

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 July 31, 1999

OR

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

For the transition from _____ to _____

Commission File Number _____

QAD INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or
organization)

77-0105228
(IRS Employer
Identification No.)

6450 Via Real, Carpinteria, California 93013
(Address of principal executive offices)

(805) 684-6614
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required
to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during
the preceding 12 months (or for such shorter period that the registrant was
required to file such reports), and (2) has been subject to filing requirements
for the past 90 days. Yes ☒ No ☐.

The number of shares outstanding of the issuer's common stock as of the close of
business on August 31, 1999: 30,223,361.

QAD Inc.
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Part I - Financial Information

QAD Inc.

Condensed Consolidated Balance Sheets

(In thousands, except for share data)

Assets

	July 31, 1999 ----- (Unaudited)	January 31, 1999 -----
Current assets:		
Cash and equivalents	\$ 15,292	\$ 16,078
Short-term cash investments	--	3,000
Accounts receivable, net	76,759	95,344
Other current assets	19,921	19,680
	-----	-----
Total current assets	111,972	134,102
Property and equipment, net	34,003	36,835
Goodwill and intangibles, net	26,114	25,152
Other assets	5,076	3,966
	-----	-----
Total assets	\$ 177,165	\$ 200,055
	=====	=====

Liabilities and Stockholders' Equity

Current liabilities:		
Notes payable	\$ 795	\$ 7,166

Accounts payable	13,608	16,314
Accrued expenses	25,834	29,933
Deferred revenue and deposits	53,645	59,946
	-----	-----
Total current liabilities	93,882	113,359
Long-term debt	16,371	6,526
Other liabilities	1,088	741
Commitments and contingencies	--	--
Stockholders' equity:		
Preferred stock, \$0.001 par value. Authorized 5,000,000 shares; none issued and outstanding	--	--
Common stock, \$0.001 par value. Authorized 150,000,000 shares; issued and outstanding 30,223,361 at July 31, 1999 and 29,703,500 at January 31, 1999	30	30
Additional paid-in-capital	99,818	99,566
Accumulated deficit	(32,438)	(18,526)
Receivable from stockholders	(28)	(54)
Unearned compensation - restricted stock	(265)	(970)
Accumulated other comprehensive loss	(1,293)	(617)
	-----	-----
Total stockholders' equity	65,824	79,429
	-----	-----
Total liabilities and stockholders' equity	\$ 177,165	\$ 200,055
	=====	=====

See accompanying notes to condensed consolidated financial statements

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QAD Inc.
Condensed Consolidated Statements of Operations
(Unaudited)
(In thousands, except per share amounts)

	Three Months Ended July 31,		Six Months Ended July 31,	
	1999	1998	1999	1998
	-----	-----	-----	-----
Revenue:				
License fees	\$ 20,562	\$ 28,656	\$ 41,023	\$ 55,847
Maintenance and other	23,283	16,515	44,284	32,177
Services	14,469	2,108	26,345	3,525
	-----	-----	-----	-----
Total revenue	58,314	47,279	111,652	91,549
Costs and expenses:				
Cost of revenue	26,418	10,739	51,767	22,526
Sales and marketing	18,572	24,350	40,079	45,424
Research and development	8,457	13,118	17,463	24,540
General and administrative	6,337	6,699	13,217	11,743
Restructuring charge	1,152	--	1,152	--
	-----	-----	-----	-----
Total costs and expenses	60,936	54,906	123,678	104,233
	-----	-----	-----	-----
Operating loss	(2,622)	(7,627)	(12,026)	(12,684)
Other (income) expense:				
Interest income	(105)	(674)	(212)	(1,649)
Interest expense	499	92	793	101
Other, net	(189)	101	163	(301)
	-----	-----	-----	-----
	205	(481)	744	(1,849)
	-----	-----	-----	-----
Loss before income taxes	(2,827)	(7,146)	(12,770)	(10,835)
Income tax provision (benefit)	1,142	(2,715)	1,142	(4,117)
	-----	-----	-----	-----
Net loss	\$ (3,969)	\$ (4,431)	\$ (13,912)	\$ (6,718)
	=====	=====	=====	=====
Basic and diluted net loss per share	\$ (0.13)	\$ (0.15)	\$ (0.46)	\$ (0.23)
	=====	=====	=====	=====

See accompanying notes to condensed consolidated financial statements

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QAD Inc.
Condensed Consolidated Statements of Cash Flows
(Unaudited)
(In thousands)

	Six Months Ended July 31,	
	1999	1998
Net cash used in operating activities	(2,402)	(10,977)
Cash flows from investing activities:		
Purchase of property and equipment	(2,621)	(9,651)
Capitalized software development costs	(1,915)	(2,247)
Proceeds from sale of short-term investments	3,000	--
Other, net	(496)	9
Net cash used in investing activities	(2,032)	(11,889)
Cash flows from financing activities:		
Proceeds from notes payable and long-term debt	16,059	--
Repayment of notes payable and long-term debt	(12,585)	(119)
Issuance of common stock for cash	891	851
Other, net	(41)	151
Net cash provided by financing activities	4,324	883
Effect of exchange rates on cash and equivalents	(676)	(135)
Net decrease in cash and equivalents	(786)	(22,118)
Cash and equivalents at beginning of period	16,078	70,082
Cash and equivalents at end of period	\$ 15,292	\$ 47,964
	=====	=====

See accompanying notes to condensed consolidated financial statements

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QAD Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Basis of Presentation

In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments necessary (consisting only of reclassifications and normal recurring adjustments) to present fairly the financial information contained therein. These statements do not include all disclosures required by generally accepted accounting principles and should be read in conjunction with the audited financial statements and related notes included in our Form 10-K for the year ended January 31, 1999. The results of operations for the six months ended July 31, 1999 are not necessarily indicative of the results to be expected for the year ending January 31, 2000.

