

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended November 23, 2000  
-----

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 1-12604  
-----

THE MARCUS CORPORATION

-----  
(Exact name of registrant as specified in its charter)

Wisconsin

39-1139844

-----  
(State or other jurisdiction of  
incorporation or organization)

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

250 East Wisconsin Avenue, Suite 1700  
Milwaukee, Wisconsin

53202

-----  
(Address of principal executive offices)

-----  
(Zip Code)

Registrant's telephone number, including area code: (414) 905-1000  
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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934, during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to filing requirements for the past 90 days.

Yes    X        No  
-----        -----

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

COMMON STOCK OUTSTANDING AT DECEMBER 29, 2000 - 17,256,330  
CLASS B COMMON STOCK OUTSTANDING AT DECEMBER 29, 2000 - 11,879,718

THE MARCUS CORPORATION

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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

THE MARCUS CORPORATION  
Consolidated Balance Sheets

|  | (Unaudited)<br>November 23,<br>2000 | (Audited)<br>May 25,<br>2000 |
|--|-------------------------------------|------------------------------|
|  | ----                                | ----                         |
|  | (in thousands)                      |                              |

ASSETS

Current Assets:

|                                   |        |         |
|-----------------------------------|--------|---------|
| Cash and cash equivalents         | \$463  | \$2,935 |
| Accounts and notes receivable     | 20,055 | 11,908  |
| Receivables from joint ventures   | 4,624  | 2,468   |
| Refundable income taxes           | -      | 3,020   |
| Real estate and development costs | 4,302  | 3,917   |
| Other current assets              | 3,964  | 4,147   |
|                                   | -----  | -----   |
| Total current assets              | 33,408 | 28,395  |

Property and equipment:

|  |         |         |
|--|---------|---------|
| Land and improvements                          | 96,107  | 96,158  |
| Buildings and improvements                     | 571,038 | 514,734 |
| Leasehold improvements                         | 8,499   | 7,650   |
| Furniture, fixtures and equipment              | 243,741 | 231,643 |
| Construction in progress                       | 19,221  | 48,152  |
|  | -----   | -----   |
| Total property and equipment                   | 938,606 | 898,337 |
| Less accumulated depreciation and amortization | 260,421 | 240,020 |
|  | -----   | -----   |
| Net property and equipment                     | 678,185 | 658,317 |

Other assets:

|                               |        |        |
|-------------------------------|--------|--------|
| Investments in joint ventures | 2,033  | 2,025  |
| Other                         | 37,950 | 35,039 |
|                               | -----  | -----  |
| Total other assets            | 39,983 | 37,064 |
|                               | -----  | -----  |

|              |           |           |
|--------------|-----------|-----------|
| TOTAL ASSETS | \$751,576 | \$723,776 |
|              | =====     | =====     |

See accompanying notes to consolidated financial statements.

THE MARCUS CORPORATION  
Consolidated Balance Sheets

|   | (Unaudited)<br>November 23,<br>2000<br>---- | (Audited)<br>May 25,<br>2000<br>---- |
|---|---|--------------------------------------|
|   | (in thousands)                              |                                      |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>   |   |                                      |
| Current liabilities:  |   |                                      |
| Notes payable   | \$6,779                                     | \$4,228                              |
| Accounts payable  | 9,887                                       | 24,463                               |
| Income taxes  | 51  | -                                    |
| Taxes other than income taxes   | 13,663                                      | 11,219                               |
| Accrued compensation  | 3,086                                       | 4,307                                |
| Other accrued liabilities   | 10,461                                      | 10,026                               |
| Current maturities of long-term debt  | 19,054                                      | 16,228                               |
|   | -----                                       | -----                                |
| Total current liabilities   | 62,981                                      | 70,471                               |
| Long-term debt  | 312,365                                     | 286,344                              |
| Deferred income taxes   | 33,135                                      | 32,602                               |
| Deferred compensation and other   | 9,241                                       | 9,112                                |
| Shareholders' equity:   |   |                                      |
| Preferred Stock, \$1 par; authorized 1,000,000<br>shares; none issued   |   |                                      |
| Common Stock, \$1 par; authorized 50,000,000<br>shares; issued 19,296,537 shares at<br>November 23, 2000, 19,072,617 shares at<br>May 25, 2000        | 19,297                                      | 19,073                               |
| Class B Common Stock, \$1 par; authorized 33,000,000<br>shares; issued and outstanding 11,892,976 at<br>November 23, 2000, 12,116,896 at May 25, 2000 | 11,893                                      | 12,117                               |
| Capital in excess of par  | 40,802                                      | 40,774                               |
| Retained earnings   | 281,259                                     | 268,808                              |
| Accumulated other comprehensive loss  | (208)                                       | (257)                                |
|   | ---   | ---                                  |
|   | 353,043                                     | 340,515                              |
| Less cost of Common Stock in treasury (2,055,593<br>shares at November 23, 2000 and 1,708,247<br>shares at May 25, 2000)                              | (19,189)                                    | (15,268)                             |
|   | -----                                       | -----                                |
| Total shareholders' equity  | 333,854                                     | 325,247                              |
|   | -----                                       | -----                                |
| <b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>   | <b>\$751,576</b>                            | <b>\$723,776</b>                     |
|   | =====                                       | =====                                |

See accompanying notes to consolidated financial statements.

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THE MARCUS CORPORATION  
Consolidated Statements of Earnings (Unaudited)

|                           | November 23, 2000 |          | November 25, 1999 |          |
|---------------------------|-------------------|----------|-------------------|----------|
|                           | -----             |          | -----             |          |
|                           | 13 Weeks          | 26 Weeks | 13 Weeks          | 26 Weeks |
|                           | -----             | -----    | -----             | -----    |
| Revenues:                 |                   |          |                   |          |
| Rooms and telephone       | \$45,260          | \$98,329 | \$42,052          | \$91,986 |
| Theatre admissions        | 16,046            | 40,284   | 16,248            | 44,896   |
| Theatre concessions       | 7,152             | 17,872   | 7,220             | 20,020   |
| Food and beverage         | 8,181             | 16,267   | 6,971             | 14,000   |
| Other income              | 10,503            | 23,218   | 7,753             | 17,059   |
|                           | -----             | -----    | -----             | -----    |
| Total revenues            | 87,142            | 195,970  | 80,244            | 187,961  |
| Costs and expenses:       |                   |          |                   |          |
| Rooms and telephone       | 18,744            | 38,007   | 17,498            | 35,906   |
| Theatre operations        | 12,844            | 31,411   | 12,978            | 34,989   |
| Theatre concessions       | 1,818             | 4,386    | 1,868             | 4,899    |
| Food and beverage         | 5,729             | 11,409   | 5,108             | 10,374   |
| Advertising and marketing | 7,260             | 15,158   | 5,945             | 12,304   |
| Administrative            | 10,557            | 20,775   | 9,874             | 19,839   |

|   |         |          |         |          |
|---|---------|----------|---------|----------|
| Depreciation and amortization                                       | 10,427  | 21,488   | 9,876   | 19,879   |
| Rent  | 826     | 1,648    | 604     | 1,429    |
| Property taxes  | 3,551   | 7,319    | 3,441   | 6,847    |
| Pre-opening expenses  | 361     | 688      | 138     | 510      |
| Other operating expenses  | 4,781   | 10,385   | 3,060   | 6,631    |
|   | -----   | -----    | -----   | -----    |
| Total costs and expenses  | 76,898  | 162,674  | 70,390  | 153,607  |
|   | -----   | -----    | -----   | -----    |
| Operating income  | 10,244  | 33,296   | 9,854   | 34,354   |
| Other income (expense):   |         |          |         |          |
| Investment income (loss)  | 792     | 1,289    | 318     | 695      |
| Interest expense  | (5,955) | (11,182) | (3,905) | (8,785)  |
| Gain on disposition of property and equipment                       | 1,295   | 1,551    | 2,413   | 3,740    |
|   | -----   | -----    | -----   | -----    |
|   | (3,868) | (8,342)  | (1,174) | (4,350)  |
|   | -----   | -----    | -----   | -----    |
| Earnings from continuing operations before income taxes             | 6,376   | 24,954   | 8,680   | 30,004   |
| Income taxes  | 2,597   | 10,103   | 3,589   | 12,217   |
|   | -----   | -----    | -----   | -----    |
| Earnings from continuing operations                                 | 3,779   | 14,851   | 5,091   | 17,787   |
| Discontinued operations (Note 2):                                   |         |          |         |          |
| Income from discontinued operations, net of applicable income taxes | 317     | 694      | 497     | 971      |
|   | ---     | ---      | ---     | ---      |
| Net earnings  | \$4,096 | \$15,545 | \$5,588 | \$18,758 |
|   | =====   | =====    | =====   | =====    |
| Earnings per share - Basic and Diluted:                             |         |          |         |          |
| Continuing operations   | \$0.13  | \$0.51   | \$0.17  | \$0.60   |
| Discontinued operations   | \$0.01  | \$0.02   | \$0.02  | \$0.03   |
|   | -----   | -----    | -----   | -----    |
| Net earnings per share  | \$0.14  | \$0.53   | \$0.19  | \$0.63   |
|   | =====   | =====    | =====   | =====    |
| Weighted Average Shares Outstanding:                                |         |          |         |          |
| Basic   | 29,141  | 29,220   | 29,896  | 29,901   |
| Diluted   | 29,284  | 29,299   | 29,949  | 29,948   |

See accompanying notes to consolidated financial statements.

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THE MARCUS CORPORATION  
Consolidated Statements of Cash Flows (Unaudited)

|   | 26 Weeks Ended |              |
|---|----------------|--------------|
|   | November 23,   | November 25, |
|   | 2000           | 1999         |
|   | -----          | -----        |
|   | ----           | ----         |
|   | (in thousands) |              |
| OPERATING ACTIVITIES:   |                |              |
| Net earnings  | \$15,545       | \$18,758     |
| Adjustments to reconcile net earnings to net cash provided by operating activities: |                |              |
| Earnings on investments in joint ventures, net of distributions                     | (8)            | (157)        |
| Gain on disposition of property and equipment                                       | (1,551)        | (3,740)      |
| Depreciation and amortization   | 21,993         | 20,614       |
| Deferred income taxes   | 533            | 2,124        |
| Deferred compensation and other   | 129            | 632          |
| Changes in assets and liabilities:  |                |              |
| Accounts and notes receivable   | (8,147)        | (1,804)      |
| Real estate and development costs   | (385)          | -            |
| Other current assets  | 183            | (177)        |
| Accounts payable  | (14,576)       | (9,014)      |
| Income taxes  | 3,071          | 5,448        |
| Taxes other than income taxes   | 2,444          | 2,507        |
| Accrued compensation  | (1,221)        | (738)        |
| Other accrued liabilities   | 435            | 291          |
|   | ---            | ---          |
| Total adjustments   | 2,900          | 15,986       |
|   | -----          | -----        |
| Net cash provided by operating activities   | 18,445         | 34,744       |
| INVESTING ACTIVITIES:   |                |              |
| Capital expenditures, including business acquisitions                               | (41,795)       | (44,669)     |
| Net proceeds from disposals of property, equipment and other assets                 | 1,047          | 15,084       |
| (Increase) decrease in other assets   | (2,424)        | 1,040        |
| Cash received from (advanced to) joint ventures                                     | (2,156)        | 412          |
|   | -----          | ---          |
| Net cash used in investing activities   | (45,328)       | (28,133)     |
| FINANCING ACTIVITIES:   |                |              |

|  |          |          |
|--|----------|----------|
| Debt transactions:   |          |          |
| Net proceeds from issuance of notes payable and long-term debt | 43,005   | 10,575   |
| Principal payments on notes payable and long-term debt         | (11,607) | (10,229) |
| Equity transactions:   |          |          |
| Treasury stock transactions, except for stock options          | (3,959)  | (485)    |
| Exercise of stock options                                      | 65       | 51       |
| Dividends paid   | (3,093)  | (3,165)  |
|  | -----    | -----    |
| Net cash provided by (used in) financing activities            | 24,411   | (3,253)  |
|  | -----    | -----    |
| Net increase (decrease) in cash and cash equivalents           | (2,472)  | 3,358    |
| Cash and cash equivalents at beginning of year                 | 2,935    | 3,499    |
|  | -----    | -----    |
| Cash and cash equivalents at end of period                     | \$463    | \$6,857  |
|  | =====    | =====    |

See accompanying notes to consolidated financial statements.

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THE MARCUS CORPORATION

CONDENSED NOTES TO FINANCIAL STATEMENTS FOR THE  
THIRTEEN AND TWENTY SIX WEEKS ENDED  
NOVEMBER 23, 2000  
(Unaudited)

1. General

Accounting Policies - Refer to the Company's audited financial statements (including footnotes) for the fiscal year ended May 25, 2000, contained in the Company's Form 10-K Annual Report for such year, for a description of the Company's accounting policies.

Basis of Presentation - The consolidated financial statements for the thirteen and twenty-six weeks ended November 23, 2000 and November 25, 1999 have been prepared by the Company without audit. In the opinion of management, all adjustments, consisting only of normal recurring accruals necessary to present fairly the unaudited interim financial information at November 23, 2000, and for all periods presented, have been made. The results of operations during the interim periods are not necessarily indicative of the results of operations for the entire year.

2. Discontinued Operations

The Restaurant business segment has been presented as discontinued operations in the accompanying consolidated financial statements. KFC revenues for the thirteen and twenty-six weeks ended November 23, 2000 were \$6,224,000 and \$12,163,000, respectively. KFC revenues for the thirteen and twenty-six weeks ended November 25, 1999 were \$6,426,000 and \$13,079,000, respectively.

3. Business Segment Information

The Company's primary operations are reported in the following three business segments: Limited-Service Lodging, Theatres and Hotels/Resorts. Corporate items include amounts not allocable to the business segments and consist principally of rental revenue and general corporate expenses.

Following is a summary of business segment information for the thirteen and twenty-six weeks ended November 23, 2000 and November 25, 1999 (in thousands):

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|                   |                 |          |                |           |          |
|-------------------|-----------------|----------|----------------|-----------|----------|
| 13 Weeks Ended    | Limited-Service |          |                | Corporate |          |
| November 23, 2000 | Lodging         | Theatres | Hotels/Resorts | Items     | Total    |
| -----             | -----           | -----    | -----          | -----     | -----    |
| Revenues          | \$34,258        | \$24,273 | \$28,194       | \$417     | \$87,142 |
| Operating Income  | 4,690           | 2,904    | 4,655          | (2,005)   | 10,244   |
| 13 Weeks Ended    | Limited-Service |          |                | Corporate |          |
| November 25, 1999 | Lodging         | Theatres | Hotels/Resorts | Items     | Total    |
| -----             | -----           | -----    | -----          | -----     | -----    |
| Revenues          | \$33,525        | \$24,334 | \$21,887       | \$498     | \$80,244 |

|                  |       |       |       |         |       |
|------------------|-------|-------|-------|---------|-------|
| Operating Income | 4,662 | 2,944 | 3,512 | (1,264) | 9,854 |
|------------------|-------|-------|-------|---------|-------|

| 26 Weeks Ended    | Limited-Service |          |                | Corporate |           |
|-------------------|-----------------|----------|----------------|-----------|-----------|
| November 23, 2000 | Lodging         | Theatres | Hotels/Resorts | Items     | Total     |
| -----             | -----           | -----    | -----          | -----     | -----     |
| Revenues          | \$75,160        | \$60,167 | \$59,858       | \$785     | \$195,970 |
| Operating Income  | 15,850          | 10,168   | 10,939         | (3,661)   | 33,296    |

| 26 Weeks Ended    | Limited-Service |          |                | Corporate |           |
|-------------------|-----------------|----------|----------------|-----------|-----------|
| November 25, 1999 | Lodging         | Theatres | Hotels/Resorts | Items     | Total     |
| -----             | -----           | -----    | -----          | -----     | -----     |
| Revenues          | \$73,405        | \$66,655 | \$47,012       | \$889     | \$187,961 |
| Operating Income  | 15,012          | 12,781   | 9,092          | (2,531)   | 34,354    |

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

Special Note Regarding Forward-Looking Statements

Certain matters discussed in this Management's Discussion and Analysis of Results of Operations and Financial Condition are "forward-looking statements" intended to qualify for the safe harbors from liability established by the Private Securities Litigation Reform Act of 1995. These forward-looking statements may generally be identified as such because the context of such statements will include words such as the Company "believes," "anticipates," "expects" or words of similar import. Similarly, statements that describe the Company's future plans, objectives or goals are also forward-looking statements. Such forward-looking statements are subject to certain risks and uncertainties, including, but not limited to, the following: (i) the Company's ability to identify properties to acquire, develop and/or manage and continuing availability of funds for such development; (ii) the Company's ability to attract potential partners to assist in the acquisition and/or development of properties; (iii) the limited-service lodging division's ability to attract and retain quality franchise operators and to effectively execute its Baymont repositioning strategy; (iv) continuing consumer demand as a result of general economic conditions with respect to the hotels and resorts and limited-service lodging divisions; (v) continuing availability, in terms of both quality and quantity, of films for the theatre division; and (vi) competitive conditions in the markets served by the Company. Shareholders, potential investors and other readers are urged to consider these factors carefully in evaluating the forward-looking statements and are cautioned not to place undue reliance on such forward-looking statements. The forward-looking statements made herein are made only as of the date of this Form 10-Q and the Company undertakes no obligation to publicly update such forward-looking statements to reflect subsequent events or circumstances.

