

BURKE, WARREN, MACKAY & SERRITELLA, P.C.

330 NORTH WABASH AVENUE
 22ND FLOOR
 CHICAGO, ILLINOIS 60611-3607
 TELEPHONE (312) 840-7000
 FACSIMILE (312) 840-7900
 www.burkelaw.com

STEPHEN R. SCHUSTER
 DIRECT DIAL NUMBER
 (312) 840-7113
 SSCHUSTER@BURKELAW.COM

RECORDATION NO. 29497 FILED

SEP 09 '10 -10 48 AM

SURFACE TRANSPORTATION BOARD

September 9, 2010

Via Facsimile
 Surface Transportation Board
 395 E Street, S.W.
 Washington, D.C. 20423
 ATTN: Barbara Saddler
 Fax: (202) 245-0464

Dear Barbara:

Pursuant to the provisions of 49 U.S.C. § 11301, I am faxing for recordation one notarized copy of a Loan and Security Agreement ("Security Agreement"), a primary document, dated as of August 6, 2010 by and among R & R CONTRACTING, INC., a North Dakota corporation ("Debtor"), and THE LEADERS BANK, an Illinois banking corporation ("Secured Party").

The Security Agreement grants to Secured Party a security interest in, among other things, all railroad cars, locomotives and other rolling stock, relay rail and other track material, now owned or hereafter acquired by Debtor. Descriptions of the rolling stock are attached to the Security Agreement as Exhibit B, but the property covered by the Security Agreement is not limited to that listed on Exhibit B.

The names and address of the parties to the Security Agreement are:

Secured Party:	The Leaders Bank 2001 York Road Oak Brook, Illinois 60523
Debtors:	R & R Contracting, Inc. 5201 N. Washington St. Grand Forks, ND 58203-3800

A short summary of the document to appear in the index is:

BURKE, WARREN, MACKAY & SERRITELLA, P.C.

Surface Transportation Board

September 9, 2010

Page -2-

Loan and Security Agreement ("Security Agreement"), a primary document, dated as of August 6, 2010 by and between R & R CONTRACTING, INC., a North Dakota corporation, and THE LEADERS BANK, an Illinois banking corporation, covering all rolling stock, relay rail and other track material and all other assets of Debtor, now owned or hereafter acquired.

I am sending our check in the amount of \$41.00 in payment of the filing fee via overnight delivery. Please email the recorded document to the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Stephen Schuster". The signature is written in a cursive style with a large initial 'S'.

Stephen R. Schuster

BURKE, WARREN, MACKAY & SERRITELLA, P.C.

September 9, 2010

Surface Transportation Board:

I, the undersigned, as filer of the Loan and Security Agreement dated August 6, 2010, hereby certify that I have compared the copy with the original agreement and have found the attached to be a complete and identical copy with all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

Sincerely,



Stephen R. Schuster

RECORDATION NO. 24497 FILED

SEP 09 '10 -10 48 AM

LOAN AND SECURITY AGREEMENT

SURFACE TRANSPORTATION BOARD

This LOAN AND SECURITY AGREEMENT dated as of August 6, 2010 (the "Agreement"), is executed by and between R & R CONTRACTING, INC., a North Dakota corporation ("Borrower"), and THE LEADERS BANK, an Illinois banking corporation (the "Bank"), having its principal place of business at 2001 York Road, Suite 150, Oak Brook, Illinois 60523.

A. Borrower desires to borrow funds and obtain other financial accommodations from the Bank.

B. Pursuant to Borrower's request, the Bank is willing to extend such financial accommodations to Borrower under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises, and the mutual covenants and agreements set forth herein, Borrower agrees to borrow from the Bank, and the Bank agrees to lend to Borrower, subject to and upon the following terms and conditions:

AGREEMENTS:**Section 1. DEFINITIONS.**

1.1 **Defined Terms.** For the purposes of this Agreement, the following capitalized words and phrases shall have the meanings set forth below.

"**Affiliate**" of any Person shall mean (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any officer or director of such Person, and (c) with respect to the Bank, any entity administered or managed by the Bank, or an Affiliate or investment advisor thereof and which is engaged in making, purchasing, holding or otherwise investing in commercial loans. A Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such Person whether by contract, ownership of voting securities, membership interests or otherwise.

"**Asset Disposition**" shall mean the sale, lease, assignment or other transfer for value (each a "Disposition") by Borrower to any Person (other than Borrower) of any asset or right of Borrower (including, the loss, destruction or damage of any thereof or any actual or threatened (in writing to Borrower) condemnation, confiscation, requisition, seizure or taking thereof), other than (a) the Disposition of any asset which is to be replaced, and is in fact replaced, within thirty (30) days with another asset performing the same or a similar function, (b) the sale or lease of inventory in the ordinary course of business, and (c) other Dispositions in any fiscal year the net proceeds of which do not in the aggregate exceed \$50,000.

“Bank Product Agreements” shall mean those certain agreements entered into from time to time by Borrower or any Affiliate with the Bank or any Affiliate of the Bank concerning Bank Products.

“Bank Product Obligations” shall mean all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by Borrower or any Subsidiary to the Bank or any Affiliate of the Bank pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

“Bank Products” shall mean any service or facility extended to a Borrower or any Affiliate by the Bank or any Affiliate of the Bank, including: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH Transactions, (f) cash management, including controlled disbursement, accounts or services, or (g) Hedging Agreements.

“Bankruptcy Code” shall mean the United States Bankruptcy Code, as now existing or hereafter amended.

“Borrower” shall mean R & R Contracting, Inc.

“Business Day” shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Chicago, Illinois.

“Capital Account” shall mean the capital account of the Borrower as shown on the financial statements delivered to the Bank from time to time pursuant to Section 6.4 hereof.

“Capital Expenditures” shall mean all expenditures (including Capitalized Lease Obligations) which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of the Borrower, but excluding expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (i) from insurance proceeds (or other similar recoveries) paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced.

“Capital Lease” shall mean, as to any Person, a lease of any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, by such Person, as lessee, that is, or should be, in accordance with Financial Accounting Standards Board Statement No. 13, as amended from time to time, or, if such statement is not then in effect, such statement of GAAP as may be applicable, recorded as a “capital lease” on the financial statements of such Person prepared in accordance with GAAP.

“Capital Securities” shall mean, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued or acquired after the date hereof, including

common shares, preferred shares, membership interests in a limited liability company, limited or general partnership interests in a partnership or any other equivalent of such ownership interest.

“Capitalized Lease Obligations” shall mean, as to any Person, all rental obligations of such Person, as lessee under a Capital Lease which are or will be required to be capitalized on the books of such Person.

“Cash Equivalent Investment” shall mean, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States government or any agency thereof, (b) commercial paper, maturing not more than one year from the date of issue, or corporate demand notes, in each case (unless issued by the Bank or its holding company) rated at least A-1 by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or P-1 by Moody's Investors Service, Inc., (c) any certificate of deposit, time deposit or bankers acceptance, maturing not more than one year after such time, or any overnight Federal Funds transaction that is issued or sold by the Bank or its holding company (or by a commercial banking institution that is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$500,000,000), (d) any repurchase agreement entered into with the Bank, or other commercial banking institution of the nature referred to in clause (c), which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above, and (ii) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of the Bank, or other commercial banking institution, thereunder, (e) money market accounts or mutual funds which invest exclusively in assets satisfying the foregoing requirements, and (f) other short term liquid investments approved in writing by the Bank.

“Change in Control” shall mean the occurrence of any of the following events: (a) William Reimer shall cease to own and control, directly or indirectly, at least fifty-one (51%) of the outstanding Capital Securities of Borrower; (b) William Reimer ceases to be in operating control of Borrower; or (c) the granting by any shareholder of Borrower, directly or indirectly, of a security interest in their ownership interest in Borrower, which could result in a change in the identity of the individuals or entities in control of Borrower. For the purpose hereof, the terms “control” or “controlling” shall mean the possession of the power to direct, or cause the direction of the management and policies of the Borrower by contract or voting of securities or ownership interests.

“Collateral” shall have the meaning set forth in Section 6.1 hereof.

“Collateral Access Agreement” shall mean an agreement in form and substance reasonably satisfactory to the Bank pursuant to which a mortgagee or lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by Borrower or any Subsidiary, acknowledges the Liens of the Bank and waives any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits the Bank reasonable access to and use of such real property following the occurrence and during the continuance of an Event of Default to assemble complete and sell any collateral stored or otherwise located thereon.

“Contingent Liability” and “Contingent Liabilities” shall mean, respectively, each obligation and liability of Borrower and all such obligations and liabilities of Borrower incurred pursuant to any agreement, undertaking or arrangement by which the Borrower: (a) guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor. or otherwise to assure a creditor against loss) the indebtedness, dividend, obligation or other liability of any other Person in any manner (other than by endorsement of instruments in the course of collection), including without limitation, any indebtedness, dividend or other obligation which may be issued or incurred at some future time; (b) guarantees the payment of dividends or other distributions upon the shares or ownership interest of any other Person; (c) undertakes or agrees (whether contingently or otherwise): (i) to purchase, repurchase, or otherwise acquire any indebtedness, obligation or liability of any other Person or any property or assets constituting security therefor, (ii) to advance or provide funds for the payment or discharge of any indebtedness, obligation or liability of any other Person (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), or to maintain solvency, assets, level of income, working capital or other financial condition of any other Person, or (iii) to make payment to any other Person other than for value received; (d) agrees to lease property or to purchase securities, property or services from such other Person with the purpose or intent of assuring the owner of such indebtedness or obligation of the ability of such other Person to make payment of the indebtedness or obligation; (e) to induce the issuance of, or in connection with the issuance of, any letter of credit for the benefit of such other Person; or (f) undertakes or agrees otherwise to assure a creditor against loss. The amount of any Contingent Liability shall (subject to any limitation set forth herein) be deemed to be the outstanding principal amount (or maximum permitted principal amount, if larger) of the indebtedness, obligation or other liability guaranteed or supported thereby.

“Debt” shall mean, as to any Person, without duplication, (a) all indebtedness of such Person; (b) all borrowed money of such Person (including principal, interest, fees and charges), whether or not evidenced by bonds, debentures, notes or similar instruments; (c) all obligations to pay the deferred purchase price of property or services; (d) all obligations, contingent or otherwise, with respect to the maximum face amount of all letters of credit (whether or not drawn), bankers' acceptances and similar obligations issued for the account of such Person (including the Letters of Credit), and all unpaid drawings in respect of such letters of credit, bankers' acceptances and similar obligations; (e) all indebtedness secured by any Lien on any property owned by such Person, whether or not such indebtedness has been assumed by such Person (provided, however, if such Person has not assumed or otherwise become liable in respect of such indebtedness, such indebtedness shall be deemed to be in an amount equal to the fair market value of the property subject to such Lien at the time of determination); (f) the aggregate amount of all Capitalized Lease Obligations of such Person; (g) all Contingent Liabilities of such Person, whether or not reflected on its balance sheet; (h) all Hedging Obligations of such Person; (i) all Debt of any partnership of which such Person is a general partner; and (j) all monetary obligations of such Person under (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 that 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). Notwithstanding the foregoing, Debt shall not include trade payables and accrued expenses incurred by such Person in accordance with customary practices and in the ordinary course of business of such Person.

"Default Rate" shall mean a per annum rate of interest equal to the Prime Rate plus four percent (4%).

"Depreciation" shall mean the total amounts added to depreciation, amortization, obsolescence, valuation and other proper reserves, as reflected on Borrower's financial statements and determined in accordance with GAAP.

"Eligible Account" and **"Eligible Accounts"** shall mean each Account and all such Accounts (exclusive of sales, excise or other similar taxes) owing to Borrower which meets each of the following requirements:

(a) it is genuine in all respects and has arisen in the ordinary course of Borrower's business from (i) the performance of services by Borrower, which services have been fully performed, acknowledged and accepted by the Account Debtor or (ii) the sale or lease of Goods by Borrower, including C.O.D. sales, which Goods have been completed in accordance with the Account Debtor's specifications (if any) and delivered to and accepted by the Account Debtor, and that Borrower has possession of, or has delivered to the Bank at the Bank's request, shipping and delivery receipts evidencing such delivery;

(b) it is subject to a perfected, first priority Lien in favor of the Bank and is not subject to any other assignment, claim or Lien;

(c) it is the valid, legally enforceable and unconditional obligation of the Account Debtor with respect thereto, and is not subject to the fulfillment of any condition whatsoever or any counterclaim, credit (except as provided in subsection (h) of this definition), trade or volume discount, allowance, discount, rebate or adjustment by the Account Debtor with respect thereto, or to any claim by such Account Debtor denying liability thereunder in whole or in part and the Account Debtor has not refused to accept and/or has not returned or offered to return any of the Goods or services which are the subject of such Account;

(d) the Account Debtor with respect thereto is a resident or citizen of, and is located within, the United States, unless the sale of goods or services giving rise to such Account is on letter of credit, banker's acceptance or other credit support terms reasonably satisfactory to the Bank;

(e) it is not an Account arising from a "sale on approval", "sale or return", "consignment", "guaranteed sale" or "bill and hold", or are subject to any other repurchase or return agreement;

(f) it is not an Account with respect to which possession and/or control of the goods sold giving rise thereto is held, maintained or retained by Borrower (or by any agent or custodian of Borrower) for the account of, or subject to, further and/or future direction from the Account Debtor with respect thereto;

(g) it has not arisen out of contracts with the United States or any department, agency or instrumentality thereof, unless Borrower has assigned its right to payment of such Account to the Bank pursuant to the Assignment of Claims Act of 1940, and evidence (satisfactory to the Bank) of such assignment has been delivered to the Bank, or any state, county, city or other governmental body, or any department, agency or instrumentality thereof;

(h) if the Borrower maintain a credit limit for an Account Debtor, the aggregate dollar amount of Accounts due from such Account Debtor, including such Account, does not exceed such credit limit;

(i) if the Account is evidenced by chattel paper or an instrument, the originals of such chattel paper or instrument shall have been endorsed and/or assigned and delivered to the Bank or, in the case of electronic chattel paper, shall be in the control of the Bank, in each case in a manner satisfactory to the Bank;

(j) such Account is evidenced by an invoice delivered to the related Account Debtor and is not more than ninety (90) days past the due date thereof, according to the original terms of sale;

(k) it is not an Account with respect to an Account Debtor that is located in any jurisdiction which has adopted a statute or other requirement with respect to which any Person that obtains business from within such jurisdiction must file a notice of business activities report or make any other required filings in a timely manner in order to enforce its claims in such jurisdiction's courts unless (i) such notice of business activities report has been duly and timely filed or Borrower is exempt from filing such report and has provided the Bank with satisfactory evidence of such exemption or (ii) the failure to make such filings may be cured retroactively by Holdings for a nominal fee;

(l) the Account Debtor with respect thereto is not an Affiliate of Borrower;

(m) such Account does not arise out of a contract or order which, by its terms, forbids or makes void or unenforceable the assignment thereof by Borrower to the Bank and is not unassignable to the Bank for any other reason;

(n) there is no bankruptcy, insolvency or liquidation proceeding pending by or against the Account Debtor with respect thereto, nor has the Account Debtor suspended business, made a general assignment for the benefit of creditors or failed to pay its debts generally as they come due, and/or no condition or event has occurred having a Material Adverse Effect on the Account Debtor which would require the Accounts of such Account Debtor to be deemed uncollectible in accordance with GAAP; and

(o) it does not violate the negative covenants and does satisfy the affirmative covenants of Borrower contained in this Agreement, and it is otherwise not unacceptable to the Bank for any other reason.