Certain prior period financial statement items have been reclassified to conform to current period presentation.

2. Comprehensive income (loss)

Comprehensive income (loss) includes changes in the balances of items that are reported directly in a separate component of stockholders' equity on the Condensed Consolidated Balance Sheets. The components of comprehensive income (loss) are as follows (in thousands):

	Three Months Ended July 31,		Six Months Ended July 31,	
	1999	1998	1999	1998
Net loss	\$ (3,969)	\$ (4,431)	\$ (13,912)	\$ (6,718)
Foreign currency translation adjustments	(415)	49	(676)	(135)
Comprehensive loss	<u>\$ (4,384)</u>	<u>\$ (4,382)</u>	<u>\$ (14,588)</u>	<u>\$ (6,853)</u>

3. Per Share Information

Net income (loss) per share is computed in accordance with Statement of Financial Accounting Standards No. 128, Earnings Per Share. Basic income (loss) per share is computed using the weighted average number of common shares outstanding during the period. Diluted income (loss) per share is computed using the weighted average number of common and dilutive common stock equivalents outstanding during the period. Common stock equivalents consist of the shares issuable upon the exercise of stock options (using the treasury stock method). The following table sets forth the computation of basic and diluted income (loss) per share (in thousands, except for per share amounts):

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	Three Months Ended July 31,		Six Months Ended July 31,	
	1999	1998	1999	1998
Numerator:				
Net loss	<u>\$ (3,969)</u>	<u>\$ (4,431)</u>	<u>\$ (13,912)</u>	<u>\$ (6,718)</u>
Denominator:				
Weighted average basic shares outstanding	30,169	29,234	30,052	29,179
Effect of dilutive options	--	--	--	--
Weighted average diluted shares outstanding	<u>30,169</u>	<u>29,234</u>	<u>30,052</u>	<u>29,179</u>
Basic and diluted loss per share	<u>\$ (0.13)</u>	<u>\$ (0.15)</u>	<u>\$ (0.46)</u>	<u>\$ (0.23)</u>

Common stock equivalents of approximately 143,000 and 169,000 for the three and six months ended July 31, 1999 and 508,000 and 488,000 for the three and six months ended July 31, 1998, respectively, were not included in the diluted calculations because, due to the net loss positions, they were anti-dilutive.

4. Notes Payable and Long-Term Debt

(In thousands)	July 31, 1999	January 31, 1999
	-----	-----

Line of credit	\$ 16,000	\$ --
Subordinated notes	--	12,362
Capitalized leases	790	1,102
Other	376	228
	-----	-----
	17,166	13,692
Less current maturities	795	7,166
	-----	-----
Total long-term debt	\$ 16,371	\$ 6,526
	=====	=====

In April 1999, we entered into a secured credit agreement with The First National Bank of Chicago, which expires and we will be due on April 18, 2002. The maximum amount that can be borrowed under this credit agreement is subject to terms of the borrowing base, measured on a monthly basis, up to a maximum of \$30 million. As of July 31, 1999, a majority of the borrowing base was utilized. This credit agreement is secured by certain QAD assets and can be terminated voluntarily by us. Borrowings under this credit agreement bear interest equal to the LIBOR plus 2.50 percent or ABR plus 1.00 percent. ABR is the higher of the corporate base rate or the Federal Funds Effective Rate plus 0.50 percent. As of July 31, 1999, the rate was 7.8125 percent based on a LIBOR of 5.3125 plus 2.50 percent. We pay an annual commitment fee of 0.625 percent calculated on the average unused portion of the \$30 million credit line.

In April 1999, the subordinated notes totaling \$12.4 million in principal amount were paid. We funded the payoff of the subordinated notes with a draw on The First National Bank of Chicago line of credit.

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5. Restructuring Charge

In response to changes in customers' manufacturing capital software spending patterns during fiscal year 1999, we undertook a restructuring program that would, among other things, more closely align costs with sales expectations. The program included the consolidation of certain facilities and an approximate reduction of 230 positions across a broad cross-section of QAD. The restructuring plan, which resulted in a fiscal year 1999 charge of \$4.3 million, was continued in fiscal year 2000 with an additional \$1.2 million charge in the quarter ended July 31, 1999. This charge was comprised of \$0.9 million in employee reduction costs and \$0.3 million of facility consolidation costs. As of July 31, 1999, \$4.0 million of the total \$5.5 million restructuring charge was utilized and we expect to pay the remaining balance by January 31, 2003. The liability was increased by \$0.1 million during the three months ended July 31, 1999 to reflect changes in estimates used in determining the January 31, 1999 balance.

6. Business Acquisitions

During the six month period ended July 31, 1999, we acquired certain assets and liabilities of two businesses:

- . OpenPro (Pty.) Limited, a South Africa-based distributor, in February 1999.
- . ATOS Integration SA, a France-based distributor, in June 1999.