RESULTS OF OPERATIONS

General

The Marcus Corporation reports consolidated and individual segment results of operations on a 52-or-53-week fiscal year ending on the last Thursday in May. Fiscal 2001 is a 53-week year for the Company and each of its divisions and the Company anticipates that its reported results for fiscal 2001 will be increased proportionately by the additional week of operations. Fiscal 2000 was a 52-week year for the Company. The Company divides its fiscal year into three 13-week quarters and a final quarter consisting of 13 or 14 weeks. The Company's primary operations are reported in the following three business segments: limited-service lodging, theatres and hotels/resorts. As a result of the Company's stated intention to dispose of its KFC restaurants, the restaurant business segment has been presented as discontinued operations in the accompanying financial statements and in this discussion.

Revenues during the second quarter of fiscal 2001 ended November 23, 2000, totaled \$87.1 million, an increase of \$6.9 million, or 8.6%, from revenues of \$80.2 million during the second quarter of fiscal 2000. For the first half of fiscal 2001, revenues were \$196.0

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million, an increase of \$8.0 million, or 4.3%, from revenues of \$188.0 million during the first half of fiscal 2000. Revenue increases from the Company's limited-service lodging and hotels/resorts divisions during the second quarter and first half of fiscal 2001 were partially offset by a decrease in theatre division revenues compared to the prior year same periods.

Earnings from continuing operations during the second quarter of fiscal 2001 were \$3.8 million, or \$.13 per share, a decrease of 25.8% and 23.5%, respectively, compared to earnings from continuing operations of \$5.1 million, or \$.17 per share, for the same quarter during the prior year. Net earnings during the second quarter of fiscal 2001 were \$4.1 million, or \$.14 per share, a decrease of 26.7% and 26.3%, respectively, from net earnings of \$5.6 million, or \$.19 per share, during the same quarter last year. During the first half of fiscal 2001, earnings from continuing operations were \$14.9 million, or \$.51 per share. This represented a respective 16.5% and 15.0% decrease from earnings from continuing operations of \$17.8 million, or \$.60 per share, during the first half of fiscal 2000. Net earnings during the first half of fiscal 2001 were \$15.5 million, or \$.53 per share, a decrease of 17.1% and 15.9%, respectively, from net earnings of \$18.8 million, or \$.63 per share, during the first half of fiscal 2000. All per share data presented herein is on a diluted basis.

Operating income (earnings before other income/expense and income taxes) from continuing operations totaled \$10.2 million during the second quarter of fiscal 2001, an increase of nearly \$400,000, or 4.0%, compared to the prior year's same period. For the first half of fiscal 2001, operating income from continuing operations was \$33.3 million, a decrease of \$1.1 million, or 3.1%, from operating income from continuing operations of \$34.4 million during the first half of fiscal 2000. Operating income increases from the Company's limited-service lodging and hotels/resorts divisions during the quarter and first half of fiscal 2001 compared to the same periods last year were offset by reduced operating income from the theatre division and increased unallocated corporate expenses. Factors contributing to the increased loss from corporate items include reduced rental income on former restaurants, increased legal expenses on several one-time projects, and increased costs associated with building the Company's internal real estate/development function, the benefits of which will ultimately include the acquisition of additional revenue-producing projects for the Company.

Increased interest expense and decreased gains on disposition of property and equipment contributed to the Company's decreased earnings from continuing operations and net earnings during the second quarter and first half of fiscal 2001, compared to the prior year same periods. Interest expense, net of investment income, totaled \$5.2 million and \$9.9 million for the second quarter and first half of fiscal 2001, respectively, compared to \$3.6 million and \$8.1 million during the same periods last year. These increases were the result of increased long-term debt levels necessary to help finance the Company's capital expenditures and higher short-term interest rates. Gains on disposition of property and equipment totaled \$1.3 million and \$1.6 million for the second quarter and first half of fiscal 2001, respectively, compared to \$2.4 million and \$3.7 million during the prior year same periods. The timing of periodic sales of Company property and equipment can vary from quarter to quarter, resulting in variations in the Company's gains or losses on disposition of property and equipment.

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#### Limited-Service Lodging

Total revenues for the second quarter of fiscal 2001 for the limited-service lodging division were \$34.3 million, an increase of \$800,000, or 2.2%, compared to revenues of \$33.5 million during the same period in fiscal 2000. Total revenues for the first half of fiscal 2001 for the limited-service lodging division were \$75.2 million, an increase of \$1.8 million, or 2.4%, compared to total revenues of \$73.4 million for the first half of fiscal 2000. The limited-service lodging division's operating income for the fiscal 2001 second quarter totaled \$4.69 million, an increase of \$30,000, or 0.6%, over operating income of \$4.66 million during the same period of fiscal 2000. For the first half of fiscal 2001, the limited-service lodging division's operating income totaled \$15.9 million, a \$900,000 increase, or 5.6%, over operating income of \$15.0 million for the first half of fiscal 2000.

At the end of the fiscal 2001 second quarter, one additional Company-owned

or operated and four additional franchised Baymont Inns & Suites were in operation compared to the end of the second quarter of fiscal 2000. As a result of the sale of two Baymont Inns during the second quarter of fiscal 2000 (one of which was sold to a franchisee), a gain on disposition of \$2.4 million was recognized last year and fiscal 2001 second quarter and first half revenues were negatively impacted by \$400,000 and \$1.2 million, respectively, compared to the same periods during the prior year.

The Company's comparable Baymont Inns & Suites experienced a 13.1% average daily rate increase and a 7.1 point decline in occupancy percentage during the second quarter of fiscal 2001, compared to the same quarter last year. During the first half of fiscal 2001, comparable Company-owned or operated Baymont Inns & Suites experienced a 12.5% increase in average daily rate and a 6.2 point decrease in occupancy percentage, compared to the first half of fiscal 2000. The primary factor contributing to the decline in occupancy has been the significant increase in the industry supply of limited-service lodging rooms during the past three years. The Company also anticipated some downward pressure on occupancy as the Company significantly increased the average daily rate as part of its efforts to reposition the Baymont Inns & Suites brand from the lower-priced economy segment of the lodging industry to the mid-price segment. The Company expects that the trend of increased average daily rates and reduced occupancy will continue during the third quarter of fiscal 2001.

The result of the average daily rate increases and occupancy decline was a 0.3% and 2.0% increase in the division's revenue per available room, or RevPAR, for comparable Baymont Inns during the fiscal 2001 second quarter and first half, respectively, compared to the same periods last year. Subject to changes in economic and industry conditions, the Company believes that RevPAR should continue to improve during fiscal 2001 as market awareness of the Baymont brand continues to increase. The Company also plans to introduce several new features in the near future which are designed to build the brand, including an enhanced lobby breakfast, upgrades in the bed and bath, a new satisfaction guarantee, additional services for business travelers, new sales and marketing programs and an expanded frequent stay program. Several of these programs will result in additional one-time and on-going costs, but are expected to increase occupancy and revenues over the long-term.

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The limited-service lodging division's increased operating results during the second quarter of fiscal 2001 compared to the prior year's same period represent the fourth consecutive quarterly increase after nine straight quarters of decreased operating income dating back to the first quarter of fiscal 1998. In addition to the impact of the RevPAR increase during the fiscal 2001 second quarter, increased revenues from franchising contributed to the division's improvement during the quarter and the Company expects that trend to continue as it continues to focus on increased growth through franchising.

At the end of the fiscal 2001 second quarter, the Company owned or operated 96 Baymont Inns & Suites and franchised an additional 78 Inns, bringing the total number of Baymont Inns & Suites in operation to 174. In addition, there were 30 approved franchised locations in development at the end of the second quarter, including 11 under construction and scheduled to open in fiscal 2001 or shortly thereafter. One Company-owned Baymont Inn & Suites is currently under construction and expected to open during the fiscal 2001 third quarter.

The Company also owned and operated seven Woodfield Suites all-suite hotels during the second quarter of fiscal 2001, compared to six locations during the same period last year. The division's seventh Company-owned Woodfield Suites, located in San Antonio, Texas, opened early during the third quarter of fiscal 2000. Revenues and operating income from Woodfield Suites increased during the second quarter and first half of fiscal 2001 compared to the same periods of fiscal 2000 due to the new location and RevPAR increases of 3.7% and 2.7%, respectively, for comparable Woodfield Suites compared to the same periods last year.

#### Theatres

The theatre division's revenues were \$24.3 million in both the second quarter of fiscal 2001 and the second quarter of fiscal 2000. Operating income for the second quarter of fiscal 2001 equaled last year's second quarter total of \$2.9 million. The theatre division's fiscal 2001 first half revenues were \$60.2 million, a decrease of \$6.5 million, or 9.7%, from revenues of \$66.7



million during the first half of fiscal 2000. Operating income for the first half of fiscal 2001 was \$10.2 million, a decrease of \$2.6 million, or 20.4%, from operating income of \$12.8 million during the first half of fiscal 2000. Consistent with the seasonal nature of the motion picture exhibition industry, the second quarter of the Company's fiscal year is typically the slowest period for its theatre division.

Total box office receipts for the fiscal 2001 second quarter were \$16.0 million, a decrease of \$200,000, or 1.2%, from box office receipts of \$16.2 million during the same period last year. The Company experienced a 3.7% increase in average ticket prices during the second quarter of fiscal 2001 compared to the same period last year and operated 32 additional screens, representing a 7.1% increase over the prior year. Total box office receipts for the first half of fiscal 2001 were \$40.3 million, a decrease of \$4.6 million, or 10.3%, from box office receipts of \$44.9 million during the same period last year. The theatre division's

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average ticket price for the first half of fiscal 2001 increased 4.5% over the same period last year.

Concession revenues totaled \$7.2 million during both the second quarter of fiscal 2001 and second quarter of fiscal 2000. Concession revenues for the fiscal 2001 first half were \$17.9 million, a decrease of \$2.1 million, or 10.7%, from concession revenues of \$20.0 million during the fiscal 2000 first half. The Company's average concession sales per person increased 4.0% during the second quarter and first half compared to last year's same periods.

Total theatre attendance for the second quarter and first half of fiscal 2001 decreased 4.9% and 14.2%, respectively, compared to the same periods last year. Total theatre attendance at the Company's comparable locations decreased 11.8% during the second quarter and 21.1% during the first half of fiscal 2001, compared to last year's same periods. The decline in total attendance and the resulting decreases in box office receipts and concession revenues during the second quarter and first half of fiscal 2001 were primarily the result of fewer quality films during the first four months of fiscal 2001 compared to the same period of fiscal 2000. The Company's box office receipts during September 2000 were down 23.0%, due in part to a lack of quality films held over from the August time period and adverse effects on theatre attendance as a result of television coverage of the summer Olympics. Attendance improved during the last two months of the fiscal 2001 second quarter as the quality of movies improved. In particular, Dr. Seuss' How the Grinch Stole Christmas and several other holiday films performed extremely well late in the second quarter and early into the Company's fiscal 2001 third quarter. Revenues for the theatre business and the motion picture industry in general are heavily dependent upon the general audience appeal of available films, together with studio marketing, advertising and support campaigns, all factors over which the Company has no control.

The Company ended the second quarter with a total of 482 total screens in 49 theatres compared to 450 screens in 49 theatres at the end of the same period last year. The Company closed one six-screen theatre early in the second quarter of fiscal 2001. The Company also sold one four-screen theatre and purchased a five-screen theatre in an adjacent market during the fiscal 2001 second quarter. The Company has three new screens at an existing location in development, including another UltraScreen, and is reviewing additional development and acquisition opportunities. The Company also has continued to retrofit existing theatres with stadium seating and digital sound during the first half of fiscal 2001. Currently 82% of its first-run auditoriums now offer stadium seating, which is the highest percentage of any top-20 theatre chain in the United States.

#### Hotels and Resorts

Total revenues from the hotels and resorts division during the second quarter of fiscal 2001 increased by \$6.3 million, or 28.8%, to \$28.2 million, compared to revenues of \$21.9 million during the previous year's comparable period. Operating income increased by \$1.2 million, or 32.5%, to \$4.7 million during the fiscal 2001 second quarter, compared to operating income of \$3.5 million during the second quarter of fiscal 2000. Total revenues

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from the hotels and resorts division during the first half of fiscal 2001 totaled \$59.9 million, an increase of \$12.9 million, or 27.3%, over first half revenues of \$47.0 million during fiscal 2000. Operating income increased by \$1.8 million, or 20.3%, during the first half of fiscal 2001 to \$10.9 million, compared to operating income of \$9.1 million during the same period last year.

Increases in RevPAR at the Company's comparable owned hotels/resorts, improved operating results from the Company's expanded Milwaukee Hilton City Center and vacation ownership sales were the primary reasons for the division's revenue and operating income increases during the fiscal 2001 second quarter and first half compared to the prior year's same periods. Excluding the Hotel Phillips and the Milwaukee Hilton City Center, which opened additional rooms during the first quarter of fiscal 2001, the division's total RevPAR for comparable Company-owned properties increased 10.7% during the fiscal 2001 second quarter compared to the same quarter last year and increased 9.4% for the first half of fiscal 2001 compared to the same period last year.

The Company opened the rooms portion of its extensive addition to the Hilton Milwaukee City Center in late June 2000, contributing significantly to the overall increase in total division revenues during the fiscal 2001 second quarter compared to the same period last year. A family water park and fun center, Paradise Landing, built in conjunction with the Hilton room addition, opened early in the second quarter of fiscal 2001. Construction also continues on the division's new Company-owned Hilton Madison at Monona Terrace. The property, which will be connected to the new Monona Terrace Convention Center, is on schedule to open in March 2001. The division incurred pre-opening expenses of \$200,000 during the second quarter of fiscal 2001 in preparation for the Hilton Madison opening and expects additional pre-opening expenses to have a slight negative impact on the division's fiscal 2001 third quarter operating results. The Company closed the newly-acquired Hotel Phillips in Kansas City in September 2000 for a major renovation. The Company expects the Hotel Phillips to reopen during the first quarter of fiscal 2002 and to have a slightly negative impact on fiscal 2001 division operating results due to anticipated pre-opening expenses.

Sales from the Company's vacation ownership development at the Grand Geneva Resort & Spa totaled \$1.9 million and \$4.6 million during the second quarter and first half of fiscal 2001, respectively. During the first three quarters of fiscal 2000, the Company accounted for all sales of vacation intervals using the deposit method, deferring all revenue because certain minimum sales levels had not been reached. During the fourth quarter of fiscal 2000, minimum sales levels were met and revenues were recognized retroactively. Due primarily to slightly higher than anticipated construction costs and high initial sales and marketing costs, the vacation ownership development has not had a material impact on division operating income during the second quarter or first half of fiscal 2001. The Company believes that recent product offering improvements and increases in pricing, combined with anticipated increased interest income from customer financing agreements, should ultimately result in the vacation ownership development adding modestly to division operating income and Company net earnings in future periods.

