender, obtain and promptly furnish to Lender evidence of all such Government Approvals as may be required to enable Borrower and each Guarantor to comply with its obligations under the Loan Documents to which it is a party and to continue in business as conducted on the Closing Date without **material** interruption or interference; and (d) execute and deliver such instruments and documents (including, without limitation, deeds of trust and vehicle title applications and registrations) and perform all such other acts as Lender may **reasonably** request to carry out the transactions contemplated by the Loan Documents and to maintain the continuous perfection and priority of Lender's Lien on all

Collateral (including, without limitation, hereafter acquired vehicles). If Borrower shall default in its obligations to reimburse Lender or to make any other payment required hereunder, interest shall accrue on the unpaid amount thereof at a per annum rate equal to five percent (5%) above the Prime Rate (changing as such Prime Rate changes) from the date demand is made upon Borrower therefor until repaid in full. The obligations of Borrower under this Section 6.13 shall survive the payment of the Loans and the Notes, the reimbursement of the Letters of Credit and the termination of this Agreement.

**Section 6.14 Financial Covenants.**

(a) **Minimum Net Worth.** Borrower shall maintain as of the end of each of its fiscal years on a consolidated basis a Net Worth equal to or greater than the sum of (i) Ten Million Dollars (\$10,000,000) plus (ii) one hundred percent (10%) of the aggregate amount received in cash, or the fair market value of other property received, by Borrower in connection with the issuance of its capital stock or any other equity securities after December 31, 2008, in each case determined in accordance with GAAP plus (iii) seventy-five percent (75%) of Borrower’s positive net income for each fiscal year in which Borrower has a positive net income, in each case determined in accordance with GAAP.

(b) **Maximum Funded Debt to EBITDA Ratio.** Borrower shall maintain on a consolidated basis, as of the end of each of its fiscal quarters commencing March 31, 2009, a Funded Debt to EBITDA Ratio equal to or less than:

Fiscal Quarters Ending	Funded Debt to EBITDA Ratio
March 31, 2009 through December 31, 2009	3.10 to 1
March 31, 2010 through December 31, 2010	2.90 to 1
March 31, 2011 through December 31, 2011	2.70 to 1
March 31, 2012 and thereafter	2.30 to 1

As used herein, “Funded Debt to EBITDA Ratio” shall mean, as of any date of determination, the ratio of (i) the sum of (a) the then outstanding aggregate principal balance of all Funded Debt other than Revolving Loans plus (b) the average aggregate outstanding principal balance of all Revolving Loans for the period of twelve (12) consecutive months then ended less (c) the then outstanding principal balance of (i) the Subordinated Debt described in clause (i) of the definition of Subordinated Debt and (ii) such portions of the Subordinated Debt described in clause (ii) of the definition of Subordinated Debt as may be consented to by Lender in writing to (ii) the sum of (a) the EBITDA of Borrower and its Subsidiaries for the period of four consecutive fiscal quarters then ended; provided, however, that for purposes of calculating the constituent elements of clause (ii) of the Funded Debt to EBITDA Ratio as of

Borrower's fiscal quarters ending March 31, 2009, June 30, 2009 and September 30, 2009, such constituent elements shall be calculated as follows (1) for the fiscal quarter ending March 31, 2009, the amount of such constituent elements for the fiscal quarter then ended times four, (2) for the fiscal quarter ending June 30, 2009, the amount of such constituent elements for the two consecutive fiscal quarters then ended times two and (3) for the fiscal quarter ending September 30, 2009, the amount of such constituent elements for the three consecutive fiscal quarters then ended times the quotient of four divided by three.

(c) **Minimum Current Ratio.** Borrower shall maintain on a consolidated basis, as of the end of each of its fiscal quarters, a Current Ratio equal to or greater than:

Fiscal Quarters Ending	Current Ratio
March 31, 2009 through December 31, 2009	1.05 to 1
March 31, 2010 through December 31, 2010	1.10 to 1
March 31, 2011 and thereafter	1.20 to 1

As used herein, "Current Ratio" shall mean, as of any date of determination, (i) Current Assets of Borrower and its Subsidiaries, divided by (ii) Current Liabilities of Borrower and its Subsidiaries.