The cost of the acquisitions totaled \$0.9 million. The acquisitions were accounted for using the purchase method. Goodwill related to the acquisitions of \$0.6 million is being amortized over ten years. Results of operations have been included in the financial statements since the respective dates of acquisition.

Prior shareholders of OpenPro and ATOS have earnouts of up to \$0.8 million and \$0.9 million, respectively, which may be added to the purchase price over the next four years.

The historical operations of the companies acquired are not material, individually, or in aggregate to our consolidated operations or financial position. Therefore, supplemental pro forma information has not been presented.

7. Business Segment Information

We adopted Statement of Financial Accounting Standards No. 131 "Disclosures about Segments of an Enterprise and Related Information," or SFAS No. 131, in fiscal year 1999. SFAS No. 131 establishes annual and interim standards for

reporting financial and descriptive information regarding a company's operating segments. As a result, amounts presented are determined on a consistent basis in accordance with SFAS No. 131.

QAD operates in regions or geographic operating segments. Operations for the North America region include the United States and Canada. Operations for the Europe region include sales to customers in the Middle East and Africa. Operations for the Asia Pacific region include sales to customers in Australia and New Zealand. Management-based cost allocations have been utilized for purposes of determining regional operating income (loss).

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(In thousands)	Three Months Ended July 31,		Six Months ended July 31,	
	1999	1998	1999	1998
Revenue				
North America	\$ 25,026	\$ 28,317	\$ 45,900	\$ 55,124
Europe	21,034	11,900	42,119	21,183
Asia Pacific	9,318	6,032	17,236	13,384
Latin America	2,936	1,030	6,397	1,858
	\$ 58,314	\$ 47,279	\$ 111,652	\$ 91,549
Operating Income (Loss):				
North America	309	(2,610)	(5,819)	(3,571)
Europe	(918)	(743)	(2,881)	(3,125)
Asia Pacific	(203)	(3,429)	(1,517)	(3,861)
Latin America	(658)	(845)	(657)	(2,127)
Restructuring Charge	(1,152)	--	(1,152)	--
	\$ (2,622)	\$ (7,627)	\$ (12,026)	\$ (12,684)
	July 31, 1999	January 31, 1999		

Identifiable Assets:

North America	\$ 71,729	\$ 87,128
Europe	73,876	83,850
Asia Pacific	21,770	17,811
Latin America	9,790	11,266
	\$ 177,165	\$ 200,055

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QAD Inc.
Management's Discussion & Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with the condensed consolidated statements and notes thereto. This Quarterly Report on Form 10-Q may be deemed to include forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 that involve risk and uncertainty, including financial, business environment and trend projections. Forward-looking statements are statements other than historical information or statements of current condition and relate to future events or the future financial performance of QAD. Some forward-looking statements may be identified by use of such terms as "believes," "anticipates," "intends," "plans," "expects" or similar language indicating the expression of an opinion or view concerning the future.

Although QAD believes that its expectations are based on reasonable assumptions, we can give no assurance that our goals will be achieved. The important factors that could cause actual results to differ materially from those in the forward-looking statements herein include, without limitation, historical fluctuations in quarterly results and potential future significant fluctuations, risks associated with the sales cycle, product mix, dependence on third-party products, rapid technological change, supply chain solutions under development and underlying technology, market concentration, dependence on key personnel, dependence upon development and maintenance of sales and marketing channels, reliance on and need to develop additional relationships with third parties, risks associated with international operations, and other factors detailed in our Annual Report on Form 10-K for the year ended January 31, 1999. These factors, among other things, could cause actual results to differ materially from historical results or those currently anticipated.

Total Revenue. Total revenue for the three months ended July 31, 1999 increased 23% to \$58.3 million from \$47.3 million in the same period in 1998. Total revenue for the six months ended July 31, 1999 increased 22% to \$111.7 million from \$91.5 million in the same period in 1998. The increase in second quarter revenue over the comparable prior year period was primarily due to a 41% increase in maintenance and other revenue and a 586% increase in services revenue. The increase in year-to-date revenue over the comparable prior year period was primarily due to a 38% increase in maintenance and other revenue and a 647% increase in services revenue.

The increase in maintenance revenue was primarily due to the growing installed base. The growth in services revenue was due to a new emphasis on services that began in late fiscal year 1999 with the acquisition of several QAD distributors and the launch of our QAD Global Services business. These increases were partially offset by 28% and 27% declines in license fees for the second quarter and year-to-date periods versus the comparable prior year periods, respectively, stemming primarily from manufacturers' decisions to delay capital spending due to concerns over Year 2000 readiness.

Cost of Revenue. Cost of revenue consists primarily of charges incurred from reselling third-party databases (and associated maintenance contracts) which are required to run MFG/PRO software, the performance of software service contracts, support costs associated with MFG/PRO software maintenance contracts, and costs to reproduce and deliver QAD software. During the three months ended July 31, 1999, cost of revenue increased 146% to \$26.4 million (45% of total revenue) from \$10.7 million (23% of total revenue) in the same period in 1998. During the six months ended July 31, 1999, cost of revenue increased 130% to \$51.8 million (46% of total revenue) from \$22.5 million (25% of total revenue) in the same period in 1998. The increase as a percentage of total revenue was primarily due to a shift in revenue mix toward the lower margin services business, as well as toward externally sourced licenses which carry royalty costs.