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During the second quarter of fiscal 2001, the Company announced its involvement in a new condominium hotel project on land adjacent to the Grand Geneva Resort & Spa. The project, the Timber Ridge Lodge, will include 225 units when fully completed and will feature a 50,000 square foot indoor/outdoor water park. The Company's hotel and resort division will have a small equity investment in the property and will manage the hotel. Guests of the Timber Ridge Lodge and Grand Geneva Resort & Spa will be able to utilize the amenities of both properties. The first phase of the new hotel is expected to open during the first quarter of fiscal 2002. The hotel and resort division continues to explore additional opportunities for growth, focusing on management contracts and limited equity investments.

#### Discontinued Operations

The Company continues to actively pursue the sale of the Company's 30 KFC and KFC/Taco Bell 2-in-1 restaurants. As a result, the Company continues to account for the restaurant operations as discontinued operations in the Company's consolidated financial statements because of its belief that a sale may be consummated during fiscal 2001.

Revenues from discontinued operations totaled \$6.2 million for the second quarter of fiscal 2001, a decrease of \$200,000, or 3.1%, from fiscal 2000 second quarter revenues of \$6.4 million. During the second quarter of fiscal 2001, the Company had income from discontinued operations, net of applicable income taxes, of \$317,000, a decrease of \$180,000, or 36.2%, from income from discontinued operations during the same period last year. During the first half of fiscal 2001, revenues from discontinued operations totaled \$12.2 million, a decrease of \$900,000, or 7.0%, from prior year first half revenues from discontinued operations of \$13.1 million. Income from discontinued operations, net of applicable income taxes, totaled \$694,000 for the first half of fiscal 2001, compared to \$971,000 during the first half of fiscal 2000. Although fiscal 2001 second quarter results improved compared to recent quarters, KFC revenues and operating results continued to be negatively impacted during the second quarter and first half of fiscal 2001 by ineffective national promotions and increased payroll costs, resulting in reduced guest counts, average guest checks and operating margins. The Company continues to have strong confidence in the KFC brand and believes that KFC revenues and operating income should improve in future quarters. This is based upon the Company's assessment of the proposed KFC national marketing program for the remainder of fiscal 2001 and the fact that sales were reduced during the last two quarters of fiscal 2000 due to an ineffective sandwich promotion and reduced local advertising.

#### FINANCIAL CONDITION

The Company's lodging, movie theatre and restaurant businesses each generate significant and consistent daily amounts of cash because each segment's revenue is derived predominantly from consumer cash purchases. The Company believes that these consistent and predictable cash sources, together with the availability to the Company of \$30 million of unused credit lines as of the end of the second quarter, should be adequate to support the ongoing operational liquidity needs of the Company's businesses. The Company increased its

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credit lines early in the third quarter of fiscal 2001, increasing its total availability under revolving credit agreements to \$175 million by replacing a \$25 million bridge loan agreement with a new \$45 million 364-day revolving credit agreement with several banks. Any borrowings under the new line would bear interest at LIBOR plus a margin which adjusts based on the Company's borrowing levels. The agreement requires an annual facility fee of .2% on the total commitment. If the new revolving credit agreement had been in place at the end of the second quarter, the Company would have had \$50 million in unused credit lines available to it.

Net cash provided by operating activities decreased by \$16.3 million during the first half of fiscal 2001 to \$18.4 million, compared to \$34.7 million during the prior year's first half, due primarily to reduced earnings, timing differences in payments of accounts payable and increases in accounts and notes receivable. Depreciation and amortization (a non-cash expense) increased as a result of the Company's increased capital spending program.

Net cash used in investing activities during the first half of fiscal 2001 totaled \$45.3 million, compared to \$28.1 million during the first half of fiscal 2000. The increase in net cash used in investing activities was primarily the result of reduced net proceeds from disposals of property, equipment and other assets, which totaled \$1.0 million during fiscal 2001 compared to \$15.1 million during fiscal 2000. Capital expenditures to support the Company's continuing expansion program totaled \$41.8 million during the first half of fiscal 2001 compared to \$44.7 million during the prior year's first half. Fiscal 2001 first half capital expenditures included approximately \$12 million incurred in the theatre division to fund screen additions to existing theatres, stadium seating retrofits and costs carried over from projects opened during the fourth quarter of fiscal 2000. In addition, capital expenditures of approximately \$8 million were incurred in the limited-service lodging division and approximately \$22 million were incurred by the hotels and resorts division to fund its major construction projects.

Net cash provided by financing activities during the first half of fiscal 2001 totaled \$24.4 million compared to net cash used in financing activities of \$3.3 million during the first half of fiscal 2000. The Company funded a portion of its capital expansion program during fiscal 2000 with the net proceeds from disposals of assets. As a result of the reduced net proceeds from disposals of

assets and reduced net cash provided by operating activities during the fiscal 2001 first half compared to the same period last year, the Company's net proceeds from issuance of notes payable and long-term debt totaled \$43.0 million during the first half of fiscal 2001 compared to \$10.6 million during the same period last year. The Company's principal payments on notes payable and long-term debt totaled \$11.6 million during the first half of fiscal 2001 compared to \$10.2 million during the same period last year. Additionally, during the first half of fiscal 2001, the Company repurchased 367,000 of its common shares pursuant to its stock repurchase program at a total cost of \$4.1 million, compared to 51,000 shares repurchased during the first half of fiscal 2000 at a total cost of \$666,000. At the end of the first half of fiscal 2001, up to 2.0 million additional shares may be repurchased under existing Board of Directors authorizations. Any such repurchases are expected to be executed on the open market or in privately negotiated transactions depending upon a number of factors, including prevailing market conditions.

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Depending upon whether a sale of the restaurant business is consummated, the Company anticipates that it may need to issue additional long-term debt to help fund the Company's ongoing expansion plans for the remainder of fiscal 2001. In addition to the Company's new and existing credit lines, the Company also has the ability to issue up to \$45 million of additional senior notes under an existing private placement program. Depending upon a number of factors, including capital requirements, proceeds from asset sales and market conditions, the Company anticipates that it might issue additional senior notes during calendar 2001. Proceeds from an issuance would be used to repay existing debt under its revolving credit lines and to fund the Company's capital expenditure and stock repurchase programs.

The actual timing and extent of the implementation of the Company's current expansion plans will depend in large part on favorable industry and general economic conditions, the competitive environment, evolving customer needs and trends and the availability of attractive opportunities. It is likely that the Company's current expansion goals will continue to evolve and change in response to these and other factors.

#### Item 3. Quantitative and Qualitative Disclosures About Market Risk

The Company has not experienced any material changes in its market risk exposures since May 25, 2000.

### PART II - OTHER INFORMATION

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

The Company's 2000 annual meeting of shareholders was held on Monday, September 25, 2000 (the "Annual Meeting"). At the Annual Meeting, the following matters were voted on in person or by proxy and approved by the Company's shareholders:

1. The shareholders voted to elect Stephen H. Marcus, Diane Marcus Gershowitz, Daniel F. McKeithan, Jr., Allan H. Selig, Timothy E. Hoeksema, Bruce J. Olson, Philip L. Milstein and Bronson J. Haase to the Company's Board of Directors for one-year terms to expire at the Company's 2001 annual meeting of shareholders and until their successors are duly qualified and elected.

As of the August 11, 2000 record date for the Annual Meeting, 14,309,444 shares of Common Stock and 11,342,002 shares of Class B Common Stock were outstanding and eligible to vote, with the Common Stock entitled to one vote per share and the Class B Common Stock entitled to ten votes per share. Following are the final votes on the matters presented for shareholder approval of the Annual Meeting:

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Election of Directors  
-----

For

Withheld

| Name                     | Votes       | Percentage (1) | Votes   | Percentage (1) |
|--------------------------|-------------|----------------|---------|----------------|
| Stephen H. Marcus        | 127,495,372 | 99.82%         | 234,092 | 0.18%          |
| Diane Marcus Gershowitz  | 127,494,691 | 99.82%         | 234,773 | 0.18%          |
| Daniel F. McKeithan, Jr. | 127,496,845 | 99.82%         | 232,619 | 0.18%          |
| Allan H. Selig           | 127,484,500 | 99.81%         | 244,964 | 0.19%          |
| Timothy E. Hoeksema      | 127,495,658 | 99.82%         | 233,806 | 0.18%          |
| Bruce J. Olson           | 127,496,534 | 99.82%         | 232,930 | 0.18%          |
| Philip L. Milstein       | 127,497,834 | 99.82%         | 231,630 | 0.18%          |
| Bronson J. Haase         | 127,496,044 | 99.82%         | 233,420 | 0.18%          |

(1) Based on a total of 127,729,464 votes represented by shares of Common Stock and Class B Common Stock actually voted in person or by proxy at the Annual Meeting.

No other matters were brought before the Annual Meeting for a shareholder vote.

Item 6. Exhibits and Reports on Form 8-K

a. Exhibits

Exhibit 4.1. Credit Agreement, dated as of December 29, 2000, among The Marcus Corporation, Bank One, NA, as administrative agent, LaSalle Bank National Association, as documentation agent, the other financial institutions party thereto and Banc One Capital Markets, Inc., as lead arranger and sole book runner

Exhibit 27. Financial Data Schedule

b. Reports on Form 8-K

No Form 8-K was filed by the Company during the quarter to which this Form 10-Q relates.

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SIGNATURES

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

THE MARCUS CORPORATION

(Registrant)

DATE: January 8, 2001

By: /s/ Stephen H. Marcus

Stephen H. Marcus,  
Chairman of the Board, President and  
Chief Executive Officer

DATE: January 8, 2001

By: /s/ Douglas A. Neis

Douglas A. Neis

THE MARCUS CORPORATION  
FORM 10-Q  
FOR  
26 WEEKS ENDED NOVEMBER 23, 2000

EXHIBIT INDEX

| Exhibit<br>----- | Description<br>-----  |
|------------------|---|
| 4.1              | Credit Agreement, dated as of December 29, 2000, among The Marcus Corporation, Bank One, NA, as administrative agent, LaSalle Bank National Association, as documentation agent, the other financial institutions party thereto and Banc One Capital Markets, Inc., as lead arranger and sole book runner |
| 27               | Financial Data Schedule   |

CREDIT AGREEMENT

Dated as of December 29, 2000

among

THE MARCUS CORPORATION,

BANK ONE, NA,  
as Administrative Agent,

LASALLE BANK NATIONAL ASSOCIATION,  
as Documentation Agent,

THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO

and

BANC ONE CAPITAL MARKETS, INC.,  
as Lead Arranger and Sole Book Runner

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CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of December 29, 2000, among THE

MARCUS CORPORATION, a Wisconsin corporation (the "Company"), the several financial institutions from time to time party to this Agreement (collectively, the "Banks"; individually, a "Bank"), Bank One, NA, as administrative agent for the Banks and LaSalle Bank National Association, as documentation agent.

WHEREAS, the Banks have agreed to make available to the Company a revolving credit facility upon the terms and conditions set forth in this Agreement;

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

## ARTICLE I

### DEFINITIONS

1.1 Certain Defined Terms. The following terms have the following meanings:

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of 50% of the capital stock, partnership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, or (c) a merger or consolidation or any other combination with another Person (other than a Person that is a Subsidiary) provided that the Company or the Subsidiary is the surviving entity.

"Adjusted Consolidated Cash Flow" means, for any period, the Consolidated Net Income of the Company and its Subsidiaries plus (a) depreciation and amortization for such period, (b) all current and deferred taxes on income, provision for taxes on income, provision for taxes on unremitted foreign earnings which are included in consolidated gross revenues and current additions to reserves, and (c) Interest and Rental Expense for the Company and its Subsidiaries on a consolidated basis.

"Affiliate" means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agent" means Bank One in its capacity as administrative agent for the Banks hereunder, and any successor administrative agent arising under Section 9.9.

"Agent-Related Persons" means Bank One and any successor administrative agent arising under Section 9.9, together with their respective Affiliates (including, in the case

of Bank One, the Lead Arranger), and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Agent's Payment Office" means the address for payments set forth on the signature page hereto in relation to the Agent, or such other address as the Agent may from time to time specify.

"Agreement" means this Credit Agreement.

"Applicable Margin" means, at any time, with respect to Eurodollar Rate Loans and Base Rate Loans, the rate per annum determined in accordance with Schedule 1.1.

"Assignee" has the meaning specified in subsection 10.8(a).

"Attorney Costs" means and includes all fees and disbursements of any law firm or other external counsel, the allocated cost of internal legal services and all disbursements of internal counsel.

"Bank" has the meaning specified in the introductory clause hereto.

"Bank One" means Bank One, NA, a national banking association having its principal office in Chicago, Illinois, in its individual capacity, and its successors.

"Bankruptcy Code" means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C.ss.101, et seq.).

"Base Rate" means, for any day, a rate of interest per annum equal to the higher of (i) the Corporate Base Rate for such day and (ii) the sum of the Federal Funds Effective Rate for such day plus 1/2% per annum.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Borrowing" means a borrowing hereunder consisting of Loans of the same Type made to the Company on the same day by the Banks under Article II, and, in the case of Eurodollar Rate Loans, having the same Interest Period.

"Borrowing Date" means any date on which a Borrowing occurs under Section 2.3.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in Chicago are authorized or required by law to close and, if the applicable Business Day relates to any Eurodollar Rate Loan, means such a day on which dealings are carried on in the London interbank market.

"Capital Adequacy Regulation" means any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy of any bank or of any corporation controlling a bank.

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"Capital Lease" means, as to any Person, any lease which, in accordance with GAAP consistently applied, is or should be capitalized on the books of such Person.

"Cash Equivalents" means, as to any Person, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than three months from the date of acquisition, (b) time deposits and certificates of deposit of any commercial bank with a long-term unsecured debt rating of at least A or its equivalent from Standard & Poor's Ratings Group or at least A-2 or its equivalent from Moody's Investors Service, Inc., with maturities of not more than three months from the date of acquisition by such Person, (c) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above, (d) commercial paper issued by any Person incorporated in the United States, which commercial paper is rated at least A-1 or the equivalent thereof by Standard & Poor's Corporation or at least P-1 or the equivalent thereof by Moody's Investors Service, Inc., and in each case maturing not more than three months after the date of acquisition by such Person and (e) investments in money market funds, substantially all the assets of which are comprised of securities of the types described in clauses (a) through (d) above.

"Change of Control" means any event, or combination of events, the result of which is that Ben Marcus, Stephen H. Marcus and Diane Marcus Gershowitz and their respective heirs, collectively, no longer beneficially own (within the meaning of Rule 13d-3 of the SEC under the Exchange Act) 51% or more of the voting rights with respect to outstanding shares of the Company.

"Closing Date" means the date on which all conditions precedent set forth in Section 4.1 are satisfied or waived by all Banks (or, in the case of subsection 4.1(e), waived by the Person entitled to receive such payment).

"Code" means the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

"Commitment", as to each Bank, has the meaning specified in Section 2.1. As of the date of this Agreement, the amount of the combined Commitments of all Banks is \$45,000,000.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C.

"Consolidated Net Income" means, for any period, the consolidated gross revenues of the Company and its Subsidiaries, less all operating and nonoperating expenses of the Company and its Subsidiaries, including all charges of a proper character (including current and deferred taxes on income, provision for taxes on income, provisions for taxes on unremitted foreign earnings which are included in consolidated gross revenues, and current additions to reserves), all determined in accordance with GAAP consistently applied, but not including in the computation thereof the amounts (including related expenses and any tax effect

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related thereto) resulting from (i) any gains or losses resulting from the sale, conversion or other disposition of capital assets (i.e., assets other than current assets), (ii) any gains or losses resulting from the reevaluation of assets, (iii) any gains or losses resulting from an acquisition by the Company or any of its Subsidiaries at a discount of any debt of the Company or any of its Subsidiaries, (iv) any equity of the Company or any of its Subsidiaries in the unremitted earnings of any Person which is not a Subsidiary, (v) any earnings of any Person acquired by the Company or any of its Subsidiaries through purchase, merger or consolidation or otherwise for any time prior to the date of acquisition, (vi) any deferred credit representing the excess of equity in any Subsidiary of the Company at the date of acquisition over the cost of the investment in such Subsidiary, (vii) any restoration to income of any reserve, except to the extent that provision for such reserve was made out of income accrued during such period, (viii) any net gain from the collection of life insurance policies, or (ix) any gain resulting from any other nonrecurring item.