## ARTICLE 7 NEGATIVE COVENANTS

So long as Lender shall have any Commitment hereunder or there shall be any Letter of Credit Usage and, until payment in full of each Loan and performance of all other obligations of Borrower under this Agreement, Borrower agrees that it will not do any of the following unless Lender shall otherwise consent in writing.

**Section 7.1 Dividends, Etc.** Borrower shall not, and shall cause each Material Subsidiary to not declare or pay any dividend (except dividends payable in the form of its capital stock) on any shares of any class of Borrower's or any Subsidiary's capital stock or apply any assets to the purchase, redemption or other retirement of, or set aside any sum for the payment of any dividends on or for the purchase, redemption or other retirement of, or make any other distribution by reduction of capital or otherwise in respect of, any shares of any class of capital stock of Borrower or any Subsidiary, except for:

(a) distributions and dividends by any Subsidiary to Borrower or any wholly-owned Subsidiary of Borrower;

(b) the repurchase or redemption of Borrower's capital stock (including warrants, options and stock appreciation rights therefor) held by or for the benefit

of former employees, officers, directors or any other stockholder of Borrower or any Subsidiary; provided that (i) the purchase price paid in such repurchases and redemptions does not exceed the fair market value of the stock repurchased or redeemed, and (ii) the aggregate amount paid by Borrower and its Subsidiaries shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000) in any fiscal year; and

(c) the repurchase or redemption of Borrower's capital stock (including warrants, options and stock appreciation rights therefor) utilizing the cash proceeds received by Borrower from any life insurance policies maintained in respect to any stockholder.

**Section 7.2 Transactions With Affiliates.** Borrower shall not, and shall cause each **Material** Subsidiary to not enter into any transaction with any Affiliate of Borrower, except upon fair and reasonable terms no less favorable to Borrower or such Subsidiary than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate of Borrower or such Subsidiary. Notwithstanding the foregoing to the contrary:

(a) Borrower may enter into any transaction with any wholly-owned Subsidiary and any Subsidiary may enter into any transaction with the Borrower or any wholly-owned Subsidiary;

(b) Borrower may repurchase or redeem its capital stock as part of a transaction permitted under Section 7.1; and

(c) Borrower may pay management fees and reimburse expenses to Acme Capital Corporation in an aggregate amount not to exceed \$250,000 during any fiscal year.

**Section 7.3 Consolidations and Mergers.** Borrower shall not, and shall cause each **Material** Subsidiary to not, liquidate, dissolve or enter into any merger or consolidation with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets to or in favor of, any Person **or enter into any agreement to do any of the foregoing**, except:

(a) any Subsidiary may liquidate, dissolve, merge, consolidate with or into, or transfer any of its assets to Borrower or any wholly-owned Subsidiary; provided that Borrower or such wholly-owned Subsidiary shall be the continuing or surviving corporation;

(b) Borrower or any Subsidiary may merge or consolidate with any Person as part of an Permitted Acquisition; provided that the Borrower or a wholly-owned Subsidiary shall be the continuing or surviving corporation or organization; and

(c) Borrower or any Subsidiary may convey, transfer, lease or otherwise dispose of its assets as permitted under Section 7.4.

**Section 7.4 Dispositions of Assets.** Borrower shall not, and shall cause each **Material** Subsidiary to not, sell, lease, or dispose of (whether in one or a series of transactions) all or any substantial portion of its businesses or assets or of any Collateral (including accounts and notes receivable, with or without recourse) **or enter into any agreement to do any of the foregoing**, except:

**(a) sales of inventory in the ordinary course of business;**

**(b) Borrower and any Subsidiary may enter into agreements to sell, lease, or dispose of all or any substantial portion of its businesses or assets or of any Collateral; provided that any material performance of Borrower or such Subsidiary under such agreements is expressly conditioned on the receipt by Borrower or such Subsidiary of certain third-party consents, which Borrower acknowledges and agrees shall include the consent of Lender;**

**(c) any Subsidiary may sell, lease or otherwise transfer any of its assets to Borrower or any wholly-owned Subsidiary;**

**(d) licensing and leasing of assets in the ordinary course of business; provided that (i) the term of any such license or lease does not exceed two years, and (ii) the fair market value of all assets licensed or leased shall not exceed Two Million Five Hundred Thousand Dollars (\$5,000,000) in the aggregate at any one time;**