Sales and Marketing. During the three months ended July 31, 1999, sales and marketing expense decreased 24% to \$18.6 million (32% of total revenue) from \$24.4 million (52% of total revenue) compared to the same period last year. During the six months ended July 31, 1999, sales and marketing expense decreased 12% to \$40.1 million (36% of total revenue) from \$45.4 million (50% of total revenue) compared to the same period last year. The decreased spending was primarily due to reduced personnel and directly related costs resulting from the restructuring program which began in late fiscal year 1999.

Research and Development. During the three months ended July 31, 1999, research and development expense decreased 36% to \$8.5 million (15% of total revenue) from \$13.1 million (28% of total revenue) in

the same period in the prior year. During the six months ended July 31, 1999, research and development expense decreased 29% to \$17.5 million (16% of total revenue) from \$24.5 million (27% of total revenue) compared to the same period last year. The decrease was primarily due to a reduction in the utilization of third party developers, as well as the transfer of research and development personnel into revenue generating positions within the Global Services organization in late fiscal year 1999.

General and Administrative. During the three months ended July 31, 1999, general and administrative expense decreased 5% to \$6.3 million (11% of total revenue) from \$6.7 million (14% of total revenue) in the same period in 1998.

During the six months ended July 31, 1999, general and administrative expense increased 13% to \$13.2 million (12% of total revenue) from \$11.7 million (13% of total revenue) in the same period in 1998. The increase in absolute dollars on a year-to-date basis resulted primarily from incremental expense related to the distributors acquired in late fiscal year 1999, including \$1.6 million in amortization expense for the acquired intangible assets. This increase was partially offset by a reduction in workforce related to the restructuring program implemented in late fiscal year 1999. With the continuation of the restructuring program in fiscal year 2000, the cost savings in personnel and directly related expenses incrementally improved enough during the three months ended July 31, 1999 to more than offset the additional acquisition-related costs.

Restructuring Charge. In response to changes in customers' manufacturing capital software spending patterns, we undertook a restructuring program in October 1998 that would, among other things, more closely align costs with sales expectations. This program was continued in fiscal year 2000 with an additional charge of \$1.2 million, representing \$0.9 million in employee reduction costs and \$0.3 of facility consolidation costs recorded in the second quarter.

Other (Income) Expense. Total other (income) expense is composed primarily of interest income, interest expense and foreign exchange transaction gains and losses. During the three months ended July 31 1999, other (income) expense decreased to \$0.2 million from \$(0.5) million. During the six months ended July 31, 1999, other (income) expense decreased to \$0.7 million from \$(1.8) million. The decrease was primarily due to significantly reduced interest income related to less invested cash and increased interest expense on higher debt levels.

Income Taxes. We recorded a provision for income taxes of \$1.1 million for the three and six months ended July 31, 1999. We have provided a tax provision in tax jurisdictions in which profits have been reported for the six months ended July 31, 1999. However, we have not provided a tax benefit in tax jurisdictions in which losses have been reported due to Management's determination regarding the uncertainty of realization of such tax benefits in the current year.

Liquidity and Capital Resources

We have historically financed our operations and met our capital expenditure requirements through cash flows from operations, sale of equity securities and borrowings. As of July 31, 1999, we had working capital and cash, equivalents and short-term cash investments of \$18.1 million and \$15.3 million, respectively as compared to \$20.7 million and \$19.1 million as of January 31, 1999.

Accounts receivable, net of allowance for doubtful accounts, decreased to \$76.8 million at July 31, 1999 from \$95.3 million at January 31, 1999. Accounts receivable days sales outstanding decreased to 118 days at July 31, 1999 from 131 days at January 31, 1999. We are continuing our focus on sales terms and collection processes to improve cash flows and working capital.

Cash flows used in operating activities were \$2.4 million and \$11.0 million for the six months ended July 31, 1999 and 1998, respectively. The fiscal year 2000 decline in cash usage related to the increased net loss, more than offset by increased depreciation/amortization and significantly higher accounts receivable collections. Cash flows used in investing activities aggregated \$2.0 million and \$11.9 million in the six months ended July 31, 1999 and 1998, respectively and primarily related to investment in computer equipment, office furniture and capitalized software development costs, partially offset in 1999 by the sale of short-term investments. Cash flows provided by financing activities totaled \$4.3 million and \$0.9 million for the six months ended July 31, 1999 and 1998, respectively, and were comprised of net proceeds from borrowings and issuance of common stock. At July 31, 1999, we had no material commitments for capital expenditures.

In April 1999, we entered into a secured credit agreement with The First National Bank of Chicago, which expires and will be due on April 18, 2002. The maximum amount that can be borrowed under this credit agreement is subject to terms of the borrowing base, measured on a monthly basis, up to a maximum of \$30 million. As of July 31, 1999, a majority of the borrowing base was utilized. This credit agreement is secured by certain QAD assets and can be terminated voluntarily by us. Borrowings under this credit agreement bear interest equal to the LIBOR plus 2.50 percent or ABR plus 1.00 percent. ABR is the higher of the corporate base rate or the Federal Funds Effective Rate plus 0.50 percent.

As of July 31, 1999, the rate was 7.8125 percent based on a LIBOR of 5.3125 plus 2.50 percent. We pay an annual commitment fee of 0.625 percent calculated on the average unused portion of the \$30 million credit line.