"Contingent Obligation" means any agreement, undertaking or arrangement by which any Person 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, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Obligation shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of the debt, obligation or other liability guaranteed thereby.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement to which such Person is a party or by which it or any of its property is bound.

"Controlled Group" means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with the Company, are treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

"Conversion/Continuation Date" means any date on which, under Section 2.4, the Company (a) converts Loans of one Type to another Type, or (b) continues as Loans of the same Type, but with a new Interest Period, Loans having Interest Periods expiring on such date.

"Corporate Base Rate" means a rate per annum equal to the corporate base rate or prime rate of interest announced by Bank One or by its parent, BANK ONE CORPORATION, from time to time, changing when and as said corporate base rate or prime rate changes.

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"Default" means any event or circumstance which, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

"Dollars", "dollars" and "\$" each mean lawful money of the United States.

"Eligible Assignee" means (i) a commercial bank organized under the laws of the United States, or any state thereof, and having a combined, capital and surplus of at least \$100,000,000; (ii) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development (the "OECD"), or a political subdivision of any such country, and having a combined capital and surplus of at least \$100,000,000, provided that such bank is acting through a branch or agency located in the United States; (iii) a Person that is primarily engaged in the business of commercial banking and that is (A) a Subsidiary of a Bank, (B) a Subsidiary of a Person of which a Bank is a Subsidiary, or (C) a Person of which a Bank is a Subsidiary; and (iv) any other Person agreed to by the Company and the Agent.

"Environmental Claims" means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment.

"Environmental Laws" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters.

"ERISA" means the Employee Retirement Income Security Act of 1974, and regulations promulgated thereunder.

"Eurodollar Base Rate" means, with respect to a Eurodollar Rate Loan for the relevant Interest Period, the applicable British Bankers' Association Interest Settlement Rate for deposits in U.S. dollars appearing on Reuters Screen FRBD as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, and having a maturity equal to such Interest Period, provided that, (i) if Reuters Screen FRBD is not available to the Agent for any reason, the applicable Eurodollar Base Rate for the relevant Interest Period shall instead be the applicable British Bankers' Association Interest Settlement Rate for deposits in U.S. dollars as reported by any other generally recognized financial information service as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, and having a maturity equal to such Interest Period, and (ii) if no such British Bankers' Association Interest Settlement Rate is available to the Agent, the applicable Eurodollar Base Rate for the relevant Interest Period shall instead be the rate determined by the Agent to be the rate at which Bank One or one of its Affiliate banks offers to place deposits in U.S. dollars with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, in the approximate

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amount of Bank One's relevant Eurodollar Rate Loan and having a maturity equal to such Interest Period

"Eurodollar Rate" means, with respect to a Eurodollar Rate Loan for the relevant Interest Period, the sum of (i) the quotient of (a) the Eurodollar Base Rate applicable to such Interest Period, divided by (b) one minus the Eurodollar Reserve Percentage (expressed as a decimal) applicable to such Interest Period, plus (ii) the Applicable Margin.

"Eurodollar Rate Loan" means a Loan which, except as otherwise provided in Section 2.8(c), bears interest at the applicable Eurodollar Rate.

"Eurodollar Reserve Percentage" means for any day for any Interest Period the maximum reserve percentage (expressed as a decimal, rounded upward to the next 1/100th of 1%) in effect on such day (whether or not applicable to any Bank) under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities").

"Event of Default" means any of the events or circumstances specified in Section 8.1.

"Exchange Act" means the Securities and Exchange Act of 1934, and regulations promulgated thereunder.

"Facility Fee Rate" means, at any time, the rate per annum determined in accordance with Schedule 1.1.

"Federal Funds Effective Rate" means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published for such day (or, if such day is not a Business Day, for the immediately 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 at approximately 10:00 a.m. (Chicago time) on such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by Agent in its sole discretion.

"Fee Letter" has the meaning specified in subsection 2.9(a).

"FRB" means the Board of Governors of the Federal Reserve System, and any Governmental Authority succeeding to any of its principal functions.

"Funded Debt" means all Indebtedness for borrowed money (including obligations under Capital Leases and excluding Contingent Obligations with respect to Funded Indebtedness of other Persons).

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

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to Government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Indebtedness" of any Person means, without duplication, (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business on ordinary terms) (c) all non-contingent reimbursement or payment obligations with respect to Surety Instruments; (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by the Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (f) all obligations with respect to capital leases; (g) all net obligations with respect to Swap Contracts; (h) all indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and (i) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (g) above.

"Indemnified Liabilities" has the meaning specified in Section 10.5.

"Indemnified Person" has the meaning specified in Section 10.5.

"Independent Auditor" has the meaning specified in subsection 6.1(a).

"Insolvency Proceeding" means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of

its creditors; undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

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"Interest and Rental Expense" means, for any period, all amounts recorded and deducted in computing the Company's Consolidated Net Income for such period in respect of interest charges and expense and rental charges for such period (whether paid or accrued, or a cash or non-cash expense, and in the case of rental payments, including the full amount of those payments made under operating leases or synthetic leases, but only the imputed interest under Capital Leases).

"Interest Payment Date" means, as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Eurodollar Rate Loan and, as to any Base Rate Loan, the last Business Day of each month and each date such Base Rate Loan is converted into a Eurodollar Rate Loan, provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the date that falls three months after the beginning of such Interest Period and after each Interest Payment Date thereafter is also an Interest Payment Date.

"Interest Period" means, the period commencing on the Borrowing Date of a Eurodollar Rate Loan or on the Conversion/Continuation Date on which the Loan is converted into or continued as a Eurodollar Rate Loan, and ending on the date one, two, three or six months thereafter as selected by the Company in its Notice of Borrowing or Notice of Conversion/Continuation;

provided that:

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

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

(iii) no Interest Period shall extend beyond the Termination Date.

"Investment" means any advance, loan, extension of credit or capital contribution to, or any investment in the capital stock or other equity interest, or debt securities or other obligations of, another Person or any contingent liability incurred for the benefit of another Person.

"IRS" means the Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

"Joint Venture" means a single-purpose corporation, partnership, joint venture or other similar legal arrangement (whether created by contract or conducted through a separate legal entity) now or hereafter formed by the Company or any of its Subsidiaries with another Person in order to conduct a common venture or enterprise with such Person.

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"Lead Arranger" means Banc One Capital Markets, Inc.

"Lending Office" means, as to any Bank, the office or offices of such Bank specified as its "Lending Office" or "Domestic Lending Office" or "Eurodollar Lending Office", as the case may be, on Schedule 10.2, or such other office or offices as such Bank may from time to time notify the Company and the Agent.

"Lien" means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or preferential arrangement of any kind or nature



whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of any financing statement naming the owner of the asset to which such lien relates as debtor, under the Uniform Commercial Code or any comparable law), but not including the interest of a lessor under an operating lease.

"Loan" means an extension of credit by a Bank to the Company under Article II, and may be a Base Rate Loan or a Eurodollar Rate Loan (each, a "Type" of Loan).

"Loan Documents" means this Agreement, any Notes, the Fee Letter and all other documents delivered to the Agent or any Bank in connection herewith.

"Majority Banks" means at any time Banks then holding in excess of 50% of the then aggregate unpaid principal amount of the Loans, or, if no such principal amount is then outstanding, Banks then having in excess of 50% of the Commitments.

"Margin Stock" means "margin stock" as such term is defined in Regulation T, U or X of the FRB.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, liabilities (actual or contingent), properties, condition (financial or otherwise) or prospects of the Company or the Company and its Subsidiaries taken as a whole; (b) a material impairment of the ability of the Company or any Subsidiary to perform under any Loan Document and to avoid any Event of Default; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Company or any Subsidiary of any Loan Document.

"Multiemployer Plan" means a "multiemployer plan", within the meaning of Section 4001(a) (3) of ERISA, to which the Company or any member of the Controlled Group makes, is making, or is obligated to make contributions or, during the preceding three calendar years, has made, or been obligated to make, contributions.

"Note" means a promissory note executed by the Company in favor of a Bank pursuant to subsection 2.2(b), in substantially the form of Exhibit F.

"Notice of Borrowing" means a notice in substantially the form of Exhibit A.

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"Notice of Conversion/Continuation" means a notice in substantially the form of Exhibit B.

"Obligations" means all advances, debts, liabilities, obligations, covenants and duties arising under any Loan Document owing by the Company to any Bank, the Agent, or any Indemnified Person, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising.

"Organization Documents" means, for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement, and all applicable resolutions of the board of directors (or any committee thereof) of such corporation.

"Other Taxes" means any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Documents.

"Participant" has the meaning specified in subsection 10.8(d).

"PBGC" means the Pension Benefit Guaranty Corporation, or any Governmental Authority succeeding to any of its principal functions under ERISA.

"Pension Plan" means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a

Multiemployer Plan), and to which the Company or any member of the Controlled Group may have any liability with respect to current or former employees of the Company or any member of the Controlled Group, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Permitted Liens" has the meaning specified in Section 7.1.

"Person" means an individual, partnership, limited liability company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture or Governmental Authority.

"Pro Rata Share" means, as to any Bank at any time, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of such Bank's Commitment divided by the combined Commitments of all Banks.

"Replacement Bank" has the meaning specified in Section 3.7.

"Requirement of Law" means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental

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Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

"Responsible Officer" means the chief executive officer or the president of the Company, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants, the chief financial officer or the treasurer of the Company, or any other officer having substantially the same authority and responsibility.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Senior Indebtedness" means all Indebtedness of the Company for money borrowed which is not by its terms subordinated in right of payment to the payment of any other Indebtedness of the Company.

"Subsidiary" of a Person means any corporation, association, partnership, joint venture or other business entity of which more than 50% of the voting stock or other equity interests (in the case of Persons other than corporations), is owned or controlled directly or indirectly by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof. Unless the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of the Company.

"Surety Instruments" means all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

"Swap Contract" means any agreement (including any master agreement and any agreement, whether or not in writing, relating to any single transaction) that is an interest rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, forward foreign exchange agreement, rate cap, collar or floor agreement, currency swap agreement, cross-currency rate swap agreement, swaption, currency option or any other, similar agreement (including any option to enter into any of the foregoing).

"Taxes" means any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Bank and the Agent, such taxes (including income taxes or franchise taxes) as are imposed on or measured by each Bank's net income by the jurisdictions (or any political subdivision thereof) under the laws of which such Bank or the Agent, as the case may be, is organized or maintains a lending office.

"Termination Date" means the earlier to occur of:

(a) December 28, 2001 (subject to extension at the discretion

of the Banks as provided in Section 2.14); and

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(b) the date on which the Commitments terminate in accordance with the provisions of this Agreement.

"Total Capitalization" means, as to any Person and as of any date, the sum of the shareholders' equity of such Person, calculated in accordance with GAAP consistently applied, as shown on a balance sheet of such Person, plus the Funded Debt of such Person.

"Type" has the meaning specified in the definition of "Loan."

"United States" and "U.S." each means the United States of America.

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

"Wholly-Owned Subsidiary" means any corporation in which (other than directors' qualifying shares required by law) 100% of the capital stock of each class having ordinary voting power, and 100% of the capital stock of every other class, in each case, at the time as of which any determination is being made, is owned, beneficially and of record, by the Company, or by one or more of the other Wholly-Owned Subsidiaries, or both.

1.2 Other Interpretive Provisions. (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

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

(c) (i) The term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

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

(iii) 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."

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

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(e) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(f) This Agreement and 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 shall each be performed in accordance with their terms.

(g) This Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Agent, the Company and the other parties, and are the products of all parties. Accordingly, they shall not be construed against the Banks or the Agent merely because of the Agent's or Banks' involvement in their preparation.

1.3 Accounting Principles. Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied.

(a) References herein to "fiscal year" and "fiscal quarter" refer to such fiscal periods of the Company.

## ARTICLE II

### THE CREDITS

2.1 Amounts and Terms of Commitments. Each Bank severally agrees, on the terms and conditions set forth herein, to make loans to the Company (each such loan, a "Loan") from time to time on any Business Day during the period from the Closing Date to the Termination Date, in an aggregate amount not to exceed at any time outstanding, together with the principal amount of Loans outstanding in favor of such Bank at such time, the amount set forth next to such Bank's name on Schedule 2.1 (such amount, as the same may be reduced under Section 2.5 or as a result of one or more assignments under Section 10.8, the Bank's "Commitment"); provided, however, that, after giving effect to any Borrowing, the aggregate principal amount of all outstanding Loans shall not at any time exceed the combined Commitments. Within the limits of each Bank's Commitment, and subject to the other terms and conditions hereof, the Company may borrow under this Section 2.1, prepay under Section 2.6 and reborrow under this Section 2.1.

2.2 Loan Accounts. (a) The Loans made by each Bank shall be evidenced by one or more loan accounts or records maintained by such Bank in the ordinary course of business. The loan accounts or records maintained by the Agent and each Bank shall be conclusive absent manifest error of the amount of the Loans made by the Banks to the Company and the interest and payments thereon. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Company hereunder to pay any amount owing with respect to the Loans.

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(b) Upon the request of any Bank made through the Agent, the Loans made by such Bank may be evidenced by one or more Notes, instead of loan accounts. Each such Bank shall endorse on the schedules annexed to its Note(s) the date, amount and maturity of each Loan made by it and the amount of each payment of principal made by the Company with respect thereto. Each such Bank is irrevocably authorized by the Company to endorse its Note(s) and each Bank's record shall be conclusive absent manifest error; provided, however, that the failure of a Bank to make, or an error in making, a notation thereon with respect to any Loan shall not limit or otherwise affect the obligations of the Company hereunder or under any such Note to such Bank.

2.3 Procedure for Borrowing. (a) Each Borrowing shall be made upon the Company's irrevocable telephonic or written notice delivered to the Agent in the form of a Notice of Borrowing, if written and promptly confirmed by delivery of a form of Notice of Borrowing, if telephonic, which written or telephonic notice must be received by the Agent prior to 9:00 a.m. (Chicago time) (i) two Business Days prior to the requested Borrowing Date, in the case of Eurodollar Rate Loans; and (ii) on the requested Borrowing Date, in the case of Base Rate Loans, specifying:

(A) the amount of the Borrowing, which shall be in an aggregate minimum amount of \$5,000,000 or any multiple of \$1,000,000 in excess thereof;

(B) the requested Borrowing Date, which shall be a Business Day;

(C) the Type of Loans comprising the Borrowing; and

(D) the duration of the Interest Period applicable to such Loans included in such notice. If the Notice of Borrowing fails to specify the duration of the Interest Period for any Borrowing comprised of Eurodollar Rate Loans, such Interest Period shall be three months.

(b) The Agent will promptly notify each Bank of its receipt of any

Notice of Borrowing and of the amount of such Bank's Pro Rata Share of that Borrowing.

(c) Each Bank will make the amount of its Pro Rata Share of each Borrowing available to the Agent for the account of the Company at the Agent's Payment Office by 1:00 p.m. (Chicago time) on the Borrowing Date requested by the Company in funds immediately available to the Agent. The proceeds of all such Loans will then be made available to the Company by the Agent by wire transfer in accordance with written instructions provided to the Agent by the Company of like funds as received by the Agent.

(d) After giving effect to any Borrowing, there may not be more than ten different Interest Periods in effect.