An Account which is at any time an Eligible Account, but which subsequently fails to meet any of the foregoing requirements, shall forthwith cease to be an Eligible Account. Further, with respect to any Account, if the Bank at any time hereafter determine in its discretion that the prospect of payment or performance by the Account Debtor with respect thereto is materially impaired for any reason whatsoever, such Account shall cease to be an Eligible Account after notice of such determination is given to Borrower.

"Employee Plan" includes any pension, stock bonus, employee stock ownership plan, retirement, profit sharing, deferred compensation, stock option, bonus or other incentive plan, whether qualified or nonqualified, or any disability, medical, dental or other health plan, life insurance or other death benefit plan, vacation benefit plan, severance plan or other employee benefit plan or arrangement, including, without limitation, those pension, profit-sharing and retirement plans of the Borrower described from time to time in the financial statements of the Borrower and any pension plan, welfare plan, Defined Benefit Pension Plans (as defined in ERISA) or any multi-employer plan, maintained or administered by Borrower or to which Borrower are a party or may have any liability or by which Borrower are bound.

"Environmental Laws" shall mean all present or future federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative or judicial orders, consent agreements, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authority, in each case relating to any matter arising out of or relating to public health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, emission, release, threatened release, control or cleanup of any Hazardous Substance.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Event of Default" shall mean any of the events or conditions which are set forth in Section 11 hereof.

"Federal Funds Rate" shall mean, for any day, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day 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 the

Bank. The Bank's determination of such rate shall be binding and conclusive absent manifest error.

"Funded Debt" shall mean, as to any Person, all Debt of such Person that matures more than one year from the date of its creation (or is renewable or extendible, at the option of such Person, to a date more than one year from such date).

"GAAP" shall mean generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination, provided, however, that interim financial statements or reports shall be deemed in compliance with GAAP despite the absence of footnotes and fiscal year-end adjustments as required by GAAP.

"Guarantor" shall mean William K. Reimer.

"Guaranty" shall have the meaning set forth in Section 3.1 hereof.

"Hazardous Substances" shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea "formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, radon gas and mold; (b) any chemicals, materials, pollutant or substances defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous substances", "restricted hazardous waste", "toxic substances", "toxic pollutants", "contaminants", "pollutants" or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, the exposure to, or release of which is prohibited, limited or regulated by any governmental authority or for which any duty or standard of care is imposed pursuant to, any Environmental Law.

"Hedging Agreement" shall mean any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices.

"Hedging Obligation" shall mean, with respect to any Person, any liability of such Person under any Hedging Agreement.

"Indemnified Party" and **"Indemnified Parties"** shall mean, respectively, each of the Bank and any parent corporation, Affiliate or Subsidiary of the Bank, and each of their respective officers, directors, employees, attorneys and agents, and all of such parties and entities.

"Intellectual Property" shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational

or foreign laws or otherwise, including copyrights, patents, service marks and trademarks, and all registrations and applications for registration therefor and all licensees thereof, trade names, domain names, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Interest Charges” shall mean, for any period, the sum of: (a) all interest, charges and related expenses payable with respect to that fiscal period to a lender in connection with borrowed money or the deferred purchase price of assets that are treated as interest in accordance with GAAP, plus (b) the portion of Capitalized Lease Obligations with respect to that fiscal period that should be treated as interest in accordance with GAAP, plus (c) all charges paid or payable (without duplication) during that period with respect to any Hedging Agreements.

“Investment” shall mean, with respect to any Person, any investment in another Person, whether by acquisition of any debt or equity security, by making any loan or advance, by becoming obligated with respect to a Contingent Liability in respect of obligations of such other Person (other than travel and similar advances to employees in the ordinary course of business).

“Liabilities” shall mean at all times all liabilities of Borrower that would be shown as such on a balance sheet of Borrower prepared in accordance with GAAP.

“Lien” shall mean, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person (including, without limitation, an interest in respect of a Capital Lease) which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, title retention lien, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

“Loan” shall mean the Term Loan made by the Bank to the Borrower, under and pursuant to this Agreement.

“Loan Documents” shall mean each of the agreements, documents, instruments and certificates set forth in Section 3.1 hereof, and any and all such other instruments, documents, certificates and agreements from time to time executed and delivered by the Borrower, the Guarantor or any of their Affiliates for the benefit of the Bank pursuant to any of the foregoing, and all amendments, restatements, supplements and other modifications thereto.

“Material Adverse Effect” shall mean (a) a material adverse change in, or a material adverse effect upon, the assets, business, properties, financial condition or results of operations of Borrower taken as a whole, (b) a material impairment of the ability of Borrower to perform any of the Obligations under any of the Loan Documents, or (c) a material adverse effect on (i) any substantial portion of the Collateral, (ii) the legality, validity, binding effect or enforceability against the Borrower of any of the Loan Documents, (iii) the perfection or priority of any Lien granted to the Bank under any Loan Document, or (iv) the rights or remedies of the Bank under any Loan Document.

“Net Cash Proceeds” shall mean:

(a) with respect to any Asset Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance or by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by the Borrower pursuant to such Asset Disposition net of (i) the direct costs relating to such sale, transfer or other disposition (including sales commissions and legal, accounting and investment banking fees), (ii) taxes paid or reasonably estimated by the Borrower to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), and (iii) amounts required to be applied to the repayment of any Debt secured by a Lien on the asset subject to such Asset Disposition (other than the Loan);

(b) with respect to any issuance of Capital Securities, the aggregate cash proceeds received by the Borrower pursuant to such issuance, net of the direct costs relating to such issuance (including sales and underwriters' commissions; and

(c) with respect to any issuance of Debt, the aggregate cash proceeds received by the Borrower pursuant to such issuance, net of the direct costs of such issuance (including up-front, underwriters' and placement fees).

“Net Income” shall mean, with respect to the Borrower for any period, the net income (or loss) of the Borrower for such period as determined in accordance with GAAP, **excluding** any gains from Asset Dispositions, any extraordinary gains and any gains from discontinued operations.

“Non-Excluded Taxes” shall have the meaning set forth in Section 2.3(a) hereof.

“Note” shall mean the Term Note.

“Obligations” shall mean the Loan, as evidenced by any Note, all interest accrued thereon (including interest which would be payable as post-petition in connection with any bankruptcy or similar proceeding, whether or not permitted as a claim thereunder), any fees due the Bank hereunder, any expenses incurred by the Bank hereunder and any and all other liabilities and obligations of the Borrower to the Bank under this Agreement and any other Loan Document, including any reimbursement obligations of the Borrower in respect of Letters of Credit and surety bonds, all Hedging Obligations of the Borrower which are owed to the Bank or any Affiliate of the Bank. and all Bank Product Obligations of the Borrower, all in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, together with any and all renewals or extensions thereof.

“Obligor” shall mean Borrower, Guarantor, accommodation endorser, third party pledgor, or any other party liable with respect to the Obligations.

“Organizational Identification Number” means, with respect to Borrower, the organizational identification number assigned to Borrower by the applicable governmental unit or agency of the jurisdiction of organization of Borrower.

“Other Taxes” shall mean any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from the execution, delivery, enforcement or registration of, or otherwise with respect to, this Agreement or any of the other Loan Documents.

“Permitted Liens” shall mean (a) Liens for Taxes, assessments or other governmental charges not at the time delinquent or thereafter payable without penalty or being contested in good faith by appropriate proceedings and, in each case, for which it maintains adequate reserves in accordance with GAAP and in respect of which no Lien has been filed; (b) Liens arising in the ordinary course of business (such as (i) Liens of carriers, warehousemen, mechanics and materialmen and other similar Liens imposed by law, and (ii) Liens in the form of deposits or pledges incurred in connection with worker's compensation, unemployment compensation and other types of social security (excluding Liens arising under ERISA) or in connection with surety bonds, bids, performance bonds and similar obligations) for sums not overdue or being contested in good faith by appropriate proceedings and not involving any advances or borrowed money or the deferred purchase price of property or services, which do not in the aggregate materially detract from the value of the property or assets of Borrower or materially impair the use thereof in the operation of Borrower's businesses and, in each case, for which it maintains adequate reserves in accordance with GAAP and in respect of which no Lien has been filed; and (c) Liens described on Schedule 9.2 as of the Closing Date; provided the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings and to the extent such judgments or awards do not constitute an Event of Default under Section 11.8 hereof; (e) easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of Borrower; (f) subject to the limitation set forth in Section 9.1(g), Liens arising in connection with Capitalized Lease Obligations (and attaching only to the property being leased); (g) subject to the limitation set forth in Section 9.1(h), Liens that constitute purchase money security interests on any property securing Debt incurred for the purpose of financing all or any part of the cost of acquiring such property, provided that any such Lien attaches to such property within twenty (20) days of the acquisition thereof and attaches solely to the property so acquired; and (h) Liens granted to the Bank hereunder and under the Loan Documents.

“Person” shall mean any natural person, partnership, limited liability company, corporation, trust, joint venture, joint stock company, association, unincorporated organization, government or agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

“Prime Loan” shall mean that portion, and collectively, those portions of the aggregate outstanding principal balance of the Loan that bears interest based on the Prime Rate.

"Prime Rate" shall mean the floating per annum rate of interest which at any time, and from time to time, shall be most recently announced by the Bank as its Prime Rate, which is not intended to be the Bank's lowest or most favorable rate of interest at anyone time. The effective date of any change in the Prime Rate shall for purposes hereof be the date the Prime Rate is changed by the Bank. The Bank shall not be obligated to give notice of any change in the Prime Rate.

"Regulatory Change" shall mean the introduction of, or any change in any applicable law, treaty, rule, regulation or guideline or in the interpretation or administration thereof by any governmental authority or any central bank or other fiscal, monetary or other authority having jurisdiction over the Bank or its lending office.

"Subsidiary" and **"Subsidiaries"** shall mean, respectively, with respect to any Person, each and all such corporations, partnerships, limited partnerships, limited liability companies, limited liability partnerships, joint ventures or other entities of which or in which such Person owns, directly or indirectly, such number of outstanding Capital Securities as have more than fifty percent (50.00%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to Subsidiaries of Borrower.

"Surface Transportation Board" shall mean the Surface Transportation Board of the U.S. Department of Transportation.

"Taxes" shall mean any and all present and future taxes, duties, levies, imposts, deductions, assessments, charges or withholdings, and any and all liabilities (including interest and penalties and other additions to taxes) with respect to the foregoing.

"Term Loan" shall mean the direct advance made by the Bank to the Borrower in the form of a term loan under and pursuant to this Agreement, as set forth in Section 2.1 of this Agreement.

"Term Loan Commitment" shall mean Two Million and 00/100 Dollars (\$2,000,000.00).

"Term Loan Maturity Date" shall mean November 6, 2010, unless extended by the Bank pursuant to any modification, extension or renewal note executed by the Borrower and accepted by the Bank in its sole and absolute discretion in substitution for the Term Note.

"Term Note" shall mean a term note in the form prepared by and acceptable to the Bank, dated as of the date hereof, in the amount of the Term Loan Commitment and maturing on the Term Loan Maturity Date, duly executed by the Borrower and payable to the order of the Bank, together with any and all renewal, extension, modification or replacement notes executed by the Borrower and delivered to the Bank and given in substitution therefor.

“Total Debt” shall mean all Debt of the Borrower, determined on a consolidated basis, excluding (i) Contingent Liabilities (except to the extent constituting Contingent Liabilities in respect of the Debt of a Person other than the Borrower or any Subsidiaries), (ii) Hedging Obligations, and (iii) Debt of the Borrower to Subsidiaries and Debt of Subsidiaries to the Borrower or to other Affiliates.

“UCC” shall mean the Uniform Commercial Code in effect in the state of Illinois from time to time.

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

“Voidable Transfer” shall have the meaning set forth in Section 13.21 hereof.

“Wholly-Owned Subsidiary” shall mean any Subsidiary of which or in which Borrower owns, directly or indirectly, one hundred percent (100%) of the Capital Securities of such Subsidiary.

“Working Capital” shall mean the total of cash on hand, cash equivalents, marketable securities, Accounts minus adequate reserves for doubtful Accounts and readily salable Inventory at the lower of cost or market value, minus the total of all liabilities payable within one year, all as determined in accordance with GAAP.

1.2 Accounting Terms. Any accounting terms used in this Agreement which are not specifically defined herein shall have the meanings customarily given them in accordance with GAAP. Calculations and determinations of financial and accounting terms used and not otherwise specifically defined hereunder and the preparation of financial statements to be furnished to the Bank pursuant hereto shall be made and prepared, both as to classification of items and as to amount, in accordance with sound accounting practices and GAAP as used in the preparation of the financial statements of the Borrower on the date of this Agreement. If any changes in accounting principles or practices from those used in the preparation of the financial statements are hereafter occasioned by the promulgation of rules, regulations, pronouncements and opinions by or required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successor thereto or agencies with similar functions), which results in a material change in the method of accounting in the financial statements required to be furnished to the Bank hereunder or in the calculation of financial covenants, standards or terms contained in this Agreement, the parties hereto agree to enter into good faith negotiations to amend such provisions so as equitably to reflect such changes to the end that the criteria for evaluating the financial condition and performance of the Borrower will be the same after such changes as they were before such changes; and if the parties fail to agree on the amendment of such provisions, the Borrower will furnish financial statements in accordance with such changes, but shall provide calculations for all financial covenants, perform all financial covenants and otherwise observe all financial standards and terms in accordance with applicable accounting principles and practices in effect immediately prior to such changes. Calculations with respect to financial covenants required to be stated in accordance with

applicable accounting principles and practices in effect immediately prior to such changes shall be reviewed and certified by Borrower's accountants.

1.3 Other Terms Defined in UCC. All other capitalized words and phrases used herein and not otherwise specifically defined herein shall have the respective meanings assigned to such terms in the UCC, to the extent the same are used or defined therein.

1.4 Other Interpretive Provisions.

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms. Whenever the context so requires, the neuter gender includes the masculine and feminine, the single number includes the plural, and vice versa, and in particular the word "Borrower" shall be so construed.

(b) Section and Schedule references are to this Agreement unless otherwise specified. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement

(c) The term "including" is not limiting, and means "including, without limitation".

(d) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including".

(e) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement and the other Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, supplements and other modifications thereto, but only to the extent such amendments, restatements, supplements and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation.

(f) To the extent any of the provisions of the other Loan Documents are inconsistent with the terms of this Agreement, the provisions of this Agreement shall govern.

(g) This Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and each shall be performed in accordance with its terms.

(h) The Bank and Borrower and their respective legal counsels have reviewed and commented on this document. Accordingly, the usual rule of construction to the

effect that any ambiguities are to be construed or resolved against the drafting party shall not be used in the interpretation of this document.

Section 2. COMMITMENT OF THE BANK.