We believe that the cash on hand and the available borrowings under the credit agreement will provide us with sufficient resources to meet our working capital requirements, debt service and other cash needs for the next twelve months.

Year 2000 Compliance

Our business operations are significantly dependent upon the same proprietary software products we license to customers. Our management believes it has successfully addressed Y2K readiness in our proprietary software products and does not anticipate any business interruptions associated with these applications. To ensure that we have adequately addressed exposures related to Y2K and to ensure that we are Y2K ready, we have established a Y2K program that includes business partners and other third-party relationships. We define systems as "Y2K ready" if they are either "Y2K compliant" or otherwise will operate without any substantial decrease in performance as a result of processing date data into the next century. "Y2K compliant" means the system must perform fault-free in the processing of date and date related data (including calculating, comparing and sequencing) by all software components individually and in combination, upon installation. Fault-free performance includes the manipulation of this data with dates prior to, through and beyond January 1, 2000.

Our Y2K program consists of these five phases: 1) Assessment, 2) Planning, 3) Resources, 4) Technology and 5) Reporting. These phases are defined as follows:

- 1) Assessment - which identifies the magnitude of Y2K exposure, a process that includes estimating the business risk of not becoming Y2K compliant, determining our potential areas for Y2K exposure, and developing an internal definition of compliance;
- 2) Planning - which details corporate planning efforts, including taking inventory and analyzing our systems for Y2K impact and developing contingency plans for systems that pose unusual compliance issues;
- 3) Resources - which ensures that funds and resources are sufficient, given the magnitude of the Y2K plan. This is facilitated by obtaining funds through internal mechanisms and assessing staff capacity for remediation and testing;
- 4) Technology - which executes the work needed to repair or retire existing systems, through a process which includes programming, code testing, user testing data conversion and program implementation
- 5) Reporting - which includes providing status of program activities to business and regulatory bodies.

We have completed the first three phases and are near completion of our fourth phase in addressing the readiness of our information technology (IT) systems, excluding our proprietary software products which QAD believes to be generally Y2K compliant currently. We are in the "Resources" phase with regard to our state of readiness for areas classified as non-IT systems. We are almost complete with the fourth phase, which encompasses "Technology" for third-party products that constitute material relationships. We expect to have substantially completed all five phases by October 31, 1999.

As of July 31, 1999, the direct costs incurred to remediate Y2K issues were not material. Costs directly attributed to our overall Y2K program are estimated to be approximately \$1.1 million.

Significant uncertainty exists in the software industry concerning the potential effects associated with Y2K readiness. Although we currently offer software products that are designed and have been tested to be ready for the Year 2000, there can be no assurance that our software products contain all necessary date code changes. Furthermore, it has been widely reported that a significant amount of litigation surrounding business interruptions will arise out of Y2K issues. It is uncertain whether, or to what extent, this type of

litigation may affect us. Additionally, third-party software, computer and

other equipment used internally may materially impact us if it is not Y2K compliant. Our operations may be at risk if our suppliers and other third parties fail to adequately address the problem or if software conversions result in system incompatibilities. This issue could result in system failures, the generation of erroneous information, and other significant disruptions of business activities. To the extent that either QAD or a third-party vendor or service provider on which we rely does not achieve Y2K readiness, we may be adversely impacted. As part of the five-phase process outlined above, we are developing specific contingency plans in connection with the assessment and resolution of the risks identified. We have established certain IT contingency plans, and we are continuing to develop additional plans regarding each specific area of risk associated with this issue as part of our Y2K program. We also hold insurance coverage for errors and omissions, which includes coverage for customer claims associated with certain Y2K issues.

QAD Inc.

Quantitative and Qualitative Disclosures About Market Risk

Foreign Exchange. QAD is subject to risks typical of a global business, including, but not limited to differing economic conditions, changes in political climate, differing tax structures, other regulations and restrictions and foreign exchange volatility. Historically, our revenue from international operations has primarily been denominated in United States dollars. We have generally priced our products in United States dollars and over 90 percent of our sales in the fiscal years 1997, 1998 and 1999, were denominated in United States dollars, with the remainder in approximately ten different currencies. Due to recent acquisitions of several international distributors and the launch of the QAD Global Services business, we expect that a growing percentage of our business will be conducted in currencies other than the United States dollar. We also incur a significant portion of our expenses in currencies other than the United States dollar. As a result, fluctuations in the values of the respective currencies relative to the other currencies in which we generate revenue could materially adversely affect us. While we may in the future change our pricing practices, an increase in the value of the United States dollar relative to foreign currencies could make QAD software products more expensive and, therefore, less competitive in other markets.

Fluctuations in currencies relative to the United States dollar have affected and will continue to affect period-to-period comparison of our reported results of operations. For the six months ended July 31, 1999 and 1998, (gains) and losses resulting from foreign currency transactions and remeasurement adjustments for those foreign entities whose books of record are not maintained in the functional currency totaled \$0.1 million and \$(0.2) million, respectively. Due to the constantly changing currency exposures and the volatility of currency exchange rates, there can be no assurance that we will not experience currency losses in the future, nor can we predict the effect of exchange rate fluctuations upon future operating results. We continue to evaluate our currency management policies. Although we do not currently undertake hedging transactions, we may choose to hedge a portion of our currency exposure in the future as we deem appropriate.