2.4 Conversion and Continuation Elections. (a) The Company may, upon irrevocable written or telephonic notice (promptly confirmed in writing, if telephonic) to the Agent in accordance with subsection 2.4(b):

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(i) elect, as of any Business Day, in the case of Base Rate Loans, or as of the last day of the applicable Interest Period, in the case of Eurodollar Rate Loans, to convert any such Loans (or any part thereof in an amount not less than \$5,000,000, or that is in an integral multiple of \$1,000,000 in excess thereof) into Loans of any other Type; or

(ii) elect, as of the last day of the applicable Interest Period, to continue any Eurodollar Rate Loans having Interest Periods expiring on such day (or any part thereof in an amount not less than \$5,000,000, or that is in an integral multiple of \$1,000,000 in excess thereof);

provided, that if at any time the aggregate amount of Eurodollar Rate Loans in respect of any Borrowing is reduced, by payment, prepayment, or conversion of part thereof to be less than \$1,000,000, such Eurodollar Rate Loans shall automatically convert into Base Rate Loans, and on and after such date the right of the Company to continue such Loans as, and convert such Loans into, Eurodollar Rate Loans shall terminate.

(b) The Company shall give written or telephonic notice to be received by the Agent not later than 9:00 a.m. (Chicago time) at least (i) two Business Days in advance of the Conversion/Continuation Date, if the Loans are to be converted into or continued as Eurodollar Rate Loans; and (ii) on the Conversion/Continuation Date, if the Loans are to be converted into Base Rate Loans, specifying:

(A) the proposed Conversion/Continuation Date;

(B) the aggregate amount of Loans to be converted or renewed;

(C) the Type of Loans resulting from the proposed conversion or continuation; and

(D) in the case of conversions into or continuations of Eurodollar Rate Loans, the duration of the requested Interest Period.

Such notice, if written, shall be in the form of a Notice of Conversion/Continuation and, if telephonic, shall be confirmed with a Notice of Conversion/Continuation.

(c) If upon the expiration of any Interest Period applicable to Eurodollar Rate Loans, the Company has failed to select timely a new Interest Period to be applicable to such Eurodollar Rate Loans or if any Default or Event of Default then exists, the Company shall be deemed to have elected to convert such Eurodollar Rate Loans into Base Rate Loans effective as of the expiration date of such Interest Period.

(d) The Agent will promptly notify each Bank of its receipt of a Notice of Conversion/Continuation, or, if no timely notice is provided by the Company, the Agent will promptly notify each Bank of the details of any automatic conversion. All conversions and continuations shall be made ratably according to the respective outstanding principal amounts of the Loans with respect to which

the notice was given held by each Bank.

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(e) Unless the Majority Banks otherwise agree, during the existence of a Default or Event of Default, the Company may not elect to have a Loan converted into or continued as a Eurodollar Rate Loan.

(f) After giving effect to any conversion or continuation of Loans, there may not be more than five different Interest Periods in effect.

2.5 Changes in Aggregate Commitments. The Company may, upon not less than four Business Days' prior notice to the Agent, terminate the Commitments, or permanently reduce the Commitments by an aggregate minimum amount of \$5,000,000 or any multiple of \$1,000,000 in excess thereof; unless, after giving effect thereto and to any prepayments of Loans made on the effective date thereof, the then-outstanding principal amount of the Loans would exceed the amount of the combined Commitments then in effect. Once reduced in accordance with this Section 2.5, the Commitments may not be increased. Any reduction of the Commitments shall be applied to each Bank according to its Pro Rata Share. All accrued commitment fees to, but not including the effective date of any reduction or termination of Commitments, shall be paid on the effective date of such reduction or termination.

2.6 Optional Prepayments. Subject to Section 3.4, the Company may, at any time or from time to time, upon not less than one Business Day's irrevocable notice to the Agent (in the case of Base Rate Loans) and three Business Days' irrevocable notice to the Agent (in the case of Eurodollar Rate Loans), ratably prepay Loans in whole or in part, in minimum amounts of \$1,000,000 or any multiple of \$1,000,000 in excess thereof. Such notice of prepayment shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid. The Agent will promptly notify each Bank of its receipt of any such notice, and of such Bank's Pro Rata Share of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, together with, in the case of Eurodollar Rate Loans, accrued interest to each such date on the amount prepaid and any amounts required pursuant to Section 3.4.

2.7 Repayment. The Company shall repay to the Banks on the Termination Date the aggregate principal amount of Loans outstanding on such date.

2.8 Interest. (a) Each Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing Date at a rate per annum equal to the Eurodollar Rate or the Base Rate, as the case may be (and subject to the Company's right to convert to other Types of Loans under Section 2.4), plus the Applicable Margin.

(b) Interest on each Loan shall be paid in arrears on each Interest Payment Date. Interest shall also be paid on the date of any prepayment of Loans under Section 2.6 for the portion of the Loans so prepaid and upon payment (including prepayment) in full thereof and, during the existence of any Event of Default, interest shall be paid on demand of the Agent at the request or with the consent of the Majority Banks.

(c) Notwithstanding subsection (a) of this Section, while any Event of Default exists or after acceleration, the Company shall pay interest (after as well as before

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entry of judgment thereon to the extent permitted by law) on the principal amount of all outstanding Loans, at a rate per annum which is determined by adding 2% per annum to the Applicable Margin then in effect for such Loans; provided, however, that, on and after the expiration of any Interest Period applicable to any Eurodollar Rate Loan outstanding on the date of occurrence of such Event of Default or acceleration, the principal amount of such Eurodollar Rate Loan shall, during the continuation of such Event of Default or after acceleration, bear interest at a rate per annum equal to the Base Rate plus 2%.

(d) Anything herein to the contrary notwithstanding, the obligations of

the Company to any Bank hereunder shall be subject to the limitation that payments of interest shall not be required for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by such Bank would be contrary to the provisions of any law applicable to such Bank limiting the highest rate of interest that may be lawfully contracted for, charged or received by such Bank, and in such event the Company shall pay such Bank interest at the highest rate permitted by applicable law.

2.9 Fees. (a) Arrangement, Agency Fees. The Company shall pay an arrangement fee to the Lead Arranger for the Lead Arranger's own account, and shall pay an agency fee to the Agent for the Agent's own account, as required by the letter agreement ("Fee Letter") between the Company and the Lead Arranger and Agent dated November 20, 2000.

(b) Facility Fee. The Company shall pay to the Agent for the account of each Bank a facility fee on the Bank's Commitment (regardless of usage), computed on a quarterly basis in arrears on the last Business Day of each calendar quarter, equal to the Facility Fee Rate. Such facility fee shall accrue from the date hereof to the Termination Date and shall be due and payable quarterly in arrears on the last Business Day of each calendar quarter commencing on March 31, 2001 through the Termination Date, with the final payment to be made on the Termination Date; provided that, in connection with any reduction or termination of Commitments under Section 2.5, the accrued facility fee calculated for the period ending on such date shall also be paid on the date of such reduction or termination, with the following quarterly payment being calculated on the basis of the period from such reduction or termination date to such quarterly payment date. The facility fees provided in this subsection shall accrue at all times after the above-mentioned commencement date, including at any time during which one or more conditions in Article IV are not met.

(c) Utilization Fee. The Company shall pay to the Agent for the account of each Bank a utilization fee at a rate of 0.25% per annum on the principal amount of all outstanding Loans for each day on which the outstanding principal balance of all Loans is equal to or greater than 33.0% of the combined Commitments of all Banks hereunder. Such utilization fee shall accrue for each such day from the date hereof to the Termination Date and shall be due and payable quarterly in arrears on the last Business Day of each calendar quarter commencing on March 31, 2001 through the Termination Date, with the final payment to be made on the Termination Date.

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(d) Upfront Fee. The Company shall pay an upfront fee to the Lead Arranger for the ratable benefit of the Banks as required by the Fee Letter.

2.10 Computation of Fees and Interest. (a) All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more interest being paid than if computed on the basis of a 365-day year). Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(b) Each determination of an interest rate by the Agent shall be conclusive and binding on the Company and the Banks in the absence of manifest error.

2.11 Payments by the Company. (a) All payments to be made by the Company shall be made without set-off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by the Company shall be made to the Agent for the account of the Banks at the Agent's Payment Office, and shall be made in dollars and in immediately available funds, no later than 2:00 p.m. (Chicago time) on the date specified herein. The Agent will promptly distribute to each Bank its Pro Rata Share (or other applicable share as expressly provided herein) of such payment in like funds as received. Any payment received by the Agent later than 2:00 p.m. (Chicago time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue.

(b) Subject to the provisions set forth in the definition of "Interest Period" herein, whenever any payment is due on a day other than a Business Day, such payment shall be made on the following Business Day, and such extension of

time shall in such case be included in the computation of interest or fees, as the case may be.

(c) Unless the Agent receives notice from the Company prior to the date on which any payment is due to the Banks that the Company will not make such payment in full as and when required, the Agent may assume that the Company has made such payment in full to the Agent on such date in immediately available funds and the Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Bank on such due date an amount equal to the amount then due such Bank. If and to the extent the Company has not made such payment in full to the Agent, each Bank shall repay to the Agent on demand such amount distributed to such Bank, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Bank until the date repaid.

2.12 Payments by the Banks to the Agent. (a) Unless the Agent receives notice from a Bank on or prior to the Closing Date or, with respect to any Borrowing after the Closing Date, at least one Business Day prior to the date of such Borrowing, that such Bank will not make available as and when required hereunder to the Agent for the account of the Company the amount of that Bank's Pro Rata Share of the Borrowing, the Agent may assume that each Bank has made such amount available to the Agent in immediately available funds on the Borrowing Date and the Agent may (but shall not be so required), in reliance upon such assumption, make available to the Company on such date a corresponding amount. If and to the extent any Bank shall not have made its full amount available to the Agent in immediately

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available funds and the Agent in such circumstances has made available to the Company such amount, that Bank shall on the Business Day following such Borrowing Date make such amount available to the Agent, together with interest at the Federal Funds Rate for each day during such period. A notice of the Agent submitted to any Bank with respect to amounts owing under this subsection (a) shall be conclusive, absent manifest error. If such amount is so made available, such payment to the Agent shall constitute such Bank's Loan on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to the Agent on the Business Day following the Borrowing Date, the Agent will notify the Company of such failure to fund and, upon demand by the Agent, the Company shall pay such amount to the Agent for the Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Loans comprising such Borrowing.

(b) The failure of any Bank to make any Loan on any Borrowing Date shall not relieve any other Bank of any obligation hereunder to make a Loan on such Borrowing Date, but no Bank shall be responsible for the failure of any other Bank to make the Loan to be made by such other Bank on any Borrowing Date.

2.13 Sharing of Payments, Etc. If, other than as expressly provided elsewhere herein, any Bank shall obtain on account of the Loans made by it any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its Pro Rata Share, such Bank shall immediately (a) notify the Agent of such fact, and (b) purchase from the other Banks such participations in the Loans made by them as shall be necessary to cause such purchasing Bank to share the excess payment pro rata with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from the purchasing Bank, such purchase shall to that extent be rescinded and each other Bank shall repay to the purchasing Bank the purchase price paid therefor, together with an amount equal to such paying Bank's ratable share (according to the proportion of (i) the amount of such paying Bank's required repayment to (ii) the total amount so recovered from the purchasing Bank) of any interest or other amount paid or payable by the purchasing Bank in respect of the total amount so recovered. The Company agrees that any Bank so purchasing a participation from another Bank may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 10.9) with respect to such participation as fully as if such Bank were the direct creditor of the Company in the amount of such participation. The Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify the Banks following any such purchases or repayments.



2.14 Extension of Termination Date. At least 30 days but not more than 60 days prior to the Termination Date, the Company, by written notice to the Agent, may request one extension of the Termination Date for an additional period of 364 days. The Agent shall promptly notify each Bank of such request, and each Bank shall in turn, in its sole discretion, within 21 days after receipt of such notice from the Agent, notify the Company and the Agent in writing as to whether such Bank will consent to such extension. If any Bank shall fail to notify the Agent and the Company in writing of its consent to any such request for extension of the Termination Date by such time, such Bank shall be deemed to have not consented to

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such extension request. The Agent shall notify the Company on or prior to the scheduled Termination Date of the decision of the Banks regarding the Company's request for an extension of the Termination Date. If all the Banks consent in writing to such request as provided above, the Termination Date shall, effective as at the scheduled Termination Date set forth in clause (a) of the definition thereof in Section 1.1, be automatically extended for a period of 364 days; provided that on such date the applicable conditions set forth in Article IV shall be satisfied.

### ARTICLE III

#### TAXES, YIELD PROTECTION AND ILLEGALITY

3.1 Taxes. (a) Any and all payments by the Company to each Bank or the Agent under this Agreement and any other Loan Document shall be made free and clear of, and without deduction or withholding for any Taxes. In addition, the Company shall pay all Other Taxes.

(b) The Company agrees to indemnify and hold harmless each Bank and the Agent for the full amount of Taxes or Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section) paid by the Bank or the Agent and any liability (including penalties, interest, additions to tax and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. Payment under this indemnification shall be made within 30 days after the date the Bank or the Agent makes written demand therefor.

(c) If the Company shall be required by law to deduct or withhold any Taxes or Other Taxes from or in respect of any sum payable hereunder to any Bank or the Agent, then:

(i) the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) such Bank or the Agent, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made; (ii) the Company shall make such deductions and withholdings;

(iii) the Company shall pay the full amount deducted or withheld to the relevant taxing authority or other authority in accordance with applicable law; and

(iv) the Company shall also pay to each Bank or the Agent for the account of such Bank, at the time interest is paid, all additional amounts which the respective Bank specifies as necessary to preserve the after-tax yield the Bank would have received if such Taxes or Other Taxes had not been imposed.

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(d) Within 30 days after the date of any payment by the Company of Taxes or Other Taxes, the Company shall furnish the Agent the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to the Agent.

(e) If the Company is required to pay additional amounts to any Bank or the Agent pursuant to subsection (c) of this Section, then such Bank shall use

reasonable efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its Lending Office so as to eliminate any such additional payment by the Company which may thereafter accrue, if such change in the judgment of such Bank is not otherwise disadvantageous to such Bank.

3.2 Illegality. (a) If any Bank determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Bank or its applicable Lending Office to make Eurodollar Rate Loans, then, on notice thereof by the Bank to the Company through the Agent, any obligation of that Bank to make Eurodollar Rate Loans shall be suspended until the Bank notifies the Agent and the Company that the circumstances giving rise to such determination no longer exist.

(b) If a Bank determines that it is unlawful to maintain any Eurodollar Rate Loan, the Company shall, upon its receipt of notice of such fact and demand from such Bank (with a copy to the Agent), prepay in full such Eurodollar Rate Loans of that Bank then outstanding, together with interest accrued thereon and amounts required under Section 3.4, either on the last day of the Interest Period thereof, if the Bank may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if the Bank may not lawfully continue to maintain such Eurodollar Rate Loan. If the Company is required to so prepay any Eurodollar Rate Loan, then concurrently with such prepayment, the Company shall borrow from the affected Bank, in the amount of such repayment, a Base Rate Loan.

(c) If the obligation of any Bank to make or maintain Eurodollar Rate Loans has been so terminated or suspended, the Company may elect, by giving notice to the Bank through the Agent that all Loans which would otherwise be made by the Bank as Eurodollar Rate Loans shall be instead Base Rate Loans.

(d) Before giving any notice to the Agent under this Section, the affected Bank shall designate a different Lending Office with respect to its Eurodollar Rate Loans if such designation will avoid the need for giving such notice or making such demand and will not, in the judgment of the Bank be illegal or otherwise disadvantageous to the Bank.

3.3 Increased Costs and Reduction of Return. (a) If any Bank determines that, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance by that Bank with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to such Bank of agreeing to make or making, funding or maintaining any Eurodollar Rate Loans, then the Company shall be liable for, and shall from time to time,

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upon demand (with a copy of such demand to be sent to the Agent), pay to the Agent for the account of such Bank, additional amounts as are sufficient to compensate such Bank for such increased costs.