2.1 Term Loan.

(a) **Term Loan Commitment.** Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties of the Borrower set forth herein and in the other Loan Documents, the Bank agrees to make a Term Loan equal to the Term Loan Commitment. The Term Loan shall be available to Borrower in a single principal advance on such date as the conditions set forth in Section 3 shall have been satisfied. The Term Loan may be prepaid in whole or in part at any time without penalty, but shall be due in full on the Term Loan Maturity Date, unless the credit extended under the Term Loan is otherwise accelerated, terminated or extended as provided in this Agreement. The proceeds of the Term Loan shall be used to acquire the business assets of Central Railgroup Construction Services, LLC, Central Illinois Railroad Holdings, LLC, Central Railink Services, LLC and Central Illinois Railroad Company owned by Bank.

(b) **Term Loan Interest Payments.** Except as otherwise provided in this Section 2.1(b), the principal amount of the Term Loan outstanding from time to time shall bear interest at the applicable Prime Rate. Borrower shall make monthly payments of interest only to Bank commencing September 6, 2010, continuing on the 6th day of each month thereafter until the Term Maturity Date. Any amount of principal or interest on the Term Loan which is not paid when due, whether at stated maturity, by acceleration or otherwise, shall bear interest payable on demand at the Default Rate.

(c) **Term Loan Interest and Principal Payments.** The outstanding principal balance of the Term Loan shall be repaid on the Term Loan Maturity Date. Principal amounts repaid on the Term Note may not be borrowed again.

(d) **Term Loan Optional Prepayments.**

(i) Provided that no Event of Default then exists under this Agreement or the Loan, Borrower may voluntarily prepay the principal balance of the Term Loan, in whole or in part at any time on or after the date hereof, subject to the following conditions:

(A) Not less than ten (10) days prior to the date upon which the Borrower desire to make such prepayment, the Borrower shall deliver to the Bank written notice of its intention to prepay the Term Loan, which notice shall be irrevocable and state the prepayment amount and the prepayment date (the "Term Loan Prepayment Date");

(B) The Borrower shall pay to the Bank all accrued and unpaid interest on the Term Loan through the date of such prepayment on the principal balance being prepaid.

2.2 Interest and Fee Computation; Collection of Funds. Except as otherwise set forth herein, all interest and fees shall be calculated on the basis of a year consisting of 360 days and shall be paid for the actual number of days elapsed. Principal payments submitted in funds not immediately available shall continue to bear interest until collected. If any payment to be made by the Borrower hereunder or under any Note shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment. Notwithstanding anything to the contrary contained herein, the final payment due under the Loan must be made by wire transfer or other immediately available funds. All payments made by the Borrower hereunder or under any of the Loan Documents shall be made without setoff, counterclaim, or other defense. To the extent permitted by applicable law, all payments hereunder or under any of the Loan Documents (including any payment of principal, interest, or fees) to, or for the benefit of, any Person shall be made by the Borrower free and clear of, and without deduction or withholding for, or account of, any taxes now or hereinafter imposed by any taxing authority.

2.3 Taxes.

(a) All payments made by the Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any governmental authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on the Bank as a result of a present or former connection between the Bank and the jurisdiction of the governmental authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Bank having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings (collectively, "Non-Excluded Taxes") or Other Taxes are required to be withheld from any amounts payable to the Bank hereunder, the amounts so payable to the Bank shall be increased to the extent necessary to yield to the Bank (after payment of all Non-Excluded Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement, provided, however, that the Borrower shall not be required to increase any such amounts payable to the Bank with respect to any Non-Excluded Taxes that are attributable to the Bank's failure to comply with the requirements of subsection 2.3(c).

(b) The Borrower shall pay any Other Taxes to the relevant governmental authority in accordance with applicable law.

(c) At the request of the Borrower and at Borrower's sole cost, the Bank shall take reasonable steps to (i) contest its liability for any Non-Excluded Taxes or Other

Taxes that have not been paid, or (ii) seek a refund of any Non-Excluded Taxes or Other Taxes that have been paid.

(d) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to the Bank a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fail to pay any Non-Excluded Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to the Bank the required receipts or other required documentary evidence or if any governmental authority seeks to collect a Non-Excluded Tax or Other Tax directly from the Bank for any other reason, the Borrower shall indemnify the Bank on an after-tax basis for any incremental taxes, interest or penalties that may become payable by the Bank.

(e) The agreements in this Section shall survive the satisfaction and payment of the Obligations and the termination of this Agreement.

2.4 All Loans to Constitute Single Obligation. The Loan shall constitute one general obligation of all Borrower, and shall be secured by Bank's priority security interest in and Lien upon all of the Collateral and by all other security interests, Liens, claims and encumbrances heretofore, now or at any time or times hereafter granted by Borrower and/or any Affiliates to Bank.

Section 3. CONDITIONS OF BORROWING.

Notwithstanding any other provision of this Agreement, the Bank shall not be required to disburse, make or continue all or any portion of the Loan, if any of the following conditions shall have occurred.

3.1 Loan Documents. The Borrower shall have failed to execute and deliver to the Bank any of the following Loan Documents, all of which must be satisfactory to the Bank and the Bank's counsel in form, substance and execution:

(a) Loan and Security Agreement. Two copies of this Agreement duly executed by the Borrower.

(b) Term Note. A Term Note duly executed by the Borrower, in the form prepared by and acceptable to the Bank.

(c) Guaranty. Continuing Guaranty dated as of the date of this Agreement executed by Guarantor to and for the benefit of the Bank, in the form prepared by and acceptable to the Bank (the "Guaranty").

(d) Intercreditor Agreement. An Intercreditor Agreement dated as of the date of this Agreement, from each creditor of Borrower, in the form prepared by and acceptable to the Bank (the "Intercreditor Agreement"). **DISCUSS**

(e) Search Results; Lien Terminations. Copies of UCC and Surface Transportation Board search reports dated such a date as is reasonably acceptable to the Bank, listing all effective financing statements which names Borrower, under their present names and any previous names, as debtors, together with (i) copies of such financing statements, (ii) payoff letters evidencing repayment in full of all existing Debt to be repaid with the Loan, the termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with UCC or other appropriate termination statements and documents including all necessary filings with Surface Transportation Board effective to evidence the foregoing (other than Permitted Liens), and (iii) such other termination statements as the Bank may reasonably request.

(f) Organizational and Authorization Document. Copies of (i) the Articles of Incorporation and Bylaws of Borrower; (ii) resolutions of the board of directors of Borrower approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby; (iii) signature and incumbency certificates of the officers and directors of Borrower executing any of the Loan Documents, each of which the Borrower hereby certifies to be true and complete, and in full force and effect without modification, it being understood that the Bank may conclusively rely on each such document and certificate until formally advised by the Borrower of any changes therein; and (iv) a good standing certificate in the state of organization of the Borrower and in each other state requested by the Bank.

(g) Insurance. Evidence satisfactory to the Bank of the existence of insurance required to be maintained pursuant to Section 8.6, together with evidence that Borrower has assigned such policies to Bank and that the Bank has been named as a lender's loss payee and as an additional insured on all related insurance policies.

(h) Legal Opinion. A legal opinion in form and substance acceptable to Bank issued by Borrower's counsel.

(i) Guarantor Information. Signed original current personal financial statements of each Guarantor.

(j) Post-Closing Letter Agreement. A letter agreement executed by Borrower and Bank with respect to certain issues to be resolved beyond the date hereof.

(k) Additional Documents. Such other certificates, financial statements, schedules, resolutions, opinions of counsel, notes and other documents which are provided for hereunder or which the Bank shall require.

3.2 Event of Default. Any Event of Default, or Unmatured Event of Default shall have occurred and be continuing.

3.3 Material Adverse Effect. The occurrence of any event having a Material Adverse Effect upon the Borrower.

3.4 Litigation. Any litigation or governmental proceeding shall have been instituted against Borrower or any of its officers or shareholders having a Materially Adverse Effect upon Borrower.

3.5 Representations and Warranties. Any representation or warranty of the Borrower contained herein or in any Loan Document shall be untrue or incorrect in any material respect as of the date of any Loan as though made on such date, except to the extent such representation or warranty expressly relates to an earlier date.

Section 4. NOTES EVIDENCING LOANS.

4.1 Term Note. The Term Loan shall be evidenced by the Term Note. At the time of the disbursement of the Term Loan, or a repayment made in whole or in part thereon, a notation thereof shall be made on the books and records of the Bank. All amounts recorded shall be, absent demonstrable error, conclusive and binding evidence of (i) the principal amount of the Term Loan advanced hereunder, (ii) any accrued and unpaid interest owing on the Term Loan and (iii) all amounts repaid on the Term Loan. The failure to record any such amount or any error in recording such amounts shall not, however, limit or otherwise affect the obligations of the Borrower under the Term Note to repay the principal amount of the Term Loan, together with all interest accruing thereon.

Section 5. MANNER OF BORROWING.

5.1 Borrowing Procedures. Borrower hereby irrevocably confirms, ratifies and approves all advances by the Bank and does hereby indemnify the Bank against losses and expenses (including court costs, attorneys' and paralegals' fees) and shall hold the Bank harmless with respect thereto.

5.2 Automatic Debit. In order to effectuate the timely payment of any of the Obligations when due, Borrower hereby authorizes and directs the Bank, at the Bank's option, to debit the amount of the Obligations to any ordinary deposit account of the Borrower.

5.3 Discretionary Disbursements. The Bank, in its sole and absolute discretion, may immediately upon notice to the Borrower, disburse any or all proceeds of the Loan made or available to the Borrower pursuant to this Agreement to pay any fees, costs, expenses or other amounts required to be paid by the Borrower hereunder and not so paid. All monies so disbursed shall be a part of the Obligations, payable by the Borrower on demand from the Bank.

Section 6. SECURITY FOR THE OBLIGATIONS.

6.1 Security for Obligations. As security for the payment and performance of the Obligations, the Borrower does hereby pledge, assign, transfer and deliver to the Bank and does hereby grant to the Bank a continuing and unconditional first priority security interest in and to any and all property of Borrower, of any kind or description, tangible or intangible, wherever located and whether now existing or hereafter arising or acquired, including, but not limited to,

the following (all of which property, along with the products and proceeds therefrom, are individually and collectively referred to as the "Collateral"):

(a) all property of, or for the account of, the Borrower now or hereafter coming into the possession, control or custody of, or in transit to, the Bank or any agent or bailee for the Bank or any parent, Affiliate or Subsidiary of the Bank or any participant with the Bank in the Loan (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise), including all earnings, dividends, interest, or other rights in connection therewith and the products and proceeds therefrom, including the proceeds of insurance thereon; and

(b) the additional property of the Borrower, whether now existing or hereafter arising or acquired, and wherever now or hereafter located, together with all additions and accessions thereto, substitutions, betterments and replacements therefor, products and Proceeds therefrom, and all of Borrower's books and records and recorded data relating thereto (regardless of the medium of recording or storage), together with all of Borrower's right, title and interest in and to all computer software required to utilize, create, maintain and process any such records or data on electronic media, identified and set forth as follows:

- (i) All Accounts and all Goods whose sale, lease or other disposition by Borrower has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, Borrower, or rejected or refused by an Account Debtor;
- (ii) All Inventory, including, without limitation, relay rail, other track material, railroad ties, raw materials, work-in-process and finished goods;
- (iii) All Goods (other than Inventory), including, without limitation, embedded software, Equipment, vehicles, furniture and Fixtures;
- (iv) All Equipment and Machinery including, without limitation, all rolling stock, Machinery and Equipment listed in the attached Exhibit B;
- (iv) All Software and computer programs;
- (v) All Securities, Investment Property, Financial Assets and Deposit Accounts;
- (vi) All Chattel Paper, Electronic Chattel Paper, Instruments, Documents, Letter of Credit Rights, all proceeds of letters of credit, Health-Care-Insurance Receivables, Supporting Obligations, notes secured by real estate, Commercial Tort Claims, and General Intangibles, including Payment Intangibles; and

- (vii) All Proceeds (whether Cash Proceeds or Noncash Proceeds) of the foregoing property, including, without limitation, all insurance policies and proceeds of insurance payable by reason of loss or damage to the foregoing property, including unearned premiums, and of eminent domain or condemnation awards.

6.2 Other Collateral. Intentionally Deleted

6.3 Possession and Transfer of Collateral. Unless an Event of Default exists hereunder, the Borrower shall be entitled to possession or use of the Collateral (other than Instruments or Documents, Tangible Chattel Paper, Investment Property consisting of certificated securities and other Collateral required to be delivered to the Bank pursuant to this Section 6). The cancellation or surrender of any Note, upon payment or otherwise, shall not affect the right of the Bank to retain the Collateral for any other of the Obligations. The Borrower shall not sell, assign (by operation of law or otherwise), license, lease or otherwise dispose of, or grant any option with respect to any of the Collateral, except that the Borrower may sell Inventory in the ordinary course of business.

6.4 Financing Statements. Borrower shall, at the Bank's request, at any time and from time to time, execute and deliver to the Bank such financing statements, Surface Transportation Board filings, amendments and other documents and do such acts as the Bank deems necessary in order to establish and maintain valid, attached and perfected first priority security interests in the Collateral in favor of the Bank, free and clear of all Liens and claims and rights of third parties whatsoever, except Permitted Liens. Borrower hereby irrevocably authorizes the Bank at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto without the signature of the Borrower that (a) indicate the Collateral (i) is comprised of all assets of the Borrower or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (ii) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (b) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Borrower is an organization, the type of organization and any Organizational Identification Number issued to the Borrower, and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Collateral relates. Borrower hereby agrees that a photocopy or other reproduction of this Agreement is sufficient for filing as a financing statement and the Borrower authorizes the Bank to file this Agreement as a financing statement in any jurisdiction. Borrower agrees to furnish any such information to the Bank promptly upon request. Borrower further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by the Bank in any jurisdiction prior to the date of this Agreement. In addition, the Borrower shall make appropriate entries on its books and records disclosing the Bank's security interests in the Collateral.

6.5 Preservation of the Collateral. The Bank may, but is not required, to take such actions from time to time as the Bank deems appropriate to maintain or protect the Collateral. The Bank shall have exercised reasonable care in the custody and preservation of the Collateral if the Bank takes such action as the Borrower shall reasonably request in writing which is not inconsistent with the Bank's status as a secured party, but the failure of the Bank to comply with any such request shall not be deemed a failure to exercise reasonable care; provided, however, the Bank's responsibility for the safekeeping of the Collateral shall (i) be deemed reasonable if such Collateral is accorded treatment substantially equal to that which the Bank accords its own property, and (ii) not extend to matters beyond the control of the Bank, including, without limitation, acts of God, war, insurrection, riot or governmental actions. In addition, any failure of the Bank to preserve or protect any rights with respect to the Collateral against prior or third parties, or to do any act with respect to preservation of the Collateral, not so requested by the Borrower, shall not be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral. The Borrower shall have the sole responsibility for taking such action as may be necessary, from time to time, to preserve all rights of the Borrower and the Bank in the Collateral against prior or third parties. Without limiting the generality of the foregoing, where Collateral consists in whole or in part of securities, the Borrower represents to, and covenants with, the Bank that Borrower has made arrangements for keeping informed of changes or potential changes affecting the securities (including, but not limited to, rights to convert or subscribe, payment of dividends, reorganization or other exchanges, tender offers and voting rights), and Borrower agrees that the Bank shall have no responsibility or liability for informing the Borrower of any such or other changes or potential changes or for taking any action or omitting to take any action with respect thereto.