Interest Rates. QAD invests its surplus cash in a variety of financial instruments, consisting principally of bank time deposits and short-term marketable securities with maturities of less than one year. QAD's investment securities are held for purposes other than trading. Cash balances held by subsidiaries are invested in short-term time deposits with the local operating banks. QAD accounts for its investment instruments in accordance with Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investment in Debt and Equity Securities" ("SFAS 115"). All of the cash equivalent and short-term investments are treated as "available for sale" under SFAS 115. Investments in both fixed rate and floating rate interest earning instruments carry a degree of interest rate risk. Fixed rate securities may have their fair market value adversely impacted due to a rise in interest rates, while floating rate securities may produce less income than expected if interest rates fall. Due in part to these factors, our future investment income may fall short of expectations due to changes in interest rates or we may suffer losses in principal if forced to sell securities which have seen a decline in market value due to changes in interest rates.

Item 1 - Legal Proceedings

Not applicable

Item 2 - Changes in Securities

Not applicable

Item 3 - Defaults upon Senior Securities

Not applicable

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

At the annual meeting of stockholders held on June 22, 1999, the following proposals were adopted by the margins indicated:

- (1) To elect one director to hold office for a term of one year until the annual meeting of stockholders in the year 2000 (Class I Director):

	Votes For -----	Votes Withheld -----
Evan M. Bishop	27,130,546	793,918

Karl F. Lopker and Pamela M. Lopker continue as directors and were elected at the prior year's annual meeting for a term of two years (Class II directors). Peter R. van Cuylenburg and Koh Boon Hwee also continue as directors and were elected at the prior year's annual meeting for a term of three years (Class III directors).

- (2) Increase of four million shares to the QAD Inc. 1997 Stock Incentive Program.

Votes For -----	Votes Against -----	Abstentions -----
20,893,937	1,436,225	33,633

- (3) Ratification of appointment of KPMG LLP as the Company's independent auditors for the Company's 2000 fiscal year.

Votes For -----	Votes Against -----	Abstentions -----
27,839,761	56,771	27,932

Item 5 - Other Information

Not applicable

Item 6 - Exhibits and Reports on Form 8-K

a) Exhibits

- 10.1 Second Amendment to Credit Agreement between QAD Inc. and The First National Bank of Chicago (incorporated by reference to Exhibit 10.1 to QAD Inc.'s Current Report on Form 8-K filed June 25, 1999.)

- 10.2 Eighth Amendment to Office Lease between the Registrant and Matco Enterprises, Inc. for Suites I, K, L, C, J and Basement Room B located at 5464 Carpinteria Avenue, Carpinteria, California dated February 18, 1999.

- 10.3 Lease Surrender and Termination Agreement between Registrant and Cito Corp. for the premises located at 201 North Salispuedes Street, Suite 101 and 520 East Montecito Street, Suite 200, Santa Barbara, California dated December 3, 1998.

- 10.4 Lease Termination Agreement between Registrant and Wright and Company for Suites 1 and 2 located at 6430 Via Real, Carpinteria, California dated September 9, 1999.

10.45 Related Facility Credit Agreement between the Registrant and The First National Bank of Chicago.

27 Financial Data Schedule

b) Reports on Form 8-K

On June 25, 1999, QAD filed a Current Report on Form 8-K disclosing that we entered into a Second Amendment to Credit Agreement with The First National Bank of Chicago. The amendment was filed as Exhibit 10.1 to the Form 8-K.

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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.

QAD INC.
(Registrant)

Date: September 13, 1999

By /s/ A.J. MOYER

A.J. Moyer
Chief Financial Officer
(on behalf of the registrant and as
Principal Financial Officer)

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EIGHTH AMENDMENT TO OFFICE LEASE

This Eighth Amendment to Office Lease is entered into between Matco Enterprises, Inc., a Washington corporation, hereinafter referred to as "Landlord", and QAD Inc., a California corporation, hereinafter referred to as "Tenant".

This Eighth Amendment To Office Lease is made in reference to the following facts:

A. Landlord and Tenant entered into an Office Lease dated November 30, 1992, for Suites I, K and L located at 5464 Carpinteria Avenue, Carpinteria, California, hereinafter "Office Lease".

B. Landlord and Tenant entered into a First Amendment To Office Lease dated September 9, 1993, whereby Landlord leased Suites C and H to Tenant on the terms and conditions of the First Amendment To Office Lease.

C. Landlord and Tenant entered into a Second Amendment To Office Lease dated January 14, 1994, whereby Landlord leased Suite J to Tenant on the terms and conditions of the Second Amendment To Office Lease.

D. Landlord and Tenant entered into Third Amendment To Office Lease dated January 14, 1994, whereby Landlord leased Room B in the basement and temporarily leased Room C in the basement on the terms and conditions of the Third Amendment To Office Lease.

E. Landlord and Tenant entered into a Fourth Amendment To Office Lease dated February 15, 1994, whereby Landlord and Tenant agreed the Office lease would terminate as to Suite H only.

F. Landlord and Tenant entered into a Fifth Amendment To Office Lease dated September 12, 1994, whereby Landlord leased Suite G and E to Tenant on the terms and conditions of the Fifth Amendment To Office Lease.