**(e) sales, leases or other dispositions of obsolete assets or assets no longer used or useful in the business of Borrower and its Subsidiaries; and**

**(f) sales or other dispositions of assets or property; provided that (i) the fair market value of such assets or property does not exceed One Million Five Hundred Thousand Dollars (\$1,500,000) in the aggregate during any fiscal year and (ii) the Net Proceeds from the sale or other disposition of such assets are, within 180 days after the receipt thereof by Borrower or such Subsidiary, (A) applied to (or contractually committed to) the purchase price or the cost of construction or refurbishment of replacement equipment or (B) applied against Term Loan principal in accordance with Section 2.5(b).**

**Section 7.5 Indebtedness.** Borrower shall not, and shall cause each **Material** Subsidiary to not, create, incur, assume or become liable for any Indebtedness except:

**(a) the Loans and other Indebtedness arising under this Agreement and the other Loan Documents;**

**(b) Indebtedness existing on the Closing Date and disclosed on Schedule 7.5 attached hereto, including any renewal, extension, refinancing in whole or in part or replacement of any such Indebtedness; provided that (i) the maturity date is not earlier than the Indebtedness renewed, extended, refinanced or replaced, and (ii) the principal amount thereof is not increased;**

**(c) accounts payable incurred in the ordinary course of business;**

(d) obligations (contingent or otherwise) of Borrower or any Subsidiary existing or arising under any Swap Contract with Lender or any Affiliate of Lender; provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, and not for purposes of speculation or taking a “market view;” and (ii) such Swap Contract does not contain any provision exonerating the non defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) endorsements for collection and deposit in the ordinary course of business;

(f) intercompany Indebtedness owing by Borrower or any Subsidiary to Borrower or any other Subsidiary permitted by Section 7.8;

(g) Indebtedness permitted under Section 7.6;

(h) Indebtedness assumed by Borrower or any Subsidiary as part of a Permitted Acquisition; provided that (i) such Indebtedness was in existence prior to such Permitted Acquisition and was not incurred in contemplation thereof, and (ii) the aggregate principal amount of such Indebtedness shall not exceed One Million Dollars (\$1,000,000) at any time outstanding; and

(i) Indebtedness incurred after the Closing Date for obligations under Capital Leases, Indebtedness secured by Purchase Money Liens and other Indebtedness in an aggregate principal amount not to exceed One Million Dollars (\$1,000,000) at any time outstanding.

**Section 7.6 Guaranties, Etc.** Borrower shall not, and shall cause each **Material** Subsidiary to not assume, guaranty, endorse or otherwise become directly or contingently liable for, nor obligated to purchase, pay or provide funds for payment of, any obligation or Indebtedness of any other Person, except by endorsement of negotiable instruments for deposit or collection or by similar transactions in the ordinary course of business and except:

(a) guaranties existing on the Closing Date and disclosed on Schedule 7.6 attached hereto, including any renewal, extension, replacement or refinancing thereof; provided that the principal amount thereof is not increased;

(b) guaranties of any Indebtedness permitted under Section 7.5;

(c) performance, surety, bid, appeal or similar bonds incurred in the ordinary course of business;

(d) guaranties of operating leases and other contractual obligations of Borrower or any wholly-owned Subsidiary incurred in the ordinary course of business and not constituting indebtedness or liability for borrowed money;

(e) customary title insurance agreements; and

(f) other contingent obligations in an aggregate principal amount not to exceed Five Hundred Thousand Dollars (\$500,000) at any time outstanding.

**Section 7.7 Liens.** Borrower shall not, and shall cause each **Material** Subsidiary to not create, assume or suffer to exist any Lien on any of its assets except:

(a) Liens on property existing on the Closing Date and disclosed on Schedule 7.7 attached hereto and any renewals or extensions thereof; provided that the obligations secured thereby or the property covered thereby are not increased, except as permitted by this Agreement;

(b) Liens in favor of Lender arising pursuant to the Security Documents;

(c) Liens securing Indebtedness under Capital Leases (provided such Liens shall attach only to the property subject to such Capital Leases) and Purchase Money Liens securing Indebtedness in each case permitted under Section 7.5;

(d) Permitted Liens;

(e) Liens on property acquired as part of a Permitted Acquisition; and

(f) other Liens securing Indebtedness in an aggregate principal amount not to exceed One Million Dollars (\$1,000,000) at any time outstanding.