6.6 Other Actions as to any and all Collateral. The Borrower further agrees to take any other action reasonably requested by the Bank to ensure the attachment, perfection and first priority of, and the ability of the Bank to enforce, the Bank's security interest in any and all of the Collateral including, without limitation, (a) causing the Bank's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the bank to enforce, the Bank's security interest in such Collateral, (b) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Bank to enforce, the Bank's security interest in such Collateral, (c) obtaining governmental and other third party consents and approvals, including without limitation any consent of any licensor, lessor or other Person obligated on Collateral, (d) obtaining waivers from mortgagees and landlords in form and substance satisfactory to the Bank, and (e) taking all actions required by the UCC or Surface Transportation Board in effect from time to time or by other law, as applicable, or by other law as applicable in any foreign jurisdiction. The Borrower further agrees to indemnify and hold the Bank harmless against claims of any Persons not a party to this Agreement concerning disputes arising over the Collateral.

6.7 Collateral in the Possession of a Warehouseman or Bailee. If any of the Collateral at any time is in the possession of a warehouseman or bailee, the Borrower shall promptly notify the Bank thereof, and shall promptly obtain a Collateral Access Agreement. The Bank agrees with the Borrower that the Bank shall not give any such instructions unless an Event of Default

has occurred and is continuing or would occur after taking into account any action by the Borrower with respect to the warehouseman or bailee.

6.8 Letter-of-Credit Rights. If the Borrower at any time is a beneficiary under a letter of credit now or hereafter issued in favor of the Borrower, the Borrower shall promptly notify the Bank thereof and, at the request and option of the Bank, the Borrower shall, pursuant to an agreement in form and substance satisfactory to the Bank, if requested in writing by the Bank, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Bank of the proceeds of any drawing under the letter of credit, or (ii) arrange for the Bank to become the transferee beneficiary of the letter of credit, with the Bank agreeing, in each case, that the proceeds of any drawing under the letter to credit are to be applied as provided in this Agreement.

6.9 Commercial Tort Claims. If the Borrower shall at any time hold or acquire a Commercial Tort Claim, the Borrower shall immediately notify the Bank in writing signed by the Borrower of the details thereof and grant to the Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, in each case in form and substance satisfactory to the Bank, and shall execute any amendments hereto deemed reasonably necessary by the Bank to perfect its security interest in such Commercial Tort Claim

6.10 Electronic Chattel Paper and Transferable Records. If the Borrower at any time holds or acquires an interest in any electronic chattel paper or any "transferable record", as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Borrower shall promptly notify the Bank thereof and, at the request of the Bank, shall take such action as the Bank may reasonably request to vest in the Bank control under Section 9-105 of the UCC of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Bank agrees with the Borrower that the Bank will arrange, pursuant to procedures satisfactory to the Bank "and so long as such procedures will not result in the Bank's loss of control, for the Borrower to make alterations to the electronic chattel paper or transferable record permitted under Section 9-105 of the UCC or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control.

6.11 Purchase Money Security Interest. Bank is extending the Term Loan so that Borrower can purchase certain business assets and equipment from Bank. Accordingly, Bank shall have a purchase money security interest in the Collateral listed on Exhibit B attached hereto.

Section 7. REPRESENTATIONS AND WARRANTIES.

To induce the Bank to make the Loan, the Borrower makes the following representations and warranties to the Bank, each of which shall survive the execution and delivery of this

Agreement and are true and correct except as set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule"):

7.1 Borrower Organization and Name. Borrower is a corporation duly organized, existing and in good standing under the laws of the State of North Dakota, with full and adequate power to carry on and conduct its respective business as presently conducted. Borrower is licensed or qualified in all foreign jurisdictions wherein the nature of their respective activities require such qualification or licensing, except for such jurisdictions where the failure to so qualify would not have a Material Adverse Effect. Borrower's Organizational Identification Number is 2226800. The exact legal name of Borrower is as set forth in the first paragraph of this Agreement, and Borrower currently does not conduct, nor has it during the last five (5) years conducted, businesses under any other name or trade.

7.2 Authorization. Borrower has full right, power and authority to enter into this Agreement, to make the borrowings and execute and deliver the Loan Documents as provided herein and to perform all of its duties and obligations under this Agreement and the other Loan Documents. The execution and delivery of this Agreement and the other Loan Documents will not, nor will the observance or performance of any of the matters and things herein or therein set forth, violate or contravene any provision of law or of its articles of incorporation or bylaws of the Borrower. All necessary and appropriate action has been taken on the part of the Borrower to authorize the execution and delivery of this Agreement and the Loan Documents.

7.3 Validity and Binding Nature. This Agreement and the other Loan Documents are the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

7.4 Consent: Absence of Breach. The execution, delivery and performance of this Agreement, the other Loan Documents and any other documents or instruments to be executed and delivered by the Borrower in connection with the Loan, and the borrowings by the Borrower hereunder, do not and will not (a) require any consent, approval, authorization of, or filings with, notice to or other act by or in respect of, any governmental authority or any other Person (other than any consent or approval which has been obtained and is in full force and effect) except where the failure to obtain such consent, approval or authorization or make such filing or provide such notice would not have a Material Adverse Effect; (b) conflict with (i) any provision of law or any applicable regulation, order, writ, injunction or decree of any court or governmental authority, (ii) the their respective articles of incorporation, bylaws, articles of organization or operating agreement of Borrower, or (iii) any material agreement, indenture, instrument or other document, or any judgment, order or decree. which is binding upon Borrower or any of its respective properties or assets, except where the conflict would not have a Material Adverse Effect; or (c) require, or result in, the creation or imposition of any Lien on any asset of the Borrower, other than Liens in favor of the Bank created pursuant to this Agreement.

7.5 Ownership of Properties; Liens. Borrower is the sole owner or has other rights in all of its properties and assets, real and personal, tangible and intangible, of any nature whatsoever (including patents, trademarks, trade names, service marks and copyrights), free and

clear of all Liens, charges and claims (including infringement claims with respect to patents, trademarks, service marks, copyrights and the like), other than Permitted Liens.

7.6 Equity Ownership. All issued and outstanding Capital Securities of Borrower and each of its Subsidiaries are duly authorized and validly issued, fully paid, non-assessable, and free and clear of all Liens other than those in favor of the Bank, if any, and such securities were issued in compliance with all applicable state and federal laws concerning the issuance of securities. As of the date hereof, there are no pre-emptive or other outstanding rights, options, warrants, conversion rights or other similar agreements or understandings for the purchase or acquisition of any Capital Securities of Borrower and each of its Subsidiaries.

7.7 Intellectual Property. Borrower owns and possesses or has a license or other right to use all Intellectual Property, as are necessary for the conduct of the businesses of the Borrower, without any infringement upon rights of others which could reasonably be expected to have a Material Adverse Effect upon the Borrower, and no material claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property nor does the Borrower know of any valid basis for any such claim.

7.8 Financial Statements. All financial statements submitted to the Bank have been prepared in accordance with sound accounting practices and GAAP on a basis, except as otherwise noted therein, consistent with the previous fiscal year and present fairly the financial condition of the Borrower and the results of the operations for the Borrower as of such date and for the periods indicated. Since the date of the most recent financial statement submitted by the Borrower to the Bank, there has been no change in the financial condition or in the assets or liabilities of the Borrower having a Material Adverse Effect on Borrower.

7.9 Litigation and Contingent Liabilities. There is no litigation, arbitration proceeding, demand, charge, claim, petition or governmental investigation or proceeding pending, or to the knowledge of the Borrower, threatened, against Borrower, which, if adversely determined, which would reasonably be expected to have a Material Adverse Effect upon such Borrower, except as set forth in Schedule 7.9. Other than any liability incident to such litigation or proceedings, Borrower has no material guarantee obligations, contingent liabilities, liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not fully-reflected or fully reserved for in the most recent audited financial statements delivered pursuant to subsection 8.8(a) or fully-reflected or fully reserved for in the most recent quarterly financial statements delivered pursuant to subsection 8.8(b) and not permitted by Section 9.1.

7.10 Event of Default. No Event of Default or Unmatured Event of Default exists or would result from the incurrence by Borrower of any of the Obligations hereunder or under any of the other Loan Documents, and Borrower is not in default (without regard to grace or cure periods) under any other contract or agreement to which it is a party, the effect of which would have a Material Adverse Effect upon Borrower.

7.11 Adverse Circumstances. No condition, circumstance, event, agreement, document, instrument, restriction, litigation or proceeding (or threatened litigation or proceeding or basis therefor) exists which (a) would have a Material Adverse Effect upon Borrower, or (b) would constitute an Event of Default or an Unmatured Event of Default.

7.12 Environmental Laws and Hazardous Substances. Borrower has not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Substances, on or off any of the premises of the Borrower (whether or not owned by it) in any manner which at any time violates any Environmental Law or any license, permit, certificate, approval or similar authorization thereunder. The Borrower complies in all material respects with all Environmental Laws and all licenses, permits certificates, approvals and similar authorizations thereunder. There has been no investigation, proceeding, complaint, order, directive, claim, citation or notice by any governmental authority or any other Person, nor is any pending or, to the best of Borrower's knowledge, threatened, and the Borrower shall promptly notify the Bank upon becoming aware of any such investigation, proceeding, complaint, order, directive, claim, citation or notice, and shall take prompt and appropriate actions to respond thereto, with respect to any non-compliance with, or violation of, the requirements of any Environmental Law by Borrower or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material or any other environmental, health or safety matter, which affects the Borrower or its businesses, operations or assets or any properties at which Borrower has transported, stored or disposed of any Hazardous Substances. Borrower has no material liability, contingent or otherwise, in connection with a release, spill or discharge, threatened or actual, of any Hazardous Substances or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material. Borrower further agrees to allow the Bank or its agent access to the properties of the Borrower to confirm compliance with all Environmental Laws, and the Borrower shall, following determination by the Bank that there is non-compliance, or any condition which requires any action by or on behalf of the Borrower in order to avoid any non-compliance with any Environmental Law, at Borrower's sole expense, cause an independent environmental engineer acceptable to the Bank (after consultation with the Borrower) to conduct such tests of the relevant site as are appropriate, and prepare and deliver a report setting forth the result of such tests, a proposed plan for remediation and an estimate of the costs thereof.

7.13 Solvency, etc. As of the date hereof, and immediately prior to and after giving effect to the issuance of each Loan hereunder and the use of the proceeds thereof, (a) the fair value of Borrower's assets is greater than the amount of its liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated as required under the Section 548 of the Bankruptcy Code, (b) the present fair saleable value of Borrower's assets is not less than the amount that will be required to pay the probable liability on its debts as they become absolute and matured, (c) Borrower is able to realize upon its assets and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, (d) the Borrower does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, and (e) Borrower is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which its property would constitute unreasonably small capital.

7.14 **ERISA Obligations.** All Employee Plans of the Borrower meet the minimum funding standards of Section 302 of ERISA and 412 of the Internal Revenue Code where applicable, and each such Employee Plan that is intended to be qualified within the meaning of Section 401 of the Internal Revenue Code of 1986 is qualified. No withdrawal liability has been incurred under any such Employee Plans and no "Reportable Event" or "Prohibited Transaction" (as such terms are defined in ERISA), has occurred with respect to any such Employee Plans, unless approved by the appropriate governmental agencies. Borrower has promptly paid and discharged all obligations and liabilities arising under the Employee Retirement Income Security Act of 1974 ("ERISA") of a character which if unpaid or unperformed might result in the imposition of a Lien against any of its properties or assets.

7.15 **Labor Relations.** Except as could not reasonably be expected to have a Material Adverse Effect, (i) there are no strikes, lockouts or other labor disputes against Borrower or, to the best knowledge of the Borrower, threatened, (ii) hours worked by and payment made to employees of Borrower has not been in violation of the Fair Labor Standards Act or any other applicable law, and (ii) no unfair labor practice complaint is pending against Borrower or, to the best knowledge of Borrower, threatened before any governmental authority.

7.16 **Security Interest.** This Agreement creates a valid security interest in favor of the Bank in the Collateral and, when properly perfected by filing in the appropriate jurisdictions, or by possession or Control of such Collateral by the Bank or delivery of such Collateral to the Bank, shall constitute a valid, perfected, first-priority security interest in such Collateral.

7.17 **Lending Relationship.** The relationship hereby created between the Borrower and the Bank is and has been conducted on an open and arm's length basis in which no fiduciary relationship exists, and Borrower has not relied and is not relying on any such fiduciary relationship in executing this Agreement and in consummating the Loan. The Bank represents that it will receive any Note payable to its order as evidence of a bank loan.

7.18 **Business Loan.** The Loan, including interest rate, fees and charges as contemplated hereby, (i) are business loans within the purview of 815 ILCS 205/4(1)(c), as amended from time to time, (ii) are an exempted transaction under the Truth In Lending Act, 12 U.S.C. 1601 et seq., as amended from time to time, and (iii) do not, and when disbursed shall not, violate the provisions of the Illinois usury laws, any consumer credit laws or the usury laws of any state which may have jurisdiction over this transaction, the Borrower or any property securing the Loan.

7.19 **Taxes.** Borrower has timely filed all tax returns and reports required by law to have been filed by it and has paid all taxes, governmental charges and assessments due and payable with respect to such returns, except any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books, are insured against or bonded over to the satisfaction of the Bank and the contesting of such payment does not create a Lien on the Collateral which is not a Permitted Lien. There is no controversy or objection pending, or to the Borrower's knowledge threatened in respect of any tax returns of the Borrower. Borrower has

made adequate reserves on its books and records in accordance with GAAP for all taxes that have accrued but which are not yet due and payable.

7.20 Compliance with Regulation U. No portion of the proceeds of the Loan shall be used by Borrower, or any Affiliate of the Borrower, either directly or indirectly, for the purpose of purchasing or carrying any margin stock, within the meaning of Regulation U as adopted by the Board of Governors of the Federal Reserve System or any successor thereto.

7.21 Governmental Regulation. No Borrower is, or after giving effect to any loan, will be, subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the ICC Termination Act of 1995 or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting its ability to incur indebtedness for borrowed money.

7.22 Bank Accounts. Intentionally Omitted.

7.23 Places of Businesses. The principal places of businesses and books and records of Borrower is set forth on Schedule 7.23 attached hereto, and the location of all Collateral, if other than at such principal place of business, is as set forth on Schedule 7.23 attached hereto, and Borrower shall promptly notify the Bank of any change in such locations. Borrower will not remove or permit the Collateral to be removed from such locations without the prior written consent of the Bank, except for Inventory sold in the usual and ordinary course of Borrower's business.

7.24 Complete Information. This Agreement and all financial statements, schedules, certificates, confirmations, agreements, contracts, and other materials and information heretofore or contemporaneously herewith furnished in writing by the Borrower to the Bank for purposes of, or in connection with, this Agreement and the transactions contemplated hereby is, and all written information hereafter furnished by or on behalf of the Borrower to the Bank pursuant hereto or in connection herewith will be, true and accurate in every material respect on the date as of which such information is dated or certified, and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading in light of the circumstances under which made (it being recognized by the Bank that any projections and forecasts provided by the Borrower are based on good faith estimates and assumptions believed by the Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results).

7.25 Intentionally Omitted.

7.26 Intentionally Omitted.

7.27 Regulatory Compliance. Borrower is in full compliance with all federal and state laws, statutes, regulations, and rules of all governmental authorities, agencies and political subdivisions having jurisdiction over the Borrower.