G. Landlord and Tenant entered into a Sixth Amendment To Office Lease dated October 30, 1996, whereby Landlord leased Suites A, B, D, F, H and Basement Room A to Tenant on the terms and conditions of the Sixth Amendment To Office Lease.

H. Landlord and Tenant entered into a Seventh Amendment To Office Lease dated February, 1998, memorializing the terms and conditions of Tenant's exercise of its first one year option to renew the lease for one additional year for Suites I, K, L, C, J and Basement B.

I. The Tenant desires to exercise its second option to renew the lease for Suites I, K, L, C, J and Basement Room B pursuant to the terms and conditions of the Office Lease as amended.

IT IS AGREED:

1. RENEWAL OF LEASE.

Tenant hereby exercises the second option to renew the lease as to Suites I, K, L, C, J and Basement Room B from March 9, 1999 to March 8, 2000. Tenant and Landlord agree that Tenant,

shall now exercise the third option to renew the lease as to Suites I, K, L, C, J and Basement Room B from March 9, 2000 to March 8, 2001. This renews the term of the lease as to Suite I, K, L, C, J and Basement Room B for the period March 9, 1999 through and including March 8, 2001.

2. RENT FOR SUITES I, K, L, C AND J.

Tenant shall pay to Landlord as minimum monthly rent without deduction, setoff, prior notice, or demand, the sum of \$37,425.95 (\$1.45/per square foot for 25,811 square feet of net rentable square footage of Suites I, K, L, C and

J) in advance on the first day of each month commencing April 1, 1999 and continuing during the term of the renewal of the Lease provided for above. Minimum monthly rent for any partial month, including the first month and last month of the renewal period shall be prorated at the rate 1/30/th/ of the minimum monthly rent per day. The rent for the first eight days of the month of March, 1999 shall be prorated at the daily rate of 1/30/th/ of the monthly rent charged for February, 1999.

3. RENT FOR BASEMENT ROOM B.

Tenant shall pay to Landlord as minimum monthly rent without deduction, setoff, prior notice, or demand, the sum of \$971.20 (\$0.80/per square foot for 1,214 square feet of net rentable square footage of Basement Room B) in advance on the first day of each month commencing April 1, 1999 and continuing during the term of the renewal of the Lease provided for above. Minimum monthly rent for any partial month, including the first month and last month of the renewal period shall be prorated at the rate of 1/30/th/ of the minimum monthly rent per day. The rent for the first eight days of the month of March, 1999 shall be prorated at the daily rate of 1/30/th/ of the monthly rent charged for February, 1999.

4. ADDITIONAL TERMS.

Except where inconsistent with this Eighth Amendment To Office Lease, the terms and conditions of the Office Lease, as amended in the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments To Office Lease, shall apply equally to this renewal option period for Suites I, K, L, C, J and Basement Room B as to the remainder of the building, including the cost of living adjustment of January 1/st/ of each year pursuant to the terms of Paragraph 5(b) of the Office Lease.

IN WITNESS WHEREOF, the parties have executed this Eighth Amendment To Office Lease on February ___, 1999.

LANDLORD: MATCO ENTERPRISES, INC., a
Washington corporation

By _____
MERIKO TAMAKI, President

TENANT: QAD Inc.

By _____
KARL LOPKER, CEO

By _____
PAM LOPKER, _____

LEASE SURRENDER AND TERMINATION AGREEMENT

I. PARTIES AND DATE.

THIS LEASE SURRENDER AND TERMINATION AGREEMENT ("Agreement") is dated as of December 3, 1998, and is made by and among Cito Corp. ("Landlord") and QAD Inc. ("Tenant").

II. RECITALS.

A. Tenant is a party to the certain Standard Lease (the "Lease") dated December 29, 1997 for the Premises known as 201 North Salsipuedes Street, Suite 101 and 520 East Montecito Street, Suite 200. The capitalized terms used and not otherwise defined herein shall have the same definitions as set forth in the Lease.

B. Landlord and Tenant desire to terminate the Lease upon the terms and conditions contained in this Agreement.

III. TERMINATION.

A. Date. Landlord and Tenant agree that the Lease shall terminate on -----
December 31, 1998 ("Termination Date"), on the condition that Tenant fulfill each and every term and obligation contained herein in a timely manner.

B. Surrender of Lease. Effective as of the Termination Date, tenant -----
surrenders, forfeits and quitclaims any and all interest in and to the Lease to Landlord, including without limitation any and all option rights.

C. Acceptance. Subject to and conditioned upon the terms, agreements, -----
and representations herein contained, Landlord accepts the termination of the Lease as of the Termination Date.

D. Consideration. In consideration of Landlord's acceptance of the -----
foregoing termination, tenant hereby agrees to pay Landlord \$90,000 per the following schedule:

\$50,000 on or before January 1, 1999
\$20,000 on or before March 1, 1999
\$20,000 on or before May 1, 1999

\$90,000 Total Consideration

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E. Release. Except as expressly set forth in this Agreement, Landlord -----
and Tenant, and their respective officers, directors, shareholders, employees, partners, successors and assigns, hereby mutually release each other and each of their respective officers, directors, shareholders, employees, partners, successors and assigns, from any and all claims, demands, actions, liabilities and obligations, whether known or unknown, which they now have or which may hereafter accrue in the future arising prior to the date of this Agreement under and/or in connection with the Lease, including without limitation, the events and circumstances surrounding the entering into of the Lease. The parties shall, after the Termination Date, have no claim or demand against each other in connection with the Lease, provided however, that nothing in this Agreement -----
shall be deemed to release Tenant from (i) any liability arising on or before the Termination Date related to Tenant's use, occupancy or control of the Premises during the Term; (ii) the obligation to pay Rent and other payments due to Landlord on or before the Termination Date which has not been received by

Landlord as of the Termination Date; (iii) the obligations of Tenant under the Lease regarding surrender of the Premises, including but not limited to the specific obligations and duties set forth in the Lease; and (iv) any damages, expenses and liabilities accruing after the Termination Date arising out of the failure of Tenant to surrender the Premises to Landlord on the Termination Date, or of any of Tenant's representations and warranties set forth herein being untrue or inaccurate.