(b) If any Bank shall have determined that (i) the introduction of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by the Bank (or its Lending Office) or any corporation controlling the Bank with any Capital Adequacy Regulation, affects or would affect the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank and (taking into consideration such Bank's or such corporation's policies with respect to capital adequacy and such Bank's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitments, loans, credits or obligations under this Agreement, then, upon demand of such Bank to the Company through the Agent, the Company shall pay to the Bank, from time to time as specified by the Bank, additional amounts sufficient to compensate the Bank for such increase.

3.4 Funding Losses. The Company shall reimburse each Bank and hold each Bank harmless from any loss or expense which the Bank may sustain or incur as a consequence of:

(a) the failure of the Company to make on a timely basis any payment of principal of any Eurodollar Rate Loan;

(b) the failure of the Company to borrow, continue or convert a Loan after the Company has given (or is deemed to have given) a Notice of Borrowing or a Notice of Conversion/Continuation;

(c) the failure of the Company to make any prepayment in accordance with any notice delivered under Section 2.6;

(d) the prepayment or other payment (including after acceleration thereof) of a Eurodollar Rate Loan on a day that is not the last day of the relevant Interest Period; or

(e) the automatic conversion under Section 2.4 of any Eurodollar Rate Loan to a Base Rate Loan on a day that is not the last day of the relevant Interest Period;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its Eurodollar Rate Loans or from fees payable to terminate the deposits from which such funds were obtained. For purposes of calculating amounts payable by the Company to the Banks under this Section and under subsection 3.3(a), each Eurodollar Rate Loan made by a Bank (and each related reserve, special deposit or similar requirement) shall be conclusively deemed to have been funded at the Eurodollar Base Rate used in determining the Eurodollar Rate for such Eurodollar Rate Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan is in fact so funded.

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3.5 Inability to Determine Rates. If the Agent determines that for any reason adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or that the Eurodollar Rate applicable pursuant to subsection 2.8(a) for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Banks of funding such Loan, the Agent will promptly so notify the Company and each Bank. Thereafter, the obligation of the Banks to make or maintain Eurodollar Rate Loans hereunder shall be suspended until the Agent with the consent of the Majority Banks revokes such notice in writing. Upon receipt of such notice, the Company may revoke any Notice of Borrowing or Notice of Conversion/Continuation then submitted by it. If the Company does not revoke such Notice, the Banks shall make, convert or continue the Loans, as proposed by the Company, in the amount specified in the applicable notice submitted by the Company, but such Loans shall be made, converted or continued as Base Rate Loans instead of Eurodollar Rate Loans.

3.6 Certificates of Banks. Any Bank claiming reimbursement or compensation under this Article III shall deliver to the Company (with a copy to the Agent) a certificate setting forth in reasonable detail the amount payable to the Bank hereunder and such certificate shall be conclusive and binding on the Company in the absence of manifest error.

3.7 Substitution of Banks. Upon the receipt by the Company from any Bank (an "Affected Bank") of a claim for compensation under Section 3.3, the Company may: (i) request the Affected Bank to use its best efforts to obtain a replacement bank or financial institution satisfactory to the Company to acquire and assume all or a ratable part of all of such Affected Bank's Loans and Commitment (a "Replacement Bank"); (ii) request one more of the other Banks to acquire and assume all or part of such Affected Bank's Loans and Commitment; or (iii) designate a Replacement Bank. Any such designation of a Replacement Bank under clause (i) or (iii) shall be subject to the prior written consent of the Agent (which consent shall not be unreasonably withheld)

3.8 Survival. The agreements and obligations of the Company in this Article III shall survive the payment of all other Obligations.

#### ARTICLE IV

#### CONDITIONS PRECEDENT

4.1 Conditions of Initial Loans. The obligation of each Bank to make its initial Loan hereunder is subject to the condition that the Agent have received on or before the Closing Date (i) evidence, satisfactory to the Agent, that the line of credit letter agreement dated November 22, 2000, between the Company and Bank One and the Master Note of the Company dated November 22, 2000 have been terminated, that all amounts owing by the Company thereunder have been paid and that all obligations of the Company thereunder have been satisfied, and (ii) all of the following, in form and substance satisfactory to the Agent and each Bank, and in sufficient copies for each Bank:

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(a) Credit Agreement. This Agreement executed by each party thereto;

(b) Resolutions; Incumbency.

(i) Copies of the resolutions of the board of directors of the Company (or a committee thereof having power to authorize the transactions contemplated hereby) authorizing the transactions contemplated hereby, certified as of the Closing Date by the Secretary or an Assistant Secretary of the Company; and

(ii) A certificate of the Secretary or Assistant Secretary of the Company certifying the names and true signatures of the officers of the Company authorized to execute, deliver and perform this Agreement, and all other Loan Documents to be delivered by it hereunder;

(c) Organization Documents. The articles or certificate of incorporation and the bylaws of the Company as in effect on the Closing Date, certified by the Secretary or Assistant Secretary of the Company as of the Closing Date.

(d) Legal Opinions. An opinion of Robin J. Irwin, counsel to the Company and addressed to the Agent and the Banks, substantially in the form of Exhibit D;

(e) Payment of Fees. Evidence of payment by the Company of all accrued and unpaid fees, costs and expenses to the extent then due and payable on the Closing Date; including any such costs, fees and expenses arising under or referenced in Sections 2.9 and 10.4;

(f) Certificate. A certificate signed by a Responsible Officer, dated as of the Closing Date, stating that:

(i) the representations and warranties contained in Article V are true and correct on and as of such date, as though made on and as of such date;

(ii) no Default or Event of Default exists or would result from the initial Borrowing; and

(iii) there has occurred since May 25, 2000, no event or circumstance that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(g) Other Documents. Such other approvals, opinions, documents or materials as the Agent or any Bank may request.

4.2 Conditions to All Borrowings. The obligation of each Bank to make any Loan to be made by it (including its initial Loan) is subject to the satisfaction of the following conditions precedent in the relevant Borrowing Date:

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(a) Notice of Borrowing. The Agent shall have received a Notice of Borrowing;

(b) Continuation of Representations and Warranties. The representations and warranties in Article V shall be true and correct on and as of such Borrowing Date with the same effect as if made on and as of such Borrowing Date

(except to the extent such representations and warranties expressly refer to an earlier date, in which case they shall be true and correct as of such earlier date); and

(c) No Existing Default. No Default or Event of Default shall exist or shall result from such Borrowing.

Each Notice of Borrowing submitted by the Company hereunder shall constitute a representation and warranty by the Company hereunder, as of the date of each such notice and as of each Borrowing Date, that the conditions in Section 4.2 are satisfied.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

The Company represents and warrants to the Agent and each Bank that:

5.1 Corporate Existence and Power. The Company and each of its Subsidiaries:

(a) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;

(b) has the power and authority and all governmental licenses, authorizations, consents and approvals to own its assets, carry on its business and to execute, deliver, and perform its obligations under the Loan Documents;

(c) is duly qualified as a foreign corporation and is licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification or license; and

(d) is in compliance with all Requirements of Law; except, with respect to clauses (c) and (d), to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.2 Corporate Authorization; No Contravention. The execution, delivery and performance by the Company and its Subsidiaries of this Agreement and each other Loan Document to which such Person is party, have been duly authorized by all necessary corporate action, and do not and will not:

(a) contravene the terms of any of that Person's Organization Documents;

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(b) conflict with or result in any breach or contravention of, or the creation of any Lien under, any document evidencing any Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject; or

(c) violate any Requirement of Law, except to the extent that such violation could not reasonably be expected to have a Material Adverse Effect.

5.3 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Company or any of its Subsidiaries of the Agreement or any other Loan Document.

5.4 Binding Effect. This Agreement and each other Loan Document to which the Company or any of its Subsidiaries is a party constitute the legal, valid and binding obligations of the Company and any of its Subsidiaries to the extent it is a party thereto, enforceable against such Person in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement or creditors' rights generally or by equitable principles relating to enforceability.

5.5 Litigation. There are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of the Company, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against the Company, or its Subsidiaries or any of their respective

properties which:

(a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or thereby; or

(b) if determined adversely to the Company or its Subsidiaries, would reasonably be expected to have a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

5.6 No Default. No Default or Event of Default exists or would result from the incurring of any Obligations by the Company or the execution, delivery and performance of a Guaranty by any Subsidiary. As of the Closing Date, neither the Company nor any Subsidiary is in default under or with respect to any Contractual Obligation in any respect which, individually or together with all such defaults could reasonably be expected to have a Material Adverse Effect, or that would, if such default had occurred after the Closing Date, create an Event of Default under subsection 8.1(e).

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#### 5.7 ERISA Compliance.

(a) During the twelve-consecutive-month period prior to the date of the execution and delivery of this Agreement or the making of any Loan hereunder, (i) no steps have been taken to terminate any Pension Plan and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a lien under Section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which might result in the incurrence by the Company or any Subsidiary of any material liability, fine or penalty.

(b) All contributions (if any) have been made to any Multiemployer Plan that are required to be made by the Company or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable law; neither the Company nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan (except a single withdrawal, with respect to which the liability of the Company and the members of the Controlled Group shall not exceed \$1,000,000), incurred any withdrawal liability with respect to any such plan, received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, or continued, might result in a withdrawal or partial withdrawal from any such plan; and neither the Company nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

5.8 Use of Proceeds; Margin Regulations. The proceeds of the Loans are to be used solely for the purposes set forth in and permitted by Section 6.12 and Section 7.7. Neither the Company nor any Subsidiary is generally engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.

5.9 Title to Properties. The Company and each Subsidiary have good record and marketable title in fee simple to, or valid leasehold interests in all real property necessary or used in the ordinary conduct of their respective businesses, except for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect. The property of the Company and its Subsidiaries is subject to no Liens, other than Permitted Liens.

5.10 Taxes. The Company and its Subsidiaries have filed all Federal and other material tax returns and reports required to be filed, and have paid all Federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Company or

any Subsidiary that would, if made, have a Material Adverse Effect.

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5.11 Financial Condition. (a) The audited consolidated financial statements of the Company and its Subsidiaries dated May 25, 2000 and the unaudited consolidated financial statements of the Company and its Subsidiaries dated August 24, 2000; and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal year or period ended on such dates:

(i) Were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;

(ii) fairly present the financial condition of the Company and its Subsidiaries as of the date thereof and results of operations for the period covered thereby; and

(iii) show all material indebtedness and other liabilities, direct or contingent, of the Company and its consolidated Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Contingent Obligations.

(b) Since May 25, 2000, there has been no Material Adverse Effect.

5.12 Environmental Matters. The Company and its Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and existing Environmental Claims on its business, operations and properties, and as a result thereof the Company has reasonably concluded that such Environmental Laws and Environmental Claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.13 Regulated Entities. None of the Company, any person controlling the Company, or any Subsidiary, is an "Investment Company" within the meaning of the Investment Company Act of 1940. The Company is not subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other Federal or state statute or regulation limiting its ability to incur Indebtedness.

5.14 No Burdensome Restrictions. Neither the Company nor any Subsidiary is a party to or bound by any Contractual Obligation, or subject to any restriction in any Organization Document, or any Requirement of Law, which could reasonably be expected to have a Material Adverse Effect.

5.15 Copyrights, Patents, Trademarks and Licenses, etc. The Company or its Subsidiaries own or are licensed or otherwise have the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent any such conflict could not reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Company, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Company or any Subsidiary infringes upon any rights held by any other Person. No claim or litigation

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regarding any of the foregoing is pending or threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to the knowledge of the Company, proposed, which, in either case, could reasonably be expected to have a Material Adverse Effect.

5.16 Subsidiaries. As of the Closing Date, the Company has no Subsidiaries other than those specifically disclosed in part (a) of Schedule 5.16 hereto and, except as specifically disclosed in part (b) of Schedule 5.16 has no equity investments in any other corporation or entity, which, as to any one corporation or entity, are equal to or greater than 20% of the aggregate ownership interests in such corporation or entity or the value of which equity investments in any

one corporation or entity is equal to or greater than \$100,000.

5.17 Insurance. The properties of the Company and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Company, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Company or such Subsidiary operates.

5.18 Full Disclosure. None of the representations or warranties made by the Company or any Subsidiary in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of the Company or any Subsidiary in connection with the Loan Documents (including the offering and disclosure materials delivered by or on behalf of the Company to the Banks prior to the Closing Date), contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

5.19 Subsidiary Indebtedness. No Subsidiary has outstanding any Contingent Obligations with respect to Indebtedness of the Company.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

So long as any Bank shall have any Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, unless the Majority Banks waive compliance in writing:

6.1 Financial Statements. The Company shall deliver to the Agent and the Banks, in form and detail satisfactory to the Agent and the Majority Banks:

(a) as soon as available, but not later than 110 days after the end of each fiscal year, a copy of the audited consolidated balance sheet of the Company and its Subsidiaries as at the end of such year and the related consolidated statements of income or operations, shareholders' equity and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by the opinion of

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Ernst & Young LLP or another nationally recognized independent public accounting firm ("Independent Auditor") which report shall state that such consolidated financial statements present fairly the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years. Such opinion shall not be qualified or limited because of a restricted or limited examination by the Independent Auditor of any material portion of the Company's or any Subsidiary's records;

(b) as soon as available, but not later than 60 days after the end of each of the first three fiscal quarters of each fiscal year, a copy of the unaudited consolidated balance sheet of the Company and its Subsidiaries as of the end of such quarter and the related consolidated statements of income, shareholders' equity and cash flows for the period commencing on the first day and ending on the last day of such quarter, and certified by a Responsible Officer as fairly presenting, in accordance with GAAP (subject to ordinary, good faith year-end audit adjustments), the financial position and the results of operations of the Company and the Subsidiaries;

6.2 Certificates; Other Information. The Company shall furnish to the Agent and the Banks:

(a) concurrently with the delivery of the financial statements referred to in subsections 6.1(a) and (b), a Compliance Certificate executed by a Responsible Officer;

(b) promptly, copies of all financial statements and reports that the Company sends to its shareholders, and copies of all financial statements and regular, periodical or special reports (including Forms 10K, 10Q and 8K) that the Company or any Subsidiary may make to, or file with, the SEC, any securities exchange or the National Association of Securities Dealers, Inc.; and



(c) promptly, such additional information regarding the business, financial or corporate affairs or the Company or any Subsidiary as the Agent, at the request of any Bank, may from time to time request.

6.3 Notices. The Company shall promptly notify the Agent and each Bank:

(a) of the occurrence of any Default or Event of Default, and of the occurrence or existence of any event or circumstance that foreseeably will become a Default or Event of Default;

(b) of any matter that has resulted or may result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Company or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Company or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Company or any Subsidiary; including pursuant to any applicable Environmental Laws;

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(c) of the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure or any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a lien under Section 302(f) of ERISA) or to any Multiemployer Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that the Company furnish a bond on or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Plan), or any material increase in the contingent liability of the Company with respect to any post-retirement Welfare Plan benefit, or any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated or that any such plan is or may become insolvent;

(d) of any material change in accounting policies or financial reporting practices by the Company or any of its consolidated Subsidiaries.

Each notice under this Section shall be accompanied by a written statement by a Responsible Officer setting forth details of the occurrence referred to therein, and stating what action the Company or any affected Subsidiary Proposes to take with respect thereto and at what time. Each notice under subsection 6.3(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been (or foreseeably will be) breached or violated.

6.4 Preservation of Corporate Existence, Etc. The Company shall and shall cause each Subsidiary to:

(a) preserve and maintain in full force and effect its corporate existence and good standing under the laws of its state or jurisdiction of incorporation;

(b) preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business except in connection with transactions permitted by Section 7.3 and sales or assets permitted by Section 7.2;

(c) use reasonable efforts, in the ordinary course of business, to preserve its business organization and goodwill; and

(d) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.5 Maintenance of Property. The Company shall maintain, and shall cause each Subsidiary to maintain, and preserve all its property which is used or

useful in its business in

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good working order and condition, ordinary wear and tear excepted and make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.6 Insurance. The Company shall maintain, and shall cause each Subsidiary to maintain, with financially sound and reputable independent insurers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

6.7 Payment of Obligations. The Company shall, and shall cause each Subsidiary to, pay and discharge as the same shall become due and payable, all their respective obligations and liabilities, including:

(a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by the Company or such Subsidiary;

(b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and

(c) all indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.8 Compliance with Laws. The Company shall comply, and shall cause each Subsidiary to comply, in all material respects with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Poor Standards Act), except as such may be contested in good faith or as to which a bona fide dispute may exist.