Section 8. AFFIRMATIVE COVENANTS.

8.1 Compliance with Bank Regulatory Requirements: Increased Costs. If the Bank shall reasonably determine that any Regulatory Change, or compliance by the Bank or any Person controlling the Bank with any request or directive (whether or not having the force of law) of any governmental authority, central bank or comparable agency has or would have the effect of reducing the rate of return on the Bank's or such controlling Person's capital as a consequence of the Bank's obligations hereunder to a level below that which the Bank or such controlling Person could have achieved but for such Regulatory Change or compliance (taking into consideration the Bank's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by the Bank or such controlling Person to be material or would otherwise reduce the amount of any sum received or receivable by the Bank under this Agreement or under any Note with respect thereto, then from time to time, upon demand by the Bank (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail), the Borrower shall pay directly to the Bank or such controlling Person such additional amount as will compensate the Bank for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one hundred eighty days (180) days prior to the date on which the Bank first made demand therefor.

8.2 Borrower Existence. Borrower shall at all times preserve and maintain its (a) its existence and good standing in the jurisdiction of its organization, and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary (other than such jurisdictions in which the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect), and shall at all times continue as a going concern in the business which Borrower is presently conducting. If Borrower does not have an Organizational Identification Number and later obtains one, Borrower shall promptly notify the Bank of such Organizational Identification Number.

8.3 Compliance With Laws. Borrower shall use the proceeds of the Loan for the acquisition of business assets and other general corporate or business purposes not in contravention of any requirements of law and not in violation of this Agreement, and shall comply in all respects, including the conduct of its business and operations and the use of its properties and assets, with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply could not reasonably be expected to have a Material Adverse Effect. In addition, and without limiting the foregoing sentence, the Borrower shall (a) ensure, and cause each Subsidiary to ensure, that no person who owns a controlling interest in or otherwise controls the Borrower or any Subsidiary is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause each Subsidiary to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

8.4 Payment of Taxes and Liabilities. Borrower shall pay and discharge, prior to delinquency and before penalties accrue thereon, all property and other taxes, and all governmental charges or levies against it or any of the Collateral, as well as claims of any kind which, if unpaid, could become a Lien on any of its property; provided that the foregoing shall not require the Borrower to pay any such tax or charge so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP and, in the case of a claim which could become a Lien on any of the Collateral, such contest proceedings stay the foreclosure of such Lien or the sale of any portion of the Collateral to satisfy such claim.

8.5 Maintain Property. The Borrower shall at all times maintain, preserve and keep its plant, properties and Equipment, including, but not limited to, any Collateral, in good repair, working order and condition, normal wear and tear excepted, and shall from time to time make all needful and proper repairs, renewals, replacements, and additions thereto so that at all times the efficiency thereof shall be fully preserved and maintained. The Borrower shall permit the Bank to examine and inspect such plant, properties and Equipment, including, but not limited to, any Collateral, at all reasonable times.

8.6 Maintain Insurance. Borrower shall at all times, with insurance companies reasonably acceptable to the Bank, maintain such insurance coverage as may be required by any law or governmental regulation or court decree or order applicable to it and such other insurance, to such extent and against such hazards and liabilities, including employers', public and professional liability risks, as is customarily maintained by companies similarly situated, and shall have insured amounts no less than, and deductibles no higher than, are reasonably acceptable to the Bank. The Borrower shall furnish to the Bank a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower, which shall be reasonably acceptable in all respects to the Bank. The Borrower shall cause each issuer of an insurance policy to provide the Bank with an endorsement (i) showing the Bank as lender loss payee with respect to each policy of property or casualty insurance and naming the Bank as an additional insured with respect to each policy of liability insurance; and (ii) providing that thirty (30) days notice will be given to the Bank prior to any cancellation of, material reduction or change in coverage provided by or other material modification to such policy. The Borrower shall execute and deliver to the Bank a collateral assignment, in form and substance satisfactory to the Bank, of each business interruption insurance policy maintained by Borrower.

In the event Borrower either fails to provide the Bank with evidence of the insurance coverage required by this Section or at any time hereafter shall fail to obtain or maintain any of the policies of insurance required above, or to pay any premium in whole or in part relating thereto, then the Bank, without waiving or releasing any obligation or default by the Borrower hereunder, may at any time (but shall be under no obligation to so act), obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto, which the Bank deems advisable. This insurance coverage (a) may, but need not, protect Borrower's interests in such property, including, but not limited to, the Collateral, and (b) may not pay any claim made by, or against, the Borrower in connection with such property, including, but not limited to, the Collateral. The Borrower may later cause the Bank to cancel any such insurance purchased by the Bank, but only after providing the Bank with evidence that Borrower

has obtained the insurance coverage required by this Section. If the Bank purchases insurance for the Collateral, the Borrower will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the principal amount of the Loan owing hereunder. The costs of the insurance may be more than the cost of the insurance the Borrower may be able to obtain on its own.

8.7 ERISA Liabilities; Employee Plans. Borrower shall (i) keep in full force and effect any and all Employee Plans which are presently in existence or may, from time to time, come into existence under ERISA, and not withdraw from any such Employee Plans, unless such withdrawal can be effected or such Employee Plans can be terminated without liability to the Borrower; (ii) make contributions to all of such Employee Plans in a timely manner and in a sufficient amount to comply with the standards of ERISA; including the minimum funding standards of ERISA; (iii) comply with all material requirements of ERISA which relate to such Employee Plans; (iv) notify the Bank promptly upon receipt by the Borrower of any notice concerning the imposition of any withdrawal liability or of the institution of any proceeding or other action which may result in the termination of any such Employee Plans or the appointment of a trustee to administer such Employee Plans; (v) promptly advise the Bank of the occurrence of any "Reportable Event" or "Prohibited Transaction" (as such terms are defined in ERISA), with respect to any such Employee Plans; and (vi) amend any Employee Plan that is intended to be qualified within the meaning of Section 401 of the Internal Revenue Code of 1986 to the extent necessary to keep the Employee Plan qualified, and to cause the Employee Plan to be administered and operated in a manner that does not cause the Employee Plan to lose its qualified status.

8.8 Financial Statements. Borrower shall at all times maintain a standard and modern system of accounting, on the accrual basis of accounting and in all respects in accordance with GAAP, and shall furnish to the Bank or its authorized representatives such information regarding the business affairs, operations and financial condition of such Borrower, including, but not limited to:

(a) promptly when available, and in any event, within one hundred twenty (120) days after the close of each of its fiscal years, a copy of the annual audited financial statements of Borrower, including balance sheet, statement of income and retained earnings, statement of cash flows for the fiscal year then ended and such other information (including nonfinancial information) as the Bank may reasonably request, in reasonable detail, prepared and certified as accurate; and

(b) promptly when available, and in any event, within thirty (30) days following the end of each fiscal quarter, a copy of the financial statements of Borrower regarding such fiscal quarter, including balance sheet, statement of income and retained earnings, statement of cash flows for the fiscal quarter then ended and such other information (including nonfinancial information) as the Bank may request, in reasonable detail, prepared and certified as true and correct by the Borrower's treasurer or chief financial officer.

No change with respect to such accounting principles shall be made by Borrower without giving prior notification to the Bank. Borrower represents and warrants to the Bank that the financial statements delivered to the Bank at or prior to the execution and delivery of this Agreement and to be delivered at all times thereafter accurately reflect and will accurately reflect in all material respects the financial condition of the Borrower. The Bank shall have the right at all times during business hours to inspect the books and records of Borrower and make extracts therefrom.

8.9 Additional Financial Statements. Borrower shall furnish, or cause to be furnished, to the Bank or its authorized representatives such information regarding the business affairs, operations and financial condition of Guarantor, including, but not limited to, a personal financial statement, on Lender's form, to include verification of liquidity if over Ten Percent (10%) of outside net worth and certified as true and correct by Guarantor.

8.10 Supplemental Financial Statements. Borrower shall promptly upon receipt thereof, provide to the Bank copies of interim and supplemental reports if any, submitted to a Borrower by independent accountants in connection with any interim audit or review of the books of such Borrower.

8.11 Intentionally Omitted.

8.12 Intentionally Omitted.

8.13 Intentionally Omitted.

8.14 Field Audits. Borrower shall permit the Bank to inspect the Inventory, other tangible assets and/or other business operations of Borrower, to perform appraisals of the Equipment of Borrower, and to inspect, audit, check and make copies of, and extracts from, the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to Inventory, Accounts and any other Collateral, the results of which must be satisfactory to the Bank in the Bank's sole and absolute discretion.

8.15 Other Reports. The Borrower shall, within such period of time as the Bank may specify, deliver to the Bank such other schedules and reports as the Bank may require.

8.16 Collateral Records. Borrower shall keep full and accurate books and records relating to the Collateral and shall mark such books and records to indicate the Bank's Lien in the Collateral including, without limitation, placing a legend, in form and content acceptable to the Bank, on all Chattel Paper created by the Borrower indicating that the Bank has a Lien in such Chattel Paper.

8.17 Intellectual Property. The Borrower shall maintain, preserve and renew all Intellectual Property necessary for the conduct of its business as and where the same is currently located as heretofore or as hereafter conducted by it.

8.18 Notice of Proceedings. The Borrower, promptly upon becoming aware, shall give written notice to the Bank of any litigation, arbitration or governmental investigation or proceeding not previously disclosed by the Borrower to the Bank which has been instituted or, to the knowledge of Borrower, is threatened against Borrower or to which any of properties is subject which would reasonably be expected to have a Material Adverse Effect.

8.19 Notice of Event of Default or Material Adverse Effect. The Borrower shall, promptly after the commencement thereof, give notice to the Bank in writing of the occurrence of any Event of Default or any Unmatured Event of Default, or the occurrence of any condition or event having a Material Adverse Effect.

8.20 Environmental Matters. If any release or threatened release or other disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of Borrower, the Borrower shall cause the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, the Borrower shall comply with any Federal or state judicial or administrative order requiring the performance at any real property of the Borrower of activities in response to the release or threatened release of a Hazardous Substance. To the extent that the transportation of Hazardous Substances is permitted by this Agreement, the Borrower shall dispose of such Hazardous Substances, or of any other wastes, only at licensed disposal facilities operating in compliance with Environmental Laws.

8.21 Further Assurances. Borrower shall take such actions as are necessary or as the Bank may reasonably request from time to time to ensure that the Obligations under the Loan Documents are secured by substantially all of the assets of the Borrower, in each case as the Bank may determine, including (a) the execution and delivery of security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing, and (b) the delivery of certificated securities and other collateral with respect to which perfection is obtained by possession.

Section 9. NEGATIVE COVENANTS.

9.1 Debt. Borrower shall not, either directly or indirectly, create, assume, incur or have outstanding any Debt (including purchase money indebtedness), or become liable, whether as endorser, guarantor, surety or otherwise, for any debt or obligation of any other Person, except:

- (a) the Obligations under this Agreement and the other Loan Documents;
- (b) obligations of the Borrower for Taxes, assessments, municipal or other governmental charges;
- (c) obligations of the Borrower for accounts payable, other than for money borrowed, incurred in the ordinary course of business; and

(d) other obligations not to exceed \$1,000,000 in the aggregate;

9.2 Encumbrances. Borrower shall not, either directly or indirectly, create, assume, incur or suffer or permit to exist any Lien or charge of any kind or character upon any asset of the Borrower, whether owned at the date hereof or hereafter acquired, except for Permitted Liens.

9.3 Investments. Borrower shall not, either directly or indirectly, make or have outstanding any Investment, except:

(a) contributions by Borrower to the capital of any other Borrower which has granted a first perfected security interest in all of its assets in favor of the Bank;

(b) Investments constituting Debt permitted by Section 9.1;

(c) Contingent Liabilities constituting Debt permitted by Section 9.1 or Liens permitted by Section 9.2;

(d) Cash Equivalent Investments;

(e) bank deposits in the ordinary course of business, provided that the aggregate amount of all such deposits (excluding amounts in payroll accounts or for accounts payable, in each case to the extent that checks have been issued to third parties) which are maintained with any bank other than the Bank shall not at any time exceed \$50,000;

(f) Investments in securities of Account Debtors received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such account debtors; and

(g) Investments listed on Schedule 9.3 as of the Closing Date; and

(h) other Investments not to exceed \$1,000,000 in the aggregate.

Provided, however, that (i) any Investment which when made complies with the requirements of the definition of the term "Cash Equivalent Investment" may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements; and (ii) no Investment otherwise permitted by subsections (b) or (c) shall be permitted to be made if, immediately before or after giving effect thereto, any Event of Default or Unmatured Event of Default exists.

9.4 Transfer: Merger: Sales. Prior to discussion with Bank, Borrower shall not, whether in one transaction or a series of related transactions, (a) be a party to any merger or consolidation, or purchase or otherwise acquire all or substantially all of the assets or any Capital Securities of any class of, or any partnership or joint venture interest in, any other Person, except for (i) any such merger, consolidation, sale, transfer, conveyance, lease or assignment of or by

any Wholly-Owned Subsidiary into the Borrower or into any other domestic Wholly-Owned Subsidiary; (ii) any such purchase or other acquisition by the Borrower or any domestic Wholly-Owned Subsidiary of the assets or equity interests of any Wholly-Owned Subsidiary, (b) sell, transfer, convey or lease all or any substantial part of its assets or Capital Securities (including the sale of Capital Securities of any Subsidiary), except for sales of Inventory in the ordinary course of business, or (c) sell or assign, with or without recourse, any receivables.

9.5 Issuance of Capital Securities. Borrower shall not issue any Capital Securities other than (a) any issuance of shares of Borrower's common Capital Securities pursuant to any employee or director option program, benefit plan or compensation program, or (b) any issuance of Capital Securities by a Subsidiary to the Borrower or another Subsidiary in accordance with Section 9.6.

9.6 Distributions. Borrower shall not (a) make any distribution or dividend (other than stock dividends), whether in cash or otherwise, to any of its equity holders; (b) purchase or redeem any of its equity interests or any warrants, options or other rights in respect thereof, (c) except as otherwise provided for in the Intercreditor Agreement, pay or prepay interest on, principal of, premium, if any, redemption, conversion, exchange, purchase, retirement, defeasance, sinking fund or any other payment in respect of any debt owed to any creditor of Borrower, or (d) set aside funds for any of the foregoing. Notwithstanding the foregoing, so long as no Event of Default or Unmatured Event of Default exists or would result from it, the Borrower may make quarterly distributions to each of its shareholders or members in an amount not greater than the quarterly estimated income tax payments required to be made by each such shareholder or member based upon the income of such shareholder or member accruing due to the election of Borrower to be taxed as a Subchapter S Corporation under the United States Internal Revenue Code and based upon the operations of such Borrower and the resulting federal tax liability of such shareholder or member. In the event that the aggregate amount of such quarterly distributions to any shareholder or member for estimated federal income tax payments in any tax year is less than the actual annual federal income tax liability of such shareholder or member in such tax year based upon the income of such shareholder or member accruing due to the election of such Borrower to be taxed as a Subchapter S Corporation under the United States Internal Revenue Code, such Borrower may make an additional distribution to such shareholder or member in the amount of such deficit with the first quarterly distribution for the immediately following calendar year. In the event that the aggregate amount of such quarterly distributions to any shareholder or member for estimated federal income tax payments exceeds the actual annual federal income tax liability of such shareholder or member based upon the income of such shareholder or member accruing due to the operations of such Borrower, the failure of such shareholder or member, within thirty (30) days after the determination of such shareholder's or member's annual federal income tax liability, to make a member contribution of capital to such Borrower in the amount of such excess shall be an Event of Default under this Agreement.