**Section 7.8 Loans and Investments.** Borrower shall not, and shall cause each **Material** Subsidiary to not, make any loan or advance to any Person or purchase or otherwise acquire the capital stock or obligations of, or any equity or other interest in, any Person, or all or substantially all of any Person or the assets of any business line or division of any Person (collectively, "Investments") **or enter into any agreement to do any of the foregoing**, except:

(a) Investments held in the form of Cash Equivalents;

(b) Investments existing on the Closing Date and disclosed on Schedule 14 attached hereto;

(c) Borrower and any Subsidiary may enter into agreements to make loans or advances to any Person or to purchase or otherwise acquire the capital stock or obligations of, or any equity or other interest in, any Person, or all or substantially all of the assets of any Person or any business line or division of any Person; provided that, unless such loan, advance, purchase or acquisition is otherwise permitted by this Section 7.8, any material performance of Borrower or such Subsidiary under such agreements is expressly conditioned on the receipt by Borrower or such Subsidiary of certain third-party consents, which Borrower acknowledges and agrees shall include the consent of Lender;

(d) advances to employees in the ordinary course of business for business, travel, recruitment and relocation expenses in an aggregate principal amount not to exceed One Hundred Thousand Dollars (\$100,000) at any time outstanding;

(e) receivables owing to Borrower or any Subsidiary arising in the ordinary course of business;

(f) advances to suppliers, subcontractors and other similar Persons in the ordinary course of business in an aggregate principal amount not to exceed Five Hundred Thousand Dollars (\$500,000) at any time outstanding;

(g) Investments made by Borrower to or in any wholly-owned Subsidiary;

(h) Investments made by any Subsidiary to Borrower or to any wholly-owned Subsidiary;

(i) Investments in the form of promissory notes issued by an officer, director, employee or stockholder of Borrower and received by Borrower solely as consideration for the sale or issuance by Borrower of its capital stock (including warrants, options and stock appreciation rights therefor) or any other equity securities to such officer, director, employee or stockholder;

(j) Investments permitted under Section 7.5;

(k) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers or customers in settlement of accounts, claims or disputes;

(l) Investments made a part of a Permitted Acquisition; and

(m) other Investments in an aggregate amount not to exceed One Million Dollars (\$1,000,000) at any time outstanding.

**Section 7.9 Capital Expenditures.** Borrower shall not, and shall cause each Material Subsidiary to not make any expenditure which have been recorded, or should be recorded, as capital expenditures in accordance with GAAP, during any fiscal year for fixed assets or other capital expenditure if such expenditure when taken together with all prior expenditures made during such fiscal year by Borrower and the Subsidiaries would exceed the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000). As used in this Section 7.9, “fixed assets” shall include fixed assets leased by Borrower or any Subsidiary under Capital Leases. Notwithstanding the foregoing (a) capital expenditures shall not include expenditures made by Borrower or any Subsidiary for fixed assets or other capital expenditures with proceeds from (i) the sale or other disposition of fixed assets permitted hereunder and under the Security Documents or (ii) policies of insurance and condemnation awards received by Borrower or such Subsidiary with respect to any of its fixed assets and (b) Borrower may carry over to first quarter of Borrower’s immediately succeeding fiscal year up to twenty-five percent (25%) of the excess, if any, of the amount of capital expenditures permitted for

such fiscal year and the actual amount of expenditure for fixed assets or other capital expenditures for such fiscal year.

**Section 7.10 Business Activities.** Borrower shall not, and shall cause each **Material** Subsidiary to not engage in any business activity except for business activities that are reasonably related or ancillary to the business activities engaged in by Borrower or any of its Subsidiaries as of the Closing Date.

**Section 7.11 Accounting Change.** Borrower shall maintain a fiscal year ending on December 31 and shall not make any other **significant** change in accounting policies or reporting practices other than changes required by GAAP or otherwise required by law.