6.9 Employee Benefit Plans. The Company shall maintain and cause each or its Subsidiaries to maintain, each Pension Plan in substantial compliance with all applicable requirements of law and regulations.

6.10 Accounting; Inspection of Property and Books and Records. The Company shall maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in accordance with GAAP consistently applied, and to comply with the requirements of this Agreement and the other Loan Documents. The Company shall maintain and shall cause each Subsidiary to maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Company and such Subsidiary. The Company shall permit, and shall cause each Subsidiary to permit, representatives and independent contractors of the Agent or any Bank to visit and inspect any of their respective properties, to examine their respective corporate, financial and operating records, and make copies thereof or abstracts therefrom,

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and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, all at the expense of the Company and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company; provided, however, when an Event of Default exists the Agent or any Bank may do any of the foregoing at the expense of the Company at any time during normal business hours and without advance notice.

6.11 Environmental Laws. The Company shall, and shall cause each Subsidiary to, conduct its operations and keep and maintain its property in compliance with all Environmental Laws except to the extent any such noncompliance could not reasonably be expected to have a Material Adverse Effect.

6.12 Use of Proceeds. The Company shall use the proceeds of the Loans for working capital, capital expenditures, commercial paper backup and other general corporate purposes not in contravention of any Requirement of Law or of any Loan Document.

6.13 Contingent Obligations. If any Subsidiary shall have any Contingent Obligations with respect to any Indebtedness of the Company, the Company shall cause such Subsidiary to take such actions as are reasonably necessary, or as the Agent or any Bank may reasonably request from time to time, to guarantee the Obligations.

## ARTICLE VII

### NEGATIVE COVENANTS

So long as any Bank shall have any Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, unless the Majority Banks waive compliance in writing:

7.1 Limitation on Liens. The Company shall not, and shall not suffer or permit any Subsidiary to, directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its property, whether now owned or hereafter acquired, other than the following ("Permitted Liens"):

(a) Liens for taxes not delinquent or for taxes being contested in good faith by appropriate proceedings and as to which adequate financial reserves have been established on the books and records of the Company or any Subsidiary;

(b) Liens (other than any Lien imposed by ERISA) created and maintained in the ordinary course of business which are not material in the aggregate, and which would not constitute or result in a Material Adverse Effect, and which constitute (i) pledges or deposits under worker's compensation laws, unemployment insurance laws or similar legislation, (ii) good faith deposits in connection with bids, tenders, contracts or leases to which the Company or a Subsidiary is a party for a purpose other than borrowing money or obtaining credit, including rent security deposits, (iii) Liens imposed by law, such as those of carriers, warehousemen and mechanics, if payment of the obligation secured thereby is not yet due, (iv) Liens securing taxes, assessments or other charges or levies of any Governmental

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Authority not yet subject to penalties for nonpayment, and (v) pledges or deposits to secure public or statutory obligations of the Company or a Subsidiary, or surety, customs or appeal bonds to which the Company or a Subsidiary is a party;

(c) Liens affecting real property which constitute minor survey exceptions or defects or irregularities in title, minor encumbrances, easements or reservations of, or rights of others for, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of such real property; provided, however, that all of the foregoing, in the aggregate, do not at any time materially detract from the value of said properties or materially impair their use in the operation of the businesses of the Company or any Subsidiary;

(d) each Lien described in Schedule 7.1 may be suffered to exist upon the same terms as those existing on the date hereof, but no extension or renewal thereof shall be permitted except for a refinancing in the ordinary course of business for an amount not in excess of the original amount subject to such Lien;

(e) purchase money Liens upon or in property of the Company or a subsidiary acquired after the Closing Date; provided, however, that no such Lien shall extend to or cover any other property of the Company or a Subsidiary or secure an amount in excess of the lesser of the purchase price or the market value of such property; and

(f) other Liens provided that the aggregate outstanding amount of Indebtedness secured by all such other Liens shall not exceed \$15,000,000 at any time after the Closing Date.

7.2 Disposition of Assets. The Company shall not, and shall not suffer or permit any Subsidiary to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) any property (including accounts and notes receivable, with or without recourse) or enter into any agreement to do any of the foregoing, except: (a) inventory sold in the ordinary course of business upon customary credit terms and sales of obsolete or damaged material or equipment, (b) sales of assets in connection with sale-leaseback transactions in an amount not to exceed \$10,000,000 and (c) other sales of assets not to exceed 10% of the consolidated total assets of the Company and its Subsidiaries in any fiscal year of the Company ending after the Closing Date; except that (x) any Subsidiary may sell, lease, transfer or otherwise dispose of its assets to the Company or any other Subsidiary; and (y) the Company may sell, lease, transfer or otherwise dispose of assets in excess of the limitations set forth above if the proceeds thereof (i) are used to purchase or are committed to purchase other property of a similar nature of at least equivalent value within one year of such sale, lease, transfer or other disposition or (ii) are used to prepay Senior Indebtedness (including the Loans) on a pro-rata basis.

7.3 Merger; Purchase of Assets; Acquisitions; Etc. The Company shall not, and shall not suffer or permit any Subsidiary to purchase or otherwise acquire, whether in one or a series of transactions, all or a substantial portion of the business, assets, rights, revenues or property, real, personal or mixed, tangible or intangible, of any Person, or all or a substantial

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portion of the capital stock of or other ownership interest in any other Person; nor merge or consolidate or amalgamate with any other Person or take any other action having a similar effect, nor enter into any Joint Venture or similar arrangement with any other Person; provided, however, that this Section 7.3 shall not prohibit any Acquisition by the Company or any of its Subsidiaries of any Person engaged in substantially the same business as the Company or such Subsidiary if (a) in the case of an Acquisition of stock or a merger, the acquired Person shall be immediately merged with and into the Company or such Subsidiary which shall be the surviving corporation, and (b) immediately after such Acquisition, no Default or Event of Default shall exist or shall have occurred and be continuing and, prior to the consummation of such Acquisition, the Company shall have provided to the Bank a certificate of a Responsible Officer (attaching computations to demonstrate compliance with all financial covenants hereunder) stating that such Acquisition complies with this Section 7.3 and will not cause a Default or Event of Default to occur or continue and that any other conditions under this Agreement and the other Loan Documents relating to such transaction have been satisfied; and provided, further, that this Section 7.3 shall not prohibit any merger or consolidation solely between or among the Company and its Subsidiaries, so long as the Company is the surviving person of such merger or consolidation.

7.4 Loans and Investments. The Company shall not and shall not suffer or permit any Subsidiary to make or commit to make any Investment, other than: (a) Investments in Cash Equivalents; (b) Investments in its existing Subsidiaries; (c) Investments in new Subsidiaries consisting of partnerships or limited liability companies engaged in the business of owning and operating hotels or motels, movie theaters or restaurants; (d) loans or advances to franchisees not to exceed \$10,000,000, on a consolidated basis, in the aggregate at any time after the Closing Date; (e) Investments listed in the attached Schedule 7.4, (f) Investments (excluding contingent liabilities) to owners of properties or businesses managed by the Company or a Subsidiary not to exceed \$15,000,000, on a consolidated basis, in the aggregate at any time after the Closing Date; (g) Investments, consisting of contingent liabilities, to owners of properties or businesses managed by the Company or a Subsidiary not to exceed \$10,000,000, on a consolidated basis, in the aggregate at any time after the Closing Date; and (h) other Investments (including contingent liabilities) not to exceed \$3,000,000 on a consolidated basis, in the aggregate at any time after the Closing Date.

7.5 Limitation on Subsidiary Indebtedness. The Company shall not permit any Subsidiary to create, incur, assume, suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except Indebtedness, which when added to the Indebtedness secured by Liens permitted under Sections 7.1(d), (e) and (f) shall not exceed 5% of Total Capitalization.

7.6 Transactions with Affiliates. The Company shall not, and shall not

suffer or permit any Subsidiary to, enter into any transaction with any Affiliate of the Company, except upon fair and reasonable terms no less favorable to the Company or such Subsidiary than would obtain in a comparable arm's-length transaction with a Person not an Affiliate of the Company or such Subsidiary.

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7.7 Use of Proceeds. The Company shall not, and shall not suffer or permit any Subsidiary to, use any portion of the Loan proceeds, directly or indirectly, (i) to purchase or carry Margin Stock, (ii) to repay or otherwise refinance indebtedness of the Company or others incurred to purchase or carry Margin Stock, (iii) to extend credit for the purpose of purchasing or carrying any Margin Stock, or (iv) to acquire any security in any transaction that is subject to Section 13 or 14 of the Exchange Act.

7.8 Restricted Payments. The Company shall not, and shall not suffer or permit any Subsidiary to, declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of its capital stock, or purchase, redeem or otherwise acquire for value any shares of its capital stock or any warrants, rights or options to acquire such shares, now or hereafter outstanding, if a Default or Event of Default has occurred and is continuing or would result from any of the foregoing.

7.9 Change in Business. The Company shall not, and shall not suffer or permit any Subsidiary to, change the nature of its business from that engaged in on the date hereof or engage in any other businesses other than those in which it is engaged on the date hereof or other than those related thereto.

7.10 Accounting Changes. The Company shall not, and shall not suffer or permit any Subsidiary to, make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change the fiscal year of the Company or of any Subsidiary.

7.11 Funded Debt Ratio. The Company shall not permit or suffer the ratio of Funded Debt to Total Capitalization to exceed at any time 0.55 to 1.0.

7.12 Fixed Charge Coverage Ratio. The Company shall not permit or suffer the ratio at any fiscal quarter end for the four fiscal quarters then ending of Adjusted Consolidated Cash Flow to Interest and Rental Expense to be less than 3.0 to 1.0.

7.13 Subsidiary Dividends. The Company shall not, and shall not permit any Subsidiary to, enter into any agreement that would restrict the ability of any Subsidiary to pay dividends.

#### ARTICLE VIII

##### EVENTS OF DEFAULT

8.1 Event of Default. Any of the following shall constitute an "Event of Default":

(a) Non-Payment. The Company fails to pay, (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three days after the same becomes due, any interest, fee or any other amount payable hereunder or under any other Loan Document; or

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(b) Representation or Warranty. Any representation or warranty by the Company or any Subsidiary made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by the Company, any Subsidiary, or any Responsible Officer, furnished at any time under this Agreement, or in or under any other Loan Document, is incorrect in any material respect on or as of the date made or deemed made; or

(c) Specific Defaults. The Company fails to perform or observe any term, covenant or agreement contained in any of Section 6.1, 6.2, 6.3, 6.4, 6.9

or 6.12 or in Article VII; or

(d) Other Defaults. The Company or any Subsidiary party thereto fails to perform or observe any other term or covenant contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of 30 days after the earlier of (i) the date upon which a Responsible Officer knew or reasonably should have known of such failure or (ii) the date upon which written notice thereof is given to the Company by the Agent or any Bank; or

(e) Cross-Default. The Company or any Subsidiary (i) fails to make any payment in respect of any Indebtedness or Contingent Obligation having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$5,000,000 when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure; or (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness or Contingent Obligation, and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable prior to its stated maturity, or such Contingent Obligation to become payable or cash collateral in respect thereof to be demanded; or

(f) Insolvency; Voluntary Proceedings. The Company or any Subsidiary (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing; or

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against the Company or any Subsidiary, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of the Company's or any Subsidiary's properties, and any such proceeding or petition shall not be

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dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within 60 days after commencement, filing or levy; (ii) the Company or any Subsidiary admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) the Company or any Subsidiary acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its property or business; or

(h) Pension Plans. (i) Institution of any steps by the Company or any other Person to terminate a Pension Plan if as a result of such termination the Company could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$10,000,000; (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA; or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that the Company and the Controlled Group have incurred on the date of such withdrawal) exceeds \$10,000,000; or

(i) Monetary Judgments. One or more non-interlocutory judgments, non-interlocutory orders, decrees or arbitration awards is entered against the Company or any Subsidiary involving in the aggregate a liability (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) as to any single or related series of transactions, incidents or conditions, of \$10,000,000 or more, and the same shall remain

unvacated and unstayed pending appeal for a period of 30 days after the entry thereof; or

(j) Non-Monetary Judgments. Any non-monetary judgment, order or decree is entered against the Company or any Subsidiary which does or would reasonably be expected to have a Material Adverse Effect, and there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(k) Change of Control. There occurs any Change of Control; or

(l) Loss of Licenses. The Company or any Subsidiary for any reason loses any material license, permit or franchise, or the Company or any Subsidiary suffers the imposition of any restraining order, escrow, suspension or impound of funds in connection with any proceeding (judicial or administrative) with respect to any material license, permit or franchise; or

(m) Adverse Change. There occurs a Material Adverse Effect.

8.2 Remedies. If any Event of Default occurs, the Agent shall, at the request of, or may, with the consent of, the Majority Banks,

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(a) declare the commitment of each Bank to make Loans to be terminated, whereupon such commitments shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company; and

(c) exercise on behalf of itself and the Banks all rights and remedies available to it and the Banks under the Loan Documents or applicable law;

provided, however, that upon the occurrence of any event specified in subsection (f) or (g) of Section 8.1 (in the case of clause (i) of subsection (g) upon the expiration of the 60-day period mentioned therein), the obligation of each Bank to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Agent or any Bank.

8.3 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

#### ARTICLE IX

##### THE AGENT

9.1 Appointment and Authorization. Each Bank hereby irrevocably (subject to Section 9.9) appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Agent have or be deemed to have any fiduciary relationship with any Bank, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent.

9.2 Delegation of Duties. The Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

9.3 Liability of Agent. None of the Agent-Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (ii) be responsible in any manner to any of the Banks for any recital, statement, representation or warranty made by the Company or any Subsidiary or Affiliate of the Company, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of the Company or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Bank to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Company or any of the Company's Subsidiaries or Affiliates.

9.4 Reliance by Agent. The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Company), independent accountants and other experts selected by the Agent. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Majority Banks as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Banks against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Majority Banks and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Banks.

(a) For purposes of determining compliance with the conditions specified in Section 4.1, each Bank that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent by the Agent to such Bank for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to the Bank.

9.5 Notice of Default. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Agent for the account of the Banks, unless the Agent shall have received written notice from a Bank or the Company referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". The Agent will notify the Banks of its receipt of any such notice. The Agent shall take such action with respect to such Default or Event of Default as may be requested by the Majority Banks in accordance with Article VIII; provided, however, that unless and until the Agent has received any such request, the Agent may (but shall not be

obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Banks.

9.6 Credit Decision. Each Bank acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by the Agent hereinafter taken, including any review of the affairs of the Company and its Subsidiaries, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Bank. Each Bank represents to the Agent that it has, independently and without reliance upon any Agent-Related Person and



based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Company and its Subsidiaries, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Company hereunder. Each Bank also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Company. Except for notices, reports and other documents expressly herein required to be furnished to the Banks by the Agent, the Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Company which may come into the possession of any of the Agent-Related Persons.

9.7 Indemnification. Whether or not the transactions contemplated hereby are consummated, the Banks shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Company and without limiting the obligation of the Company to do so), pro rata, from and against any and all Indemnified Liabilities; provided, however, that no Bank shall be liable for the payment to the Agent-Related Persons of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct. Without limitation of the foregoing, each Bank shall reimburse the Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by or on behalf of the Company. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of the Agent.

9.8 Agent in Individual Capacity. Bank One and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Company and its Subsidiaries and Affiliates as though Bank One were not the Agent hereunder and without notice to or consent of the Banks. The Banks acknowledge

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that, pursuant to such activities, Bank One or its Affiliates may receive information regarding the Company or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Company or such Subsidiary) and acknowledge that the Agent shall be under no obligation to provide such information to them. With respect to its Loans, Bank One shall have the same rights and powers under this Agreement as any other Bank and may exercise the same as though it were not the Agent, and the terms "Bank" and "Banks" include Bank One in its individual capacity.