9.7 Transactions with Affiliates. Borrower shall not, directly or indirectly, enter into or permit to exist any transaction with any of its Affiliates or with any director, officer or employee of Borrower other than transactions in the ordinary course of, and pursuant to the reasonable requirements of, the business of the Borrower and upon fair and reasonable terms which are fully disclosed to the Bank and are no less favorable to the Borrower than would be

obtained in a comparable arm's length transaction with a Person that is not an Affiliate of the Borrower.

9.8 Unconditional Purchase Obligations. Borrower shall not enter into or be a party to any contract for the purchase of materials, supplies or other property or services if such contract requires that payment be made by it regardless of whether delivery is ever made of such materials, supplies or other property or services.

9.9 Cancellation of Debt. Borrower shall not cancel any claim or debt owing to it, except for reasonable consideration or in the ordinary course of business.

9.10 Inconsistent Agreements. Borrower shall not enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by the Borrower hereunder or by the performance by the Borrower or any Subsidiary of any of its Obligations hereunder or under any other Loan Document, (b) prohibit the Borrower or any Subsidiary from granting to the Bank a Lien on any of its assets or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (i) pay dividends or make other distributions to the Borrower or any other Subsidiary, or pay any Debt owed to the Borrower or any other Subsidiary, (ii) make loans or advances to the Borrower or any other Subsidiary, or (iii) transfer any of its assets or properties to the Borrower or any other Subsidiary, other than (A) customary restrictions and conditions contained in agreements relating to the sale of all or a substantial part of the assets of any Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary to be sold and such sale is permitted hereunder, (B) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt, and (C) customary provisions in leases and other contracts restricting the assignment thereof.

9.11 Bank Accounts. Intentionally Omitted.

9.12 Business Activities; Change of Legal Status and Organizational Documents. Borrower shall not (a) engage in any line of business other than the businesses engaged in on the date hereof and businesses reasonably related thereto, (b) change its name, its Organizational Identification Number, if it has one, its type of organization, its jurisdiction of organization or other legal structure, or (b) permit its charter, bylaws or other organizational documents to be amended or modified in any way which could reasonably be expected to materially adversely affect the interests of the Bank.

Section 10. FINANCIAL COVENANTS.

10.1 Intentionally Omitted.

Section 11. EVENTS OF DEFAULT.

The Borrower, without notice or demand of any kind, shall be in default under this Agreement upon the occurrence of any of the following events (each an "Event of Default").

11.1 Nonpayment of Obligations. Any amount due and owing on any Note or any of the Obligations, whether by its terms or as otherwise provided herein, is not paid within five (5) days after notice from the Bank that such amount was not paid when due.

11.2 Misrepresentation. Any oral or written warranty, representation, certificate or statement of any Obligor in this Agreement, the other Loan Documents or any other agreement with the Bank shall be false in any material respect when made or at any time thereafter, or if any financial data or any other information now or hereafter furnished to the Bank by or on behalf of any Obligor shall prove to be false, inaccurate or misleading in any material respect.

11.3 Nonperformance. Any failure to perform or default in the performance of any covenant, condition or agreement contained in this Agreement and, if capable of being cured, such failure to perform or default in performance continues for a period of thirty (30) days after the Borrower receives notice or knowledge from any source of such failure to perform or default in performance, or in the other Loan Documents or any other agreement with the Bank and such failure to perform or default in performance continues beyond any applicable grace or cure period.

11.4 Default under Loan Documents. A default under any of the other Loan Documents, including but not limited to the Intercreditor Agreement, all of which covenants, conditions and agreements contained therein are hereby incorporated in this Agreement by express reference, shall be and constitute an Event of Default under this Agreement and any other of the Obligations.

11.5 Default under Other Debt. Any default by any Obligor in the payment of any Debt for any other obligation beyond any period of grace provided with respect thereto or in the performance of any other term, condition or covenant contained in any agreement (including, but not limited to any capital or operating lease or any agreement in connection with the deferred purchase price of property) under which any such obligation is created, the effect of which default is to cause or permit the holder of such obligation (or the other party to such other agreement) to cause such obligation to become due prior to its stated maturity or terminate such other agreement.

11.6 Other Material Obligations. Any default in the payment when due, or in the performance or observance of, any material obligation of, or condition agreed to by, any Obligor with respect to any material purchase or lease of goods or services where such default, singly or in the aggregate with all other such defaults, would reasonably be expected to have a Material Adverse Effect.

11.7 Bankruptcy, Insolvency, etc. Any Obligor becomes insolvent or generally fails to pay, or admits in writing its inability or refusal to pay, debts as they become due; or any Obligor applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for such Obligor or any property thereof, or makes a general assignment for the benefit of creditors; or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for any Obligor or for a Substantial part of the property of any

thereof and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is commenced in respect of any Obligor, and if such case or proceeding is not commenced by such Obligor, it is consented to or acquiesced in by such Obligor, or remains undismissed for sixty (60) days; or any Obligor takes any action to authorize, or in furtherance of, any of the foregoing.

11.8 Judgments. The entry of any final judgment, decree, levy, attachment, garnishment or other process, or the filing of any Lien against any Obligor which is not fully covered by insurance.

11.9 Change in Control. The occurrence of any Change in Control.

11.10 Collateral Impairment. The entry of any judgment, decree, levy, attachment, garnishment or other process, or the filing of any Lien against, any of the Collateral or any collateral under a separate security agreement securing any of the Obligations and such judgment or other process shall not have been, within thirty (30) days from the entry thereof, (i) bonded over to the satisfaction of the Bank and appealed, (ii) vacated, or (iii) discharged, or the loss, theft, destruction, seizure or forfeiture, or the occurrence of any deterioration or impairment of any of the Collateral or any of the collateral under any security agreement securing any of the Obligations, or any decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), which causes the Collateral, in the sale opinion of the Bank acting in good faith, to become unsatisfactory as to value or character, or which causes the Bank to reasonably believe that it is insecure and that the likelihood for repayment of the Obligations is or will soon be impaired, time being of the essence. The cause of such deterioration, impairment, decline or depreciation shall include, but is not limited to, the failure by the Borrower to do any act deemed reasonably necessary by the Bank to preserve and maintain the value and collectability of the Collateral.

11.11 Material Adverse Effect. The occurrence of any development, condition or event which has a Material Adverse Effect on the Borrower.

11.12 Guaranty. There is a discontinuance by Guarantor of the Guaranty, or Guarantor shall contest the validity of such Guaranty.

11.13 Intentionally Omitted.

11.14 Death of Individual. The death or legal declaration of incompetency of any Obligor who is a natural person, provided, however, the death of any Individual Guarantor shall not constitute an Event of Default hereunder if within sixty (60) days following such death or determination of legal incompetency of such Individual Guarantor, a substitute guarantor whose creditworthiness and business experience and skills are comparable to those of the original borrower and who is otherwise acceptable to the Bank in the Bank's sole and absolute discretion, executes this Agreement and Security Agreement in favor of the Bank in form and substance substantially similar to this Agreement.

Section 12. REMEDIES.

Upon the occurrence of an Event of Default, the Bank shall have all rights, powers and remedies set forth in the Loan Documents, in any written agreement or instrument (other than this Agreement or the Loan Documents) relating to any of the Obligations or any security therefor, as a secured party under the UCC or as otherwise provided at law or in equity. Without limiting the generality of the foregoing, the Bank may, at its option upon the occurrence of an Event of Default, declare its commitments to the Borrower to be terminated and all Obligations to be immediately due and payable, provided, however, that upon the occurrence of an Event of Default under Section 11.7, all commitments of the Bank to the Borrower shall immediately terminate and all Obligations shall be automatically due and payable, all without demand, notice or further action of any kind required on the part of the Bank. The Borrower hereby waives any and all presentment, demand, notice of dishonor, protest, and all other notices and demands in connection with the enforcement of Bank's rights under the Loan Documents, and hereby consents to, and waives notice of release, with or without consideration, of any of the Borrower or Guarantor or of any Collateral, notwithstanding anything contained herein or in the Loan Documents to the contrary. In addition to the foregoing:

12.1 Possession and Assembly of Collateral. The Bank may, without notice, demand or legal process of any kind, take possession of any or all of the Collateral (in addition to Collateral of which the Bank already has possession), wherever it may be found, and for that purpose may pursue the same wherever it may be found, and may at any time enter into any of Borrower's premises where any of the Collateral may be or is supposed to be, and search for, take possession of, remove, keep and store any of the Collateral until the same shall be sold or otherwise disposed of and the Bank shall have the right to store and conduct a sale of the same in any of Borrower's premises without cost to the Bank. At the Bank's request, the Borrower will, at Borrower's sole expense, assemble the Collateral and make it available to the Bank at a place or places to be designated by the Bank which is reasonably convenient to the Bank and the Borrower.

12.2 Sale of Collateral. The Bank may sell any or all of the Collateral at public or private sale, upon such terms and conditions as the Bank may deem proper, and the Bank may purchase any or all of the Collateral at any such sale. The Borrower acknowledges that the Bank may be unable to effect a public sale of all or any portion of the Collateral because of certain legal and/or practical restrictions and provisions which may be applicable to the Collateral and, therefore, may be compelled to resort to one or more private sales to a restricted group of offerees and purchasers. The Borrower consents to any such private sale so made even though at places and upon terms less favorable than if the Collateral were sold at public sale. The Bank shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Bank may apply the net proceeds, after deducting all costs, expenses, attorneys' and paralegals' fees incurred or paid at any time in the collection, protection and sale of the Collateral and the Obligations, to the payment of any Note and/or any of the other Obligations, returning the excess proceeds, if any, to the Borrower. The Borrower shall remain liable for any amount remaining unpaid after such application, with interest at the Default Rate. Any notification of intended disposition of the Collateral required by law shall be conclusively deemed reasonable and properly given if given by the Bank at least ten (10) calendar days before the date of such

disposition. The Borrower hereby confirms, approves and ratifies all acts and deeds of the Bank relating to the foregoing, and each part thereof, and expressly waives any and all claims of any nature, kind or description which it has or may hereafter have against the Bank or its representatives, by reason of taking, selling or collecting any portion of the Collateral. The Borrower consents to releases of the Collateral at any time (including prior to default) and to sales of the Collateral in groups, parcels or portions, or as an entirety, as the Bank shall deem commercially reasonable. The Borrower expressly absolves the Bank from any loss or decline in market value of any Collateral by reason of delay in the enforcement or assertion or nonenforcement of any rights or remedies under this Agreement.

12.3 Standards for Exercising Remedies. To the extent that applicable law imposes duties on the Bank to exercise remedies in a commercially reasonable manner, the Borrower acknowledges and agrees that it is not commercially unreasonable for the Bank (a) to fail to incur expenses reasonably deemed significant by the Bank to prepare Collateral for disposition or otherwise to complete raw material or work-in-process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as the Borrower, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, including, without limitation, any warranties of title, (k) to purchase insurance or credit enhancements to insure the Bank against risks of loss, collection or disposition of Collateral or to provide to the Bank a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Bank, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Bank in the collection or disposition of any of the Collateral. The Borrower acknowledges that the purpose of this section is to provide non-exhaustive indications of what actions or omissions by the Bank would not be commercially unreasonable in the Bank's exercise of remedies against the Collateral and that other actions or omissions by the Bank shall not be deemed commercially unreasonable solely on account of not being indicated in this section. Without limitation upon the foregoing, nothing contained in this section shall be construed to grant any rights to the Borrower or to impose any duties on the Bank that would not have been granted or imposed by this Agreement or by applicable law in the absence of this section.

12.4 UCC and Offset Rights. The Bank may exercise, from time to time, any and all rights and remedies available to it under the UCC or under any other applicable law in addition

to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other agreements between any Obligor and the Bank, and may, without demand or notice of any kind, appropriate and apply toward the payment of such of the Obligations, whether matured or unmatured, including costs of collection and attorneys' and paralegals' fees, and in such order of application as the Bank may, from time to time, elect, any indebtedness of the Bank to any Obligor, however created or arising, including, but not limited to, balances, credits, deposits, accounts or moneys of such Obligor in the possession, control or custody of, or in transit to the Bank. Borrower, on behalf of itself and each Obligor, hereby waives the benefit of any law that would otherwise restrict or limit the Bank in the exercise of its right, which is hereby acknowledged, to appropriate at any time hereafter any such indebtedness owing from the Bank to any Obligor.

12.5 Additional Remedies. The Bank shall have the right and power to:

(a) instruct Borrower, at its own expense, to notify any parties obligated on any of the Collateral, including, but not limited to, any Account Debtors, to make payment directly to the Bank of any amounts due or to become due thereunder, or the Bank may directly notify such obligors of the security interest of the Bank, and/or of the assignment to the Bank of the Collateral and direct such obligors to make payment to the Bank of any amounts due or to become due with respect thereto, and thereafter, collect any such amounts due on the Collateral directly from such Persons obligated thereon;

(b) enforce collection of any of the Collateral, including, but not limited to, any Accounts, by suit or otherwise, or make any compromise or settlement with respect to any of the Collateral, or surrender, release or exchange all or any part thereof, or compromise, extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder;

(c) take possession or control of any proceeds and products of any of the Collateral, including the proceeds of insurance thereon;

(d) extend, renew or modify for one or more periods (whether or not longer than the original period) any Note, any other of the Obligations, any obligation of any nature of any other obligor with respect to any Note or any of the Obligations;

(e) grant releases, compromises or indulgences with respect to any Note, any of the Obligations, any extension or renewal of any of the Obligations, any security therefor, or to any other obligor with respect to any Note or any of the Obligations;

(f) transfer the whole or any part of securities which may constitute Collateral into the name of the Bank or the Bank's nominee without disclosing, if the Bank so desires, that such securities so transferred are subject to the security interest of the Bank, and any corporation, association, or any of the managers or trustees of any trust issuing any of such securities, or any transfer agent, shall not be bound to inquire, in the event that the Bank or such nominee makes any further transfer of such securities, or any

portion thereof, as to whether the Bank or such nominee has the right to make such further transfer, and shall not be liable for transferring the same;

(g) vote the Collateral;

(h) make an election with respect to the Collateral under Section 1111 of the Bankruptcy Code or take action under Section 364 or any other section of the Bankruptcy Code; provided, however, that any such action of the Bank as set forth herein shall not, in any manner whatsoever, impair or affect the liability of the Borrower hereunder, nor prejudice, waive, nor be construed to impair, affect, prejudice or waive the Bank's rights and remedies at law, in equity or by statute, nor release, discharge, nor be construed to release or discharge, the Borrower, any guarantor or other Person liable to the Bank for the Obligations; and

(i) at any time, and from time to time, accept additions to, releases, reductions, exchanges or substitution of the Collateral, without in any way altering, impairing, diminishing or affecting the provisions of this Agreement, the Loan Documents, or any of the other Obligations, or the Bank's rights hereunder, under any Note or under any of the other Obligations.