**Section 7.12 ERISA Compliance.** Neither Borrower nor any member of the Controlled Group nor any Plan of any of them will (a) engage in any nonexempt “prohibited transaction” (as such term is defined in § 406 of ERISA or § 4975 of the Code); (b) incur any “accumulated funding deficiency” (as such term is defined in § 302 of ERISA) whether or not waived with respect to any Pension Plan; (c) terminate any Pension Plan in a manner which could result in the imposition of a Lien on any property of Borrower or any member of the Controlled Group pursuant to § 4068 of ERISA; or (d) violate state or federal securities laws applicable to any Plan, except where any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

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**Definitions:**

“Capital Leases” means for any Person, all capitalized obligations of such Person under leases which shall have been, or in accordance with GAAP, should be recorded as capital leases.

“Cash Equivalents” means

(i) marketable direct obligations issued or unconditionally guaranteed by the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof;

(ii) commercial paper maturing no more than one year from the date issued and, at the time of acquisition, having a rate of at least A-1 from Standard & Poor’s Rating Services or at least P-1 from Moody’s Investors Service, Inc.;

(iii) certificates of deposit or bankers’ acceptances maturing within one year from the date of issuance thereof issued by, or overnight reverse repurchase agreements from any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia having combined capital and surplus of not less than One Hundred Million Dollars (\$100,000,000);

(iv) time deposits maturing no more than thirty (30) days from the date of creation thereof and demand deposits with commercial banks having membership in the

Federal Deposit Insurance Corporation in amounts not exceeding the lesser of One Hundred Thousand Dollars (\$100,000) or the maximum amount of insurance applicable to the aggregate amount of Borrower's deposits at such institution; and

(v) deposits or investments in mutual or similar funds offered or sponsored by brokerage or other companies having membership in the Securities Investor Protector Corporation investing only in obligations described in clauses (i) through (iv) above.

“Current Assets” means all assets of Borrower which may be properly classified on a consolidated balance sheet of Borrower as current assets in accordance with GAAP.

“Current Liabilities” means all liabilities of Borrower which may be properly classified on a consolidated balance sheet of Borrower as current liabilities in accordance with GAAP.

“Designated Subsidiary” shall have the meaning given in Section 6.8(b).

“Indebtedness” means, for any Person, without duplication

(a) all indebtedness for borrowed money;

(b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than indebtedness or liability for borrowed money deferred for a period of six months or less from the date of incurrence or trade payables entered into in the ordinary course of business on ordinary terms);

(c) all reimbursement or payment obligations with respect to letters of credit, bankers acceptances, surety bonds and similar instruments;

(d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses;

(e) the net obligations of such Person under a Swap Contract in an amount equal to the Swap Termination Value of such Swap Contract;

(f) all indebtedness created or arising under any conditional sale or other title retention agreement (excluding any operating lease), or incurred as financing, in either case with respect to property acquired by such Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property);

(g) all obligations with respect to Capital Leases or Synthetic Leases;

(h) all indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contracts rights)

owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and

(i) all liabilities in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (h) above for which such Person is directly or contingently liable as obligor, guarantor, or otherwise, or in respect of which such person otherwise assures a creditor against loss.

Each item of Indebtedness set forth in clauses (g) and (h) shall for purposes of this Agreement be valued at an amount equal to the lesser of (1) the amount of such Indebtedness or (2) the value of the property securing such Indebtedness. For purposes of this Agreement, the Indebtedness of any Person shall include all recourse Indebtedness of any partnership or joint venture formed as a partnership where such Person is a general partner or is otherwise liable for the Indebtedness of such partnership or joint venture, unless such Indebtedness is expressly made non-recourse to such Person and except for customary exceptions acceptable to Lender.

“Intellectual Property” means, as to any Person, all of the following:

(a) all trademarks, service marks, designs, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers owned or used by such Person in its business or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and pending applications in the United States Patent and Trademark Office, any State of the United States or any similar offices in any other country or any political subdivision thereof, and all extensions or renewals thereof;

(b) all letters patent of the United States or any other country or any political subdivision thereof, all registrations and recordings thereof, and all applications for letters patent of the United States or the equivalent thereof in any other country owned by such Persons, including registrations, recordings and pending applications in the United States Patent and Trademark Office or the equivalent thereof in any similar offices in any other country, and all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein;

(c) all computer programs, computer data bases, other computer software, trade secrets, trade secret rights, ideas, drawings, designs, schematics, algorithms, writings, techniques, processes and formulas owned or used by such Person in its business; and

(d) all copyright rights of such Person in any work subject to the copyright laws of the United States, any State thereof or any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, whether as author, assignee, transferee or otherwise, and all registrations and applications for registration of any such copyright in the United States, any State thereof or any other country or any political subdivision thereof, including registrations,

recordings, supplemental registrations and pending applications for registration in the United States Copyright Office or in any similar offices in any other country.