9.9 Successor Agent. The Agent may, and at the request of the Majority Banks shall, resign as Agent upon 30 days' notice to the Banks. If the Agent resigns under this Agreement, the Majority Banks shall appoint from among the Banks a successor agent for the Banks. If no successor agent is appointed prior to the effective date of the resignation of the Agent, the Agent may appoint, after consulting with the Banks and the Company, a successor agent from among the Banks. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article IX and Sections 10.4 and 10.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Banks shall perform all of the duties of the Agent hereunder until such

time, if any, as the Majority Banks appoint a successor agent as provided for above.

9.10 Withholding Tax. (a) If any Bank is a "foreign corporation, partnership or trust" within the meaning of the Code and such Bank claims exemption from, or a reduction of, U.S. withholding tax under Sections 1441 or 1442 of the Code, such Bank agrees with and in favor of the Agent, to deliver to the Agent:

(i) if such Bank claims an exemption from, or a reduction of, withholding tax under a United States tax treaty, properly completed IRS Forms 1001 and W-8 before the payment of any interest in the first calendar year and before the payment of any interest in each third succeeding calendar year during which interest may be paid under this Agreement;

(ii) if such Bank claims that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Bank, two properly completed and executed copies of IRS Form 4224 before the payment of any interest is due in the first taxable year of such Bank and in each succeeding taxable year of such Bank during which interest may be paid under this Agreement, and IRS Form W-9; and

(iii) such other form or forms as may be required under the Code or other laws of the United States as a condition to exemption from, or reduction of, United States withholding tax.

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Such Bank agrees to promptly notify the Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(b) If any Bank claims exemption from, or reduction of, withholding tax under a United States tax treaty by providing IRS Form 1001 and such Bank sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of the Company to such Bank, such Bank agrees to notify the Agent of the percentage amount in which it is no longer the beneficial owner of Obligations of the Company to such Bank. To the extent of such percentage amount, the Agent will treat such Bank's IRS Form 1001 as no longer valid.

(c) If any Bank claiming exemption from United States withholding tax by filing IRS Form 4224 with the Agent sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of the Company to such Bank, such Bank agrees to undertake sole responsibility for complying with the withholding tax requirements imposed by Sections 1441 and 1442 of the Code.

(d) If any Bank is entitled to a reduction in the applicable withholding tax, the Agent may withhold from any interest payment to such Bank an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by subsection (a) of this Section are not delivered to the Agent, then the Agent may withhold from any interest payment to such Bank not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(e) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Agent did not properly withhold tax from amounts paid to or for the account of any Bank (because the appropriate form was not delivered, was not properly executed, or because such Bank failed to notify the Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Bank shall indemnify the Agent fully for all amounts paid, directly or indirectly, by the Agent as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to the Agent under this Section, together with all costs and expenses (including Attorney Costs). The obligation of the Banks under this subsection shall survive the payment of all Obligations and the resignation or replacement of the Agent.

9.11 Documentation Agent. None of the Banks identified on the facing page or signature pages of this Agreement as a "documentation agent" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Banks as such. Without limiting the foregoing, none of the Banks so identified as a "documentation agent" shall have

or be deemed to have any fiduciary relationship with any Bank. Each Bank acknowledges that it has not relied, and will not rely, on any of the Banks so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

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ARTICLE X

MISCELLANEOUS

10.1 Amendments and Waivers. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by the Company or any applicable Subsidiary therefrom, shall be effective unless the same shall be in writing and signed by the Majority Banks (or by the Agent at the written request of the Majority Banks) and the Company and acknowledged by the Agent, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Banks and the Company and acknowledged by the Agent, do any of the following:

(a) increase (except as provided in Section 2.5) or extend the Commitment of any Bank (or reinstate any Commitment terminated pursuant to Section 8.2);

(b) postpone or delay any date for any scheduled payment of principal or any date for payment of interest, fees or other amounts due to the Banks (or any of them) hereunder or under any other Loan Document;

(c) reduce the principal of, or the rate of interest specified herein on any Loan, or (subject to clause (ii) below) any fees or other amounts payable hereunder or under any other Loan Document;

(d) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans which is required for the Banks or any of them to take any action hereunder; or

(e) amend this Section, or Section 2.13, or any provision herein providing for consent or other action by all Banks;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Majority Banks or all the Banks, as the case may be, affect the rights or duties of the Agent under this Agreement or any other Loan Document, and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed by the parties thereto.

10.2 Notices. (a) All notices, requests and other communications shall be in writing (including, unless the context expressly otherwise provides, by facsimile transmission, provided that any matter transmitted by the Company by facsimile (i) shall be immediately confirmed by a telephone call to the recipient at the number specified on Schedule 10.2, and (ii) shall be followed promptly by delivery of a hard copy original thereof) and mailed, faxed or delivered, to the address or facsimile number specified for notices on Schedule 10.2; or, as directed to the Company or the Agent, to such other address as shall be designated by such party in a written notice to the other parties, and as directed to any other party, at such other address as shall be designated by such party in a written notice to the Company and the Agent.

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(b) All such notices, requests and communications shall, when transmitted by overnight delivery, or faxed, be effective when delivered for overnight (next-day) delivery, or transmitted in legible form by facsimile machine, respectively, or if mailed, upon the third Business Day after the date deposited into the U.S. mail, or if delivered, upon delivery; except that notices pursuant to Article II or IX shall not be effective until actually received by the Agent.

(c) Any agreement of the Agent and the Banks herein to receive certain

notices by telephone or facsimile is solely for the convenience and at the request of the Company. The Agent and the Banks shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Company to give such notice and the Agent and the Banks shall not have any liability to the Company or other Person on account of any action taken or not taken by the Agent or the Banks in reliance upon such telephonic or facsimile notice. The obligation of the Company to repay the Loans shall not be affected in any way or to any extent by any failure by the Agent and the Banks to receive written confirmation of any telephonic or facsimile notice or the receipt by the Agent and the Banks of a confirmation which is at variance with the terms understood by the Agent and the Banks to be contained in the telephonic or facsimile notice.

10.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent or any Bank, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.4 Costs and Expenses. The Company shall:

(a) whether or not the transactions contemplated hereby are consummated, pay or reimburse Bank One (including in its capacity as Agent) and the Lead Arranger within ten days after demand (subject to subsection 4.1(e)) for all costs and expenses incurred by Bank One (including in its capacity as Agent) and the Lead Arranger in connection with the development, preparation, delivery, administration and execution of, and any amendment, supplement, waiver or modification to (in each case, whether or not consummated), this Agreement, any Loan Document and any other documents prepared in connection herewith or therewith, and the consummation of the transactions contemplated hereby and thereby, including reasonable Attorney Costs incurred by Bank One (including in its capacity as Agent) and the Lead Arranger with respect thereto; and

(b) pay or reimburse the Agent, the Lead Arranger and each Bank within ten days after demand (subject to subsection 4.1(e)) for all costs and expenses (including Attorney Costs) incurred by them in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement or any other Loan Document during the existence of an Event of Default or after acceleration of the Loans (including in connection with any "workout" or restructuring regarding the Loans, and including in any Insolvency Proceeding or appellate proceeding)

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10.5 Indemnity. Whether or not the transactions contemplated hereby are consummated, the Company shall indemnify and hold the Agent-Related Persons, and each Bank and each of its respective officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "Indemnified Person") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Loans and the termination, resignation or replacement of the Agent or replacement of any Bank) be imposed on, incurred by or asserted against any such Person in any way relating to or arising out of this Agreement or any document contemplated by or referred to herein, or the transactions contemplated hereby, or any action taken or omitted by any such Person under or in connection with any of the foregoing, including with respect to any investigation, litigation or proceeding (including any Insolvency Proceeding or appellate proceeding) related to or arising out of this Agreement or the Loans or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"); provided, that the Company shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities resulting solely from the gross negligence or willful misconduct of such Indemnified Person. The agreements in this Section shall survive payment of all other Obligations.

10.6 Payments Set Aside. To the extent that the Company makes a payment to the Agent or the Banks, or the Agent or the Banks exercise their right of set-off, and such payment or the proceeds of such set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the

Agent or such Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Bank severally agrees to pay to the Agent upon demand its pro rata share of any amount so recovered from or repaid by the Agent.

10.7 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Company may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Agent and each Bank.

10.8 Assignments, Participations, Etc. (a) Any Bank may, with the written consent of the Company at all times other than during the existence of an Event of Default and the Agent, which consents shall not be unreasonably withheld, at any time assign and delegate to one or more Eligible Assignees (provided that no written consent of the Company or the Agent shall be required in connection with any assignment and delegation by a Bank to an Eligible Assignee that is an Affiliate of such Bank) (each an "Assignee") all, or any ratable part of all, of the Loans, the Commitments and the other rights and obligations of such Bank hereunder, in a minimum amount of \$5,000,000; provided, however, that the Company and the Agent may continue to deal solely and directly with such Bank in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment

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instructions, addresses and related information with respect to the Assignee, shall have been given to the Company and the Agent by such Bank and the Assignee; (ii) such Bank and its Assignee shall have delivered to the Company and the Agent an Assignment and Acceptance in the form of Exhibit E ("Assignment and Acceptance") and (iii) the assignor Bank or Assignee has paid to the Agent a processing fee in the amount of \$3,500 (including, without limitation, in connection with any assignment by a Bank to a Bank).

(b) From and after the date that the Agent notifies the assignor Bank that it has received (and provided its consent with respect to) an executed Assignment and Acceptance and payment of the above-referenced processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Bank under the Loan Documents, and (ii) the assignor Bank shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Documents.

(c) Within five Business Days after its receipt of notice by the Agent that it has received an executed Assignment and Acceptance and payment of the processing fee, (and provided that it consents to such assignment in accordance with subsection 10.8(a)) the Company shall execute and deliver to the Agent, new Notes evidencing such Assignee's assigned Loans and Commitment and, if the assignor Bank has retained a portion of its Loans and its Commitment, replacement Notes in the principal amount of the Loans retained by the assignor Bank (such Notes to be in exchange for, but not in payment of, the Notes held by such Bank). Immediately upon each Assignee's making its processing fee payment under the Assignment and Acceptance, this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Bank pro tanto.

(d) Any Bank may at any time sell to one or more commercial banks or other Persons not Affiliates of the Company (a "Participant") participating interests in any Loans, the Commitment of that Bank and the other interests of that Bank (the "originating Bank") hereunder and under the other Loan Documents; provided, however, that (i) the originating Bank's obligations under this Agreement shall remain unchanged, (ii) the originating Bank shall remain solely responsible for the performance of such obligations, (iii) the Company and the Agent shall continue to deal solely and directly with the originating Bank in connection with the originating Bank's rights and obligations under this Agreement and the other Loan Documents, and (iv) no Bank shall transfer or grant

any participating interest under which the Participant has rights to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment, consent or waiver would require unanimous consent of the Banks as described in the first proviso to Section 10.1. In the case of any such participation, the Participant shall be entitled to the benefit of Sections 3.1, 3.3 and 10.5 as though it were also a Bank hereunder, and if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each

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Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Bank under this Agreement.

(e) Notwithstanding any other provision in this Agreement, any Bank may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement and the Note held by it in favor of any Federal Reserve Bank in accordance with Regulation A of the FRB or U.S. Treasury Regulation 31 CFR ss.203.14, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

10.9 Confidentiality. Each Bank agrees to take and to cause its Affiliates to take normal and reasonable precautions and exercise due care to maintain the confidentiality of all information identified as "confidential" or "secret" by the Company and provided to it by the Company or any Subsidiary, or by the Agent on such Company's or Subsidiary's behalf, under this Agreement or any other Loan Document, and neither it nor any of its Affiliates shall use any such information other than in connection with or in enforcement of this Agreement and the other Loan Documents or in connection with other business now or hereafter existing or contemplated with the Company or any Subsidiary; except to the extent such information (i) was or becomes generally available to the public other than as a result of disclosure by the Bank, or (ii) was or becomes available on a non-confidential basis from a source other than the Company, provided that such source is not bound by a confidentiality agreement with the Company known to the Bank; provided, however, that any Bank may disclose such information (A) at the request or pursuant to any requirement of any Governmental Authority to which the Bank is subject or in connection with an examination of such Bank by any such authority; (B) pursuant to subpoena or other court process; (C) when required to do so in accordance with the provisions of any applicable Requirement of Law; (D) to the extent reasonably required in connection with any litigation or proceeding to which the Agent, any Bank or their respective Affiliates may be party; (E) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document; (F) to such Bank's independent auditors and other professional advisors; (G) to any Participant or Assignee, actual or potential, provided that such Person agrees in writing to keep such information confidential to the same extent required of the Banks hereunder; (H) as to any Bank or its Affiliate, as expressly permitted under the terms of any other document or agreement regarding confidentiality to which the Company or any Subsidiary is party or is deemed party with such Bank or such Affiliate; and (I) to its Affiliates.

10.10 Set-off. In addition to any rights and remedies of the Banks provided by law, if an Event of Default exists or the Loans have been accelerated, each Bank is authorized at any time and from time to time, without prior notice to the Company, any such notice being waived by the Company to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Bank to or for the credit or the account of the Company against any and all Obligations owing to such Bank, now or hereafter existing, irrespective of whether or not the Agent or such Bank shall have made demand under this Agreement or any Loan Document and although such Obligations may be contingent or

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unmatured. Each Bank agrees promptly to notify the Company and the Agent after any such set-off and application made by such Bank; provided, however, that the

failure to give such notice shall not affect the validity of such set-off and application.

10.11 Automatic Debits of Fees. With respect to any commitment fee, arrangement fee, or other fee, or any other cost or expense (including Attorney Costs) due and payable to the Agent, Bank One or the Lead Arranger under the Loan Documents, the Company hereby irrevocably authorizes Bank One to debit any deposit account of the Company with Bank One in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount of the fee or other cost or expense then due, such debits will be reversed (in whole or in part, in Bank One's sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section shall be deemed a set-off.

10.12 Notification of Addresses, Lending Offices, Etc. Each Bank shall notify the Agent in writing of any changes in the address to which notices to the Bank should be directed, of addresses of any Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Agent shall reasonably request.

10.13 Counterparts. This Agreement may be executed in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

10.14 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.15 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Company, the Banks, the Agent and the Agent-Related Persons, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents.

10.16 Governing Law and Jurisdiction. (a) THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS; PROVIDED THAT THE AGENT AND THE BANKS SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF ILLINOIS OR OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE COMPANY, THE

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AGENT AND THE BANKS CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE COMPANY, THE AGENT AND THE BANKS IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO. THE COMPANY, THE AGENT AND THE BANKS EACH WAIVE PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY ILLINOIS LAW.

10.17 Waiver of Jury Trial. THE COMPANY, THE BANKS AND THE AGENT EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AGENT-RELATED PERSON, PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE COMPANY, THE BANKS AND THE AGENT EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER

SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

10.18 Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the Company, the Banks and the Agent, and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

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

THE MARCUS CORPORATION

By: /s/ Stephen H. Marcus  
-----

Title: Chairman of the Board, President  
and Chief Executive Officer

BANK ONE, NA (Main Office Chicago),  
as Agent

By: /s/ A. F. Maggiore  
-----

Title: Managing Director

BANK ONE, NA (Main Office Chicago),  
as a Bank

By: /s/ A. F. Maggiore  
-----

Title: Managing Director

BANK OF AMERICA, N.A.

By: /s/ M. H. Claggett  
-----

Title: Principal

LASALLE BANK NATIONAL ASSOCIATION

By: /s/ Dusko Marinovic  
-----

Title: Commercial Banking Officer

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<ARTICLE>

5

<LEGEND>

THE SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM  
THE MARCUS CORPORATION'S FINANCIAL STATEMENTS AND IS QUALIFIED IN ITS  
ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

</LEGEND>

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