The Borrower hereby ratifies and confirms whatever the Bank may do with respect to the Collateral and agrees that the Bank shall not be liable for any error of judgment or mistakes of fact or law with respect to actions taken in connection with the Collateral.

12.6 Attorney-in-Fact. Borrower hereby irrevocably makes, constitutes and appoints the Bank (and any officer of the Bank or any Person designated by the Bank for that purpose) as Borrower's true and lawful proxy and attorney-in-fact (and agent-in-fact) in Borrower's name, place and stead, with full power of substitution, to (i) take such actions as are permitted in this Agreement, (ii) execute such financing statements and other documents and to do such other acts as the Bank may require to perfect and preserve the Bank's security interest in, and to enforce such interests in the Collateral, and (iii) carry out any remedy provided the Bank in this Agreement, including, without limitation, endorsing Borrower's name to checks, drafts, instruments and other items of payment, and proceeds of the Collateral, executing change of address forms with the postmaster of the United States Post Office serving the address of the Borrower, changing the address of the Borrower to that of the Bank, opening all envelopes addressed to the Borrower and applying any payments contained therein to the Obligations. The Borrower hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. The Borrower hereby ratifies and confirms all that such attorney-in-fact may do or cause to be done by virtue of any provision of this Agreement.

12.7 No Marshaling. The Bank 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. To the extent that it lawfully may, Borrower hereby agrees that it will not invoke any law relating to the marshaling of collateral

which might cause delay in or impede the enforcement of the Bank's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Borrower hereby irrevocably waives the benefits of all such laws.

12.8 Application of Proceeds. The Bank will within three (3) Business Days after receipt of cash or solvent credits from collection of items of payment, proceeds of Collateral or any other source, apply the whole or any part thereof against the Obligations secured hereby. The Bank shall further have the exclusive right to determine how, when and what application of such payments and such credits shall be made on the Obligations, and such determination shall be conclusive upon the Borrower. Any proceeds of any disposition by the Bank of all or any part of the Collateral may be first applied by the Bank to the payment of expenses incurred by the Bank in connection with the Collateral, including attorneys' fees and legal expenses as provided for in Section 13 hereof.

12.9 No Waiver. No Event of Default shall be waived by the Bank except in writing. No failure or delay on the part of the Bank in exercising any right, power or remedy hereunder shall operate as a waiver of the exercise of the same or any other right at any other time; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. There shall be no obligation on the part of the Bank to exercise any remedy available to the Bank in any order. The remedies provided for herein are cumulative and not exclusive of any remedies provided at law or in equity. Borrower agrees that in the event that the Borrower fails to perform, observe or discharge any of their Obligations or liabilities under this Agreement or any other agreements with the Bank, no remedy of law will provide adequate relief to the Bank, and further agrees that the Bank shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

Section 13. MISCELLANEOUS

13.1 Obligations Absolute. None of the following shall affect the Obligations of the Borrower to the Bank under this Agreement or the Bank's rights with respect to the Collateral:

- (a) acceptance or retention by the Bank of other property or any interest in property as security for the Obligations;
- (b) release by the Bank of the Borrower or Guarantor or of all or any part of the Collateral or of any party liable with respect to the Obligations;
- (c) release, extension, renewal, modification or substitution by the Bank of any Note, or any note evidencing any of the Obligations, or the compromise of the liability of any guarantor or of the Obligations; or

(d) failure of the Bank to resort to any other security or to pursue the Borrower or any other obligor liable for any of the Obligations before resorting to remedies against the Collateral.

13.2 Entire Agreement. This Agreement and the other Loan Documents (i) are valid, binding and enforceable against the Borrower and the Bank in accordance with their respective provisions and no conditions exist as to their legal effectiveness; (ii) constitute the entire agreement between the parties with respect to the subject matter hereof and thereof; and (iii) are the final expression of the intentions of the Borrower and the Bank. No promises, either expressed or implied, exist between the Borrower and the Bank, unless contained herein or therein. This Agreement, together with the other Loan Documents, supersedes all negotiations, representations, warranties, commitments, term sheets, discussions, negotiations, offers or contracts (of any kind or nature, whether oral or written) prior to or contemporaneous with the execution hereof with respect to any matter, directly or indirectly related to the terms of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents are the result of negotiations among the Bank, the Borrower and the other parties thereto, and have been reviewed (or have had the opportunity to be reviewed) by counsel to all such parties, and are the products of all parties. Accordingly, this Agreement and the other Loan Documents shall not be construed more strictly against the Bank merely because of the Bank's involvement in their preparation.

13.3 Amendments; Waivers. No delay on the part of the Bank in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by the Bank of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or the other Loan Documents shall in any event be effective unless the same shall be in writing and acknowledged by the Bank, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

13.4 FORUM SELECTION AND CONSENT TO JURISDICTION. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE BANK FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. THE BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY

NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

13.5 WAIVER OF JURY TRIAL. THE BANK AND THE BORROWER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT, ANY OF THE OTHER OBLIGATIONS, THE COLLATERAL, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH THE BANK AND THE BORROWER ARE ADVERSE PARTIES, AND EACH AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BANK GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER.

13.6 Assignability. The Bank may at any time assign the Bank's rights in this Agreement, the other Loan Documents, the Obligations, or any part thereof and transfer the Bank's rights in any or all of the Collateral, and the Bank thereafter shall be relieved from all liability with respect to such Collateral. In addition, the Bank may at any time sell one or more participations in the Loan. The Borrower may not sell or assign this Agreement, or any other agreement with the Bank or any portion thereof, either voluntarily or by operation of law, without the prior written consent of the Bank. This Agreement shall be binding upon the Bank and the Borrower and their respective legal representatives and successors. All references herein to Borrower shall be deemed to include any successors, whether immediate or remote. In the case of a joint venture or partnership, the term "Borrower" shall be deemed to include all joint venturers or partners thereof, who shall be jointly and severally liable hereunder.

13.7 Confirmations. The Borrower and the Bank agree from time to time, upon written request received by it from the other, to confirm to the other in writing the aggregate unpaid principal amount of the Loan then outstanding under such Note.

13.8 Confidentiality. The Bank agrees to use commercially reasonable efforts (equivalent to the efforts the Bank applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information provided to them by the Borrower and designated as confidential, except that the Bank may disclose such information (a) to Persons employed or engaged by the Bank in evaluating, approving, structuring or administering the Loan; (b) to any assignee or participant or potential assignee or participant that has agreed to comply with the covenant contained in this Section 13.9 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed

by the Bank to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of the Bank's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which the Bank is a party; (f) to any nationally recognized rating agency that requires access to information about the Bank's investment portfolio in connection with ratings issued with respect to the Bank; (g) to any Affiliate of the Bank who may provide Bank Products to the Borrower or any Subsidiary, or (h) that ceases to be confidential through no fault of the Bank.

13.9 Binding Effect. This Agreement shall become effective upon execution by the Borrower and the Bank. If this Agreement is not dated or contains any blanks when executed by the Borrower, the Bank is hereby authorized, without notice to the Borrower, to date this Agreement as of the date when it was executed by the Borrower, and to complete any such blanks according to the terms upon which this Agreement is executed.

13.10 Governing Law. This Agreement, the Loan Documents and any Note shall be delivered and accepted in and shall be deemed to be contracts made under and governed by the internal laws of the State of Illinois (but giving effect to federal laws applicable to banks) applicable to contracts made and to be performed entirely within such state, without regard to conflict of laws principles.

13.11 Enforceability. 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, unenforceable or invalid under any jurisdiction, such provision shall as to such jurisdiction, be severable and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

13.12 Survival of Borrower Representations. All covenants, agreements, representations and warranties made by the Borrower herein shall, notwithstanding any investigation by the Bank, be deemed material and relied upon by the Bank and shall survive the making and execution of this Agreement and the Loan Documents and the issuance of any Note, and shall be deemed to be continuing representations and warranties until such time as Borrower has fulfilled all of its Obligations to the Bank, and the Bank has been indefeasibly paid in full in cash. The Bank, in extending financial accommodations to the Borrower, is expressly acting and relying on the aforesaid representations and warranties.

13.13 Extensions of Bank's Commitment. This Agreement shall secure and govern the terms of (i) any extensions or renewals of the Bank's commitment hereunder, and (ii) any replacement note executed by the Borrower and accepted by the Bank in its sole and absolute discretion in substitution for any Note.

13.14 Time of Essence. Time is of the essence in making payments of all amounts due the Bank under this Agreement and in the performance and observance by the Borrower of each covenant, agreement, provision and term of this Agreement.

13.15 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof. Electronic records of executed Loan Documents maintained by the Bank shall be deemed to be originals thereof.

13.16 Notices. Except as otherwise provided herein, the Borrower waive all notices and demands in connection with the enforcement of the Bank's rights hereunder. All notices, requests, demands and other communications provided for hereunder shall be in writing and addressed as follows:

If to the Borrower: R & R Contracting, Inc.
5201 N. Washington Street
Grand Forks, ND 58203-3800
Attention: Mr. William K. Reimer

With a copy to: Pearson Christensen & Clapp, PLLP
24 N. 4th Street
Grand Forks, ND 58206-5758
Attention: Douglas A. Christensen, Esq.

If to the Bank: The Leaders Bank
2001 York Road, Suite 150
Oak Brook, Illinois 60523
Attention: Mr. James Conlin

With a copy to: Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, 22nd Floor
Chicago, IL 60611
Attention: Edward J. Lesniak, Esq.

or, as to each party, at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this subsection. All notices addressed as above shall be deemed to have been properly given (i) if served in person, upon acceptance or refusal of delivery; (ii) if mailed by certified or registered mail, return receipt requested, postage prepaid, on the third (3rd) day following the day such notice is deposited in any post office station or letter box; or (iii) if sent by recognized overnight courier, on the first (1st) day following the day such notice is delivered to such carrier. No notice to or demand on the Borrower in any Case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

13.17 Release of Claims Against Bank. In consideration of the Bank making the Loan, Borrower and all other Obligor do each hereby release and discharge the Bank of and from any and all claims, harm, injury, and damage of any and every kind, known or unknown, legal or

equitable, which any Obligor may have against the Bank from the date of their respective first contact with the Bank until the date of this Loan Agreement including, but not limited to, any claim arising from any reports (environmental reports, surveys, appraisals, etc.) prepared by any parties hired or recommended by the Bank. The Borrower and all other Obligors confirm to Bank that they have reviewed the effect of this release with competent legal counsel of their choice, or have been afforded the opportunity to do so, prior to execution of this Loan Agreement and the Loan Documents and do each acknowledge and agree that the Bank is relying upon this release in extending the Loan to the Borrower.

13.18 Costs, Fees and Expenses. The Borrower shall pay or reimburse the Bank for all reasonable costs, fees and expenses incurred by the Bank or for which the Bank becomes obligated in connection with the negotiation, preparation and consummation of this Agreement, collection of the Obligations or enforcement of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith (including any amendment, supplement or waiver to any Loan Document), or during any workout, restructuring or negotiations in respect thereof, including, without limitation, reasonable consultants' fees and attorneys' fees and time charges of counsel to the Bank, which shall also include attorneys' fees and time charges of attorneys who may be employees of the Bank or any Affiliate of the Bank, plus costs and expenses of such attorneys or of the Bank; search fees, costs and expenses, and all taxes payable in connection with this Agreement or the other Loan Documents, whether or not the transaction contemplated hereby shall be consummated. In furtherance of the foregoing, the Borrower shall pay any and all stamp and other taxes, UCC and Surface Transportation Board search fees; filing fees and other costs and expenses in connection with the execution and delivery of this Agreement, any Note and the other Loan Documents to be delivered hereunder, and agrees to save and hold the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such costs and expenses. That portion of the Obligations consisting of costs, expenses or advances to be reimbursed by the Borrower to the Bank, pursuant to this Agreement or the other Loan Documents, which are not paid on or prior to the date hereof shall be payable by the Borrower to the Bank on demand. If at any time or times hereafter the Bank: (a) employs counsel for advice or other representation (i) with respect to this Agreement or the other Loan Documents, (ii) to represent the Bank in any litigation, contest, dispute, suit or proceeding or to commence, defend, or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit, or proceeding (whether instituted by the Bank, the Borrower, or any other Person) in any way or respect relating to this Agreement, the other Loan Documents or Borrower's business or affairs, or (iii) to enforce any rights of the Bank against the Borrower or any other Person that may be obligated to the Bank by virtue of this Agreement or the other Loan Documents; (b) takes any action to protect, collect, sell, liquidate, or otherwise dispose of any of the Collateral; and/or (c) attempts to or enforces any of the Bank's rights or remedies under the Agreement or the other Loan Documents, the costs and expenses incurred by the Bank in any manner or way with respect to the foregoing, shall be part of the Obligations, payable by the Borrower to the Bank on demand.

13.19 Indemnification. Borrower, jointly and severally, agrees to defend (with counsel satisfactory to the Bank), protect, indemnify, exonerate and hold harmless each Indemnified Party from and against any and all liabilities, obligations, losses, damages, penalties, actions,

judgments, suits, claims, costs, expenses and distributions of any kind or nature (including, without limitation, the disbursements and the reasonable fees of counsel for each Indemnified Party thereto, which shall also include, without limitation, reasonable attorneys' fees and time charges of attorneys who may be employees of any Indemnified Party), which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including, without limitation, securities laws, Environmental Laws, commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Agreement or any of the Loan Documents, or any act, event or transaction related or attendant thereto, the preparation, execution and delivery of this Agreement and the Loan Documents, including, but not limited to, the making or issuance and management of the Loan, the use or intended use of the proceeds of the Loan, the enforcement of the Bank's rights and remedies under this Agreement, the Loan Documents, any Note, any other instruments and documents delivered hereunder, or under any other agreement between the Borrower and the Bank; provided, however, that the Borrower shall not have any obligations hereunder to any Indemnified Party with respect to matters determined by a court of competent jurisdiction by final and nonappealable judgment to have been caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it violates any law or public policy, the Borrower shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and failing prompt payment, together with interest thereon at the Default Rate from the date incurred by each Indemnified Party until paid by the Borrower, shall be added to the Obligations of the Borrower and be secured by the Collateral. The provisions of this Section shall survive the satisfaction and payment of the other Obligations and the termination of this Agreement.

13.20 Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by any Obligor or the transfer to the Bank of any property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if the Bank is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Bank is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of the Bank, the Obligations shall automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

13.21 Customer Identification - USA Patriot Act Notice. The Bank hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (the "Act"), and the Bank's policies and practices, the Bank is required to obtain, verify and record certain information and documentation that identifies the Borrower, which information includes the name and address of the Borrower and such other information that will allow the Bank to identify the Borrower in accordance with the Act.

[Signature page follows]

IN WITNESS WHEREOF, the Borrower and the Bank have executed this Loan and Security Agreement as of the date first above written.

BORROWER:

BANK:

R & R CONTRACTING, INC., a North Dakota corporation

THE LEADERS BANK, an Illinois banking corporation

By: [Signature]
William K. Reimer, President

By: [Signature]
Name: THOMAS J. CALMOY
Title: SENIOR VICE PRESIDENT

STATE OF NORTH DAKOTA)
)
COUNTY OF Grand Forks)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that William K. Reimer, as President of R & R CONTRACTING, INC., a North Dakota corporation, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such authorized officer, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth and pursuant to such corporation's authority,

GIVEN under my hand and Notarial Seal on August 6th, 2010.