“Lien” means, for any Person, any security interest, pledge, mortgage, charge, assignment, hypothecation, encumbrance, attachment, garnishment, execution or other voluntary or involuntary lien upon or affecting the revenues of such Person or any real or personal property in which such Person has or hereafter acquires any interest.

“Material Adverse Effect” means

(a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, condition (financial or otherwise) of Borrower, any Significant Subsidiary or Borrower and its Subsidiaries taken as a whole;

(b) a material impairment of the ability of Borrower or any Guarantor to perform its obligations under any Loan Document to which it is a party; or

(c) a material adverse effect upon (i) the legality, validity, binding effect or enforceability against Borrower or any Guarantor of any Loan Document, or (ii) the perfection or priority of any Lien granted under any of the Security Documents on any material portion of the Collateral.

“Material Subsidiaries” means, as of any date of determination,

(a) each Significant Subsidiary,

(b) each Designated Subsidiary and

(c) each other Subsidiary that (i) during the then current fiscal year of Borrower (on a pro forma basis) or either of the two most recently ended fiscal years of Borrower, accounts or accounted for five percent (5%) or more of the consolidated revenue of Borrower and/or (ii) as of such date of determination or as of the end of either of the two most recently ended fiscal years of Borrower, owned five percent (5%) or more of the consolidated assets of Borrower,

and “Material Subsidiary” means any of them.

“Net Proceeds” means, as to any sale, conveyance, lease or other disposition of any asset or property by a Person, the proceeds in cash, checks or other cash equivalent financial instruments as and when received by such Person, net of: (i) the direct costs and expenses relating to such sale or other disposition excluding amounts payable to such Person or any Affiliate of such Person, (ii) sale, use or other transaction taxes paid or payable by such Person as a direct result thereof and (iii) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness secured by a Lien on the asset or property which is the subject of such sale or other disposition; provided, however, that Net Proceeds shall not include proceeds from the sale, conveyance, lease or other disposition of any asset or property with a fair market not in excess of Twenty-five Thousand Dollars (\$25,000); provided, further, that the aggregate amount of Net Proceeds excluded pursuant to the preceding proviso

shall not, for any period of four consecutive fiscal quarters, exceed One Hundred Twenty-five Thousand Dollars (\$125,000).

“Permitted Acquisition” means any acquisition, whether by purchase, merger or otherwise, of all or substantially all of the assets of, or more than fifty percent (50%) of the equity securities entitled to vote for members of the board of directors or equivalent governing body of, or a business line or a division of, any Person; provided that:

(a) all Persons, assets, business lines or divisions acquired shall be in the type of business permitted to be engaged in by the Borrower and its Subsidiaries pursuant to Section 7.10 or such other lines of business as may be approved by Lender;

(b) no Default or Event of Default shall then exist and, after giving effect to such acquisition on a pro forma basis, no Default or Event of Default would exist;

(c) as of the closing of any acquisition, such acquisition shall have been approved by the board of directors or equivalent governing body of the Person to be acquired or from which such assets, business line or division is to be acquired;

(d) not less than Fifteen (15) Business Days prior to the consummation of any acquisition for consideration (including assumed liabilities, earnout payments and any other deferred payment) in excess of One Million Dollars (\$1,000,000), Borrower shall have delivered to Lender a written description of the Person, assets, business line or division to be acquired and its operations; and

(e) if the total consideration (including assumed liabilities, earnout payments and any other deferred payment) paid for all of the Persons, assets, business lines or divisions acquired during any period of Twelve (12) consecutive months exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000), Lender shall have approved such acquisition.