My commission expires: 7/14/2015

Angie Landeis



EXHIBITS AND SCHEDULES**Exhibit B: Purchased Assets**

- 7.9 Litigation and Contingent Liabilities
- 7.23 Business Addresses / Location of Collateral
- 9.1 Debt
- 9.2 Liens
- 9.3 Investments

EXHIBIT B

Purchased Assets

Locomotives

Make	VIN #	Description	Location	Comment
EMD, SW1200	1206 - 15207	SW1200 Diesel Locomotive	Lumber District, Chicago	Not operational
EMD, SW1200	1209 - 15208	SW1200 Diesel Locomotive	IN Chicago	
EMD, SW1400	1202 - 14369	SW1400 (SW14) Diesel Locomotive	Peoria, IL	
EMD, SW1200	1207 - 14365	SW1200 Diesel Locomotive	Peoria, IL	
EMD, NW-2	1005 - 06582	NW2 Remote-Controlled Locomotive,	Battis creek MI	
EMD, SW1200	1206 - 14984	SW1200 Locomotive	Lumber District, Chicago	New Traction Motor Installed
EMD, SW-1500	1203 - 25748	SW1500 Locomotive	Hennepin (Peoria Area) IL	Largest Loco, most up to date features. Needs work on injectors and linings
EMD, SW - 1200	1204-19486	SW1200 Locomotive	James, Iowa	Cracked draft gear pocket needs repair

11/10/09

CRS and Subsidiaries

Fixed Asset Register--12/31/08

AS OF ACQUISITION DATE

Interest Asset #	Year	Make	Asset Type	VIN #	Description	Owner	Net Book Value	Location	GLV	PV	Fully Operational (Y/N)	Repair Description
84-102	1997	CASE, 1450	Equipment	JAF0241932	7 1/2 Chevy L600 3000 Super Dumpster, w/ Pallet Support	CRCS	4,693	Receivable	7,690	11,280	Y	Starts ready to go
84-103	1998	CASE, 1450	Equipment	JAF0102787	1945C 3000 Super 8 Dumpster	CRCS	4,507	Receivable			N	
84-104	1998	CASE, 1450	Equipment	JAF0105878	1945C 3000 Super Dumpster, w/ Pallet Support	CRCS	3,245	Receivable			N	
84-105	1991	CASE, 1450	Equipment	JAF0000004	1945C 3000 Super Dumpster, w/ Ld Bucket and Pallet	CRCS	2,945	Receivable			N	Starts, needs front fender
84-106	1998	CASE, 650	Equipment	17021817 (formerly described as J2018581)	580 Super Backhoe, Trench Shovel, 7 Bucket w/ Cab	CRCS	4,693	Receivable	7,000	14,990	Y	
84-107	1998	CASE, 650	Equipment	J200164438 (formerly described as J2018581)	580 Super Backhoe, Trench Shovel, 7 Bucket w/ Cab	CRCS	4,693	Receivable			N	
84-108	1998	CASE, 650	Equipment	8077854	580 Super E Backhoe, Trench Shovel, 7 Ld Bucket, Pallet	CRCS	4,693	Receivable			N	
84-109	1997	CASE, 650K	Equipment	17022817 (formerly described as J2020721)	580K LP Backhoe, Trench Shovel, 7 Ld Bucket	CRCS	5,077	Receivable			N	
84-110	1997	CASE, 650K	Equipment	J2020721	580K LP Backhoe, Trench Shovel, 7 Ld Bucket	CRCS	5,220	Receivable	31,000	28,000	N	
84-111	1998	CASE, 650K	Equipment	J2020721	580K LP Backhoe, w/ 7 Loading Bucket	CRCS	5,438	Receivable	31,600	37,600	Y	Starts Ready to go
84-112	1998	CASE, 650K	Equipment	J2020721	580K LP Backhoe, Trench Shovel, 7 Ld Bucket	CRCS	5,077	Receivable	31,000	37,000	N	
84-113	2001	CASE, 651C	Equipment	85712397	6270 Artic Wheel Loader, w/ ACS Crack & Ld Bucket	CRCS	23,748	Receivable	39,000	69,800	Y	
84-114	1998	CASE, 650	Equipment	JAF0000004	580D Crawler Loader, w/ 175W Bucket	CRCS	7,215	Receivable	10,000	14,990	Y	
84-115	1998	CASE, 650	Equipment	7800097	580D Crawler Loader, w/ 175 Bucket and Pallet (reported in Wilson Springs, Not inspected)	CRCS	5,077	Receivable	8,000	19,000	Y	
84-116	1998	CATERPILLAR, 780C	Equipment	38V1022	580C 1800 6000-LD LP Gas LR Truck, 192" LR	CRCS	1,957	Receivable			Y	

Fixed Asset Register - Updated for 03/02/10 Ser-VN

1770910

CPM and Subcontract

Fixed Asset Register-12/31/09

AS OF ACQUISITION DATE

Internal Asset #	Year	Make	Asset Type	VIN #	Description	Owner	Net Book Value 12/31/09 \$	Location	Asset Class	Net Book Value	Notes
2032	1999	BAIRDROL JONAN, 825	Equipment	145832	145832 825 TR Exchange	CRCS	7,070	Receivables	61V	38,000	NR
2053	1990	PANDROL JONAN, W7700	Equipment	P02013	1990 W7700 Rail 1.7m. Platform By 25A Children	CRCS	2,070	Receivables			
228	1999	PETTIBONE, 441	Equipment	209	Special Spring Hydraulic Hy-Rail 2000	CRCS	99	Receivables			Not Operable
2287	2004	PETTIBONE, 418	Equipment	2067	19448 418-D-17m Special Spring	CRCS	25,340	Receivables		49,000	NR
229	1974	PETTIBONE, 441	Equipment	538	Model 441-D Special Spring (Used For Family)	CRCS	69	Receivables			NR
200	RED-OARC		Equipment	483	Special Spring Water Generator, 2000gpd	CRCS	49	Receivables			N
184	RETHOUER		Equipment	18444000	RETHOUER 418 1.7m. Rail 1.7m. Platform By 25A Children	CRCS	2,681	Receivables		6,000	N
200	BRANK		Equipment		Special Spring Hydraulic Hy-Rail 2000	CRCS	207	Receivables			N
218	Slip Tack, Equip		Equipment		Special Spring Hydraulic Hy-Rail 2000	CRCS	51,293	Receivables			N
200	BTMC		Equipment	6027404	Special Spring Hydraulic Hy-Rail 2000	CRCS	110	Receivables			NR
200	Transcat		Equipment	UNKN	Special Spring Hydraulic Hy-Rail 2000	CRCS	69	Receivables			N
1978	STICHTON		Equipment	792762	Special Spring Hydraulic Hy-Rail 2000	CRCS	44	Receivables			N
200	BULLAIR		Equipment	004-10418	Special Spring Hydraulic Hy-Rail 2000	CRCS	797	Receivables			N
200	BULLAIR		Equipment	128-218077	Special Spring Hydraulic Hy-Rail 2000	CRCS	797	Receivables			N
200	Special Spring Hydraulic Hy-Rail 2000		Equipment	UNKN	Special Spring Hydraulic Hy-Rail 2000	CRCS	679	Receivables			N
1186	YALBERT		Equipment	2018105	Special Spring Hydraulic Hy-Rail 2000	CRCS	2,070	Receivables		6,000	N

Fixed Assets Register - Updated for 6-30-2010 for VR

7/7/2010

CRH and Subsidiaries

Fixed Asset Register-12/31/09

AS OF ACQUISITION DATE

Internal Asset #	Year	Make	Asset Type	VIN #	Description	Owner	Net Book Value 12/31/09 \$	Location	CLV	Historic Acquisition	Early Depreciation (FASB) Months	Repairs Description
100222	1990	YAMHAHA, 67C-1, 6A-8	Equipment	1061017	Max 1 EA-8 Jumpers							
874-106	1980	YAMHAHA, 4P1-1, 6A-TD6	Equipment	674106 P00001 1107100	Max 1 EA-TD6 Temper (Common Beam)	CRCS	8,378	Reynolds	55,000	28,250.00	18	Starts, but only left-hand starter field, so needs to be checked out. This may be due to either the fuel pump or injector pump not working since it won't stay running. Can't check to see if everything else works, needs to be repaired & serviced.
84-304	1994	YAMHAHA, TR-1	Equipment	8200304	Max 1 TR-1 Railroad The Repair	CRCS	4,784	Reynolds			18	Powerly jumping off starter, so highest needs checked out; work based on R-side needs to be put back on; makes when motor starts but back on to work head and back back up, so can't check if it works right or not; highest needs to be repaired.
82-430	1980	YAMHAHA, TR-10	Equipment	2600300	Max 1 TR-10 111 Max 1 TR-10 111 Max 1 TR-10 111	CRCS	1,918	Reynolds			18	Starts & runs; needs to be repaired; needs to be repaired; oil, fuel & hydraulic lines changed; ground and replaced.
2006	2006	Trail Rehab	Equipment		Max 1 TR-10 111 Max 1 TR-10 111 Max 1 TR-10 111	CRCS	24,616	Reynolds	50,000	55,000.00	18	Starts & runs; needs to be repaired; needs to be repaired; oil, fuel & hydraulic lines changed; ground and replaced.
1999	1999	Trail Rehab	Equipment	M4987A0301	Max 1 TR-10 111 Max 1 TR-10 111 Max 1 TR-10 111	CRCS	7,442	Reynolds			18	Starts & runs; needs to be repaired; needs to be repaired; oil, fuel & hydraulic lines changed; ground and replaced.
2009	2009	Trail Rehab	Equipment		Max 1 TR-10 111 Max 1 TR-10 111 Max 1 TR-10 111	CRCS	3,884	Reynolds	75,000	28,250.00	18	Starts & runs; needs to be repaired; needs to be repaired; oil, fuel & hydraulic lines changed; ground and replaced.
2000	2000	Trail Rehab	Equipment		Max 1 TR-10 111 Max 1 TR-10 111 Max 1 TR-10 111	CRCS	288	Reynolds			18	Starts & runs; needs to be repaired; needs to be repaired; oil, fuel & hydraulic lines changed; ground and replaced.
2000	2000	Trail Rehab	Equipment		Max 1 TR-10 111 Max 1 TR-10 111 Max 1 TR-10 111	CRCS	190	Reynolds			18	Starts & runs; needs to be repaired; needs to be repaired; oil, fuel & hydraulic lines changed; ground and replaced.
2000	2000	Trail Rehab	Equipment		Max 1 TR-10 111 Max 1 TR-10 111 Max 1 TR-10 111	CRCS	100	Reynolds			18	Starts & runs; needs to be repaired; needs to be repaired; oil, fuel & hydraulic lines changed; ground and replaced.
2000	2000	Trail Rehab	Equipment		Max 1 TR-10 111 Max 1 TR-10 111 Max 1 TR-10 111	CRCS	100	Reynolds	618,000	768,750	18	Starts & runs; needs to be repaired; needs to be repaired; oil, fuel & hydraulic lines changed; ground and replaced.

Fixed Asset Register - Updated 10-30-2010 for VE

7/7/2010

CIRM and Subsidiaries

Fixed Asset Register-12/31/09

AS OF ACQUISITION DATE

Internal Asset #	Year	Name	Asset Type	VIN #	Description	Owner	Location	QTY	RV	Full Current Cost (Book Value) (Less Accumulated Depreciation)	Prop. Int.
3022	2009	PETTERSONE, 441	Equipment	3416	441-470 Trencher (with hydraulic backhoe) and Pumps	CRCS	Chicago				Regular Description
	2009	STANLEY	Equipment	UNKN	Model 210 Hydraulic Crane Lift, 2000Lb.	CRCS	Chicago				
	2009	BULLOCK	Equipment	004-126373	185-200-10 Redger Air Compressor, 175 Gallons	CRCS	Chicago				
686-422	1996	TRAMPER, MEXI, SA-300	Equipment	040822	Black TE-300 Temporary City Enclosure #100	CRCS	Chicago				Year Built: 1996, 18.5 gals. oil storage tank, needs key start check oil, maybe fuel pump for not working or if water pump is not working. inspect with city starting, start check anything else, need timer batteries & serviced
	2000	UNKN	Equipment	UNKN	Specialty Manufactured Reducer (UN) 1/4", 200 x 187L	CRCS	Chicago	27,500	30,000	Y	
	2002	UNKN	Equipment	UNKN	Concrete Saw	CRCS	Chicago				
	2002	UNKN	Equipment	UNKN	18" Red Stone	CRCS	Chicago				
	2002	UNKN	Equipment	UNKN	18" Red Stone	CRCS	Chicago				
	2009	WISCONSIN	Equipment	4833-200715	Hydraulic Power Unit	CRCS	Chicago				
		Lumina-Lumber-Stacks	Equipment		Lumina-Lumber-Stack	CRCS	Chicago				
		Medicine	Equipment		Medicine	CRCS	Chicago				
		Hourly	Equipment		Hourly	CRCS	Chicago				
						CRCS	Chicago	200,000	200,000		

Fixed Asset Register-Updated for 6-30-2010 for CIRM

Computer & Office Furniture Inventory			
Item	Make	Model	Serial Number
PC Equipment			
Backup Driver	Cyber Power	1285 AVR	
Computer	Compaq	Presario	MXF709002P
Computer	Dell	Optiplex 745	D2R46C1
Computer	Dell	Precision 380	JMSN-IC1
Computer	Dell	Optiplex 820	2YFH2D1
Computer	Dell	PowerEdge B04	
Computer	Dell	Optiplex 820	87MP2D1
Computer	Dell	Optiplex 745	43R4831
Laptop Computer	Dell	Latitude D630	99RCYF1
Laptop Computer	Dell	Latitude D620	D0B3PD1
Fax	Lexmark	X4270	0347YG27160
Monitor	Dell		CN-OCC388-71818-888-AC03
Monitor	Dell		CN-OCC388-71818-888-8978
Monitor	Dell		CN-OUH837-48220-87T-00PO
Monitor	Dell		CN-OCC388-71818-888-8A5W
Monitor	Dell		CN-OUH837-48220-72Q-0072
Monitor	Samsung	NB19A56B	NB19HCHX21263M
Monitor	Dell		CN-OCD323-71818-888-AAMV
Monitor	Dell		CN-OCC388-71818-888-8A8M
Printer	HP	HP Laserjet 1300	
Printer	HP	laserjet 1020	CNBK872829
Printer	Lexmark	Z845	02501517987 2006 / 12
Printer	HP	HP Laserjet 2420	DNGJD07748
Printer	HP	Deskjet D4180	
Printer	Lexmark	4113-001	102913144209 2006 / 08
Printer	HP	Deskjet 2400	TH77C324T
Printer/Copier/Scanner	Canon	IR8030	MUF04515
Printer/Scanner	Canon	Lide 70	QC2-261-D803-01
Printer/Scanner	Lexmark	X75/ 4408-F01	03325147553 2002 / 08
Office Furniture			
Receptionist Desk(1)			
Desks(5)			
Office Chairs (5)			
Waiting Room Chairs(4)			
Wing Back Chair (1)			
File Credenzas(3)			
Conference Table & 4 Chairs(1)			