“Permitted Liens” means:

(a) Liens securing Taxes which are not delinquent or which remain payable without penalty (excluding any Liens imposed pursuant to any of the provisions of ERISA) or the validity or amount of which is being contested in good faith by appropriate proceedings, which shall have the effect of staying execution if execution is threatened or possible;

(b) Liens imposed by law (such as mechanics’, processor’s, materialmen’s, carriers’, warehousemen’s and landlord’s liens and maritime liens) incurred in good faith in the ordinary course of business which are not delinquent or which remain payable without penalty or the validity or amount of which is being contested in good faith by appropriate proceedings, which shall have the effect of staying execution if execution is threatened or possible;

(c) Liens arising in connection with worker’s compensation, unemployment insurance, old age pensions and social security benefits which are not delinquent or

which remain payable without penalty or the validity or amount of which is being contested in good faith by appropriate proceedings, which shall have the effect of staying execution if execution is threatened or possible;

(d) Liens incurred or deposits or pledges made in the ordinary course of business to secure the performance of bids, tenders, statutory obligations, fee and expense arrangements with trustees and fiscal agents (exclusive of obligations incurred in connection with the borrowing of money) and customary deposits or pledges granted in the ordinary course of business under operating leases;

(e) Liens securing surety, indemnity, performance, appeal and release bonds;

(f) customary rights of set off, revocation, refund or chargeback under deposit agreements or under the UCC in favor of banks or other financial institutions where Borrower or any Subsidiary maintains deposits in the ordinary course of business;

(g) Liens incurred in respect of judgments or awards that have been in force for less than the applicable period for taking an appeal so long as execution is not levied thereunder or in respect of which Borrower or such Subsidiary shall be prosecuting an appeal or proceeding for review and a stay of execution has been obtained pending such appeal or review;

(h) leases and subleases granted to others and any interest or title of a lessor under any lease (whether a Capital Lease or otherwise);

(i) Liens on accounts receivable for which attempts at collection have been undertaken by a third party;

(j) Liens arising from precautionary UCC financing statements regarding operating leases;

(k) Liens arising by operation of law on insurance policies and proceeds thereof to secure premiums thereunder;

(l) Liens attaching solely to cash earnest money deposits made by Borrower or any Subsidiary in connection with any letter of intent or purchase agreement entered into in connection with any acquisition and

(m) Liens constituting encumbrances in the nature of zoning restrictions, condemnations, easements, encroachments, covenants, rights-of-way, minor defects, irregularities and rights or restrictions of record on the title or use of real property, which, in the reasonable judgment of Lender, do not materially detract from the value of such property or materially impair the use thereof in the business of Borrower or any Subsidiary.

“Purchase Money Lien” means a Lien securing Indebtedness incurred in connection with the acquisition or construction of fixed or capital assets constructed or acquired after the Closing Date; provided that (i) such Lien shall attach only to the property to be acquired

or constructed, (ii) a description shall have been furnished to Lender for any item or group of items acquired in a single transaction or in a series of related transactions for which the purchase price is greater than One Million Dollars (\$1,000,000), and (iii) the Indebtedness incurred shall not exceed the purchase price of the item or items of fixed or capital assets acquired or constructed.

“Significant Subsidiaries” means, as of any date of determination, Subsidiary One Corporation, Subsidiary Two Corporation and each other Subsidiary that, during the then current fiscal year of Borrower (on a pro forma basis) or either of the two most recently ended fiscal years of Borrower, accounts or accounted for fifteen percent (15%) or more of the consolidated EBITDA of Borrower and its Subsidiaries, and “Significant Subsidiary” means any of them.

“Subordinated Debt” means Indebtedness of Borrower or any Subsidiary with respect to which (a) the right to payment is fully subordinated to Lender’s right to receive payment in respect of the indebtedness, liabilities and obligations of Borrower and Guarantors arising under this Agreement and the other Loan Documents on terms satisfactory to Lender or (b) Borrower or such Subsidiary and the party to whom the Indebtedness is owed have executed and delivered a subordination agreement in favor of Lender in form and substance satisfactory to Lender.

“Swap Contract” means (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the market-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include any Lender or any affiliate of any Lender).

“Synthetic Lease” means (i) a so-called synthetic, off-balance sheet or tax retention lease, or (ii) an agreement for the use or possession of property creating obligations

which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Indebtedness of such Person (without regard to accounting treatment).