F. General Release. Except as expressly set forth in this Agreement, it

is the intention of the parties in executing this Agreement that this Agreement shall be effective as a full and final accord and satisfaction and general release from any and all matters released hereunder. In furtherance of this intention, the parties acknowledge that each is familiar with Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

"The parties do hereby waive and relinquish all rights and benefits which each has or may have had under Section 1542 of the California Civil Code with respect to the subject matter of this Agreement. It is understood by the parties that if the facts or law with respect to which the foregoing general release is given hereafter turnout to be other than or different from the facts for law in that connection not known to be or believed by either party to be true, then each party hereto expressly assumes the risk of the facts or law turning out to be so different, and agrees that the foregoing release shall be in all respects effective and not subject to termination or rescission based upon differences in facts or law.

G. Tenant's Representations and Warranties. Tenant hereby represents

and warrants to Landlord that (i) Tenant has not previously assigned its interest in and to the Lease or sublet all or any portion of the Premises; (ii) Tenant has not caused or permitted any release or disposal on, under, within or from the Premises of any Hazardous Materials, and as of the Termination Date shall have properly removed from the Premises all Hazardous Materials stored or used by or on behalf of Tenant within the Premises; and (iii) tenant has not violated any Applicable Laws with respect to Tenant's use or occupancy of the Premises which violation shall not have been remedied by Tenant on or before the Termination Date.

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IV. GENERAL.

A. Attorney's Fees. The provisions of the Lease respecting attorney's

fees shall apply to this Agreement.

B. Authority to Execute Agreement. Each individual executing this

Agreement on behalf of a partnership or corporation represents that he or she is duly authorized to execute and deliver this Agreement on behalf of the partnership and/or corporation and agrees to deliver evidence of his or her authority to Landlord upon request by Landlord.

C. Governing Law. This Agreement and any enforcement of the agreements,

acknowledgments and representations of Landlord and Tenant set forth above shall be governed by and construed in accordance with the laws of the State of California.

D. Counterparts. If this Agreement is executed in counterparts, each

counterpart shall be deemed an original.

E. Time of Essence. Time is of the essence as to each of the terms,

provisions, conditions and requirements set forth herein.

LANDLORD: Cito Corporation

TENANT: QAD Inc.

By: _____

By: _____

Its: _____

Its: _____

(Printed on Wright & Company letterhead)

September 8, 1999

QAD Inc.
6450 Via Real
Carpinteria, CA 93013

Attn: Marsha Eslick

RE: South Coast Business Park, Carpinteria, California
6430 Via Real, Suite's 1 & 2
Termination of Lease

Dear Marsha:

This is to confirm that QAD Inc., (Lessee) will surrender possession of the above mentioned leasehold and that South Coast Business Park (Lessor) will accept the surrender on September 30, 1999. The Lease shall be cancelled and terminated and Lessor and Lessee shall be relieved from any and all rights and responsibilities set forth in the lease as of September 30, 1999.

Please have this letter accepted and returned for our signature and we will see that you get a copy for your files.

Cordially,

Tony Bortolazzo

TB:jwb

AGREED:

QAD Inc. (Lessee)

By: _____
Barry Anderson, Executive Vice President Date

South Coast Business park (Lessor)

By: _____
Date

RELATED FACILITY CREDIT AGREEMENT

by and among

_____,
as Subsidiary Borrower

THE LENDERS FROM TIME TO TIME PARTY HERETO

and

THE FIRST NATIONAL BANK OF CHICAGO,
as Administrative Agent for the Lenders

_____, _____

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Various subsidiaries of QAD entered into agreements with The First National Bank of Chicago that are substantially identical to the above document. QAD will file the omitted documents upon request by the Commission.

Parties -----	Dated as of -----	Material Differences -----
QAD Europe BV	June 23, 1999	None
QAD Australia Pty Limited	June 23, 1999	Sub-Limit of \$3,000,000
QAD Europe Ltd	August 3, 1999	None

RELATED FACILITY CREDIT AGREEMENT

This Agreement, dated as of _____, ____, is among _____, a _____, the Lenders and THE FIRST NATIONAL BANK OF CHICAGO, as Agent and is a "Related Facility Credit Agreement" as that term is used in the Parent Credit Agreement (as defined below). The parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1. Incorporation of Parent Credit Agreement Definitions. Capitalized terms used herein and not otherwise defined are used with the meanings given such terms in the Parent Credit Agreement.

1.2. Additional Definitions. The following capitalized terms used herein shall have the following meanings:

"Agreement" means this credit agreement, as it may be amended or modified and in effect from time to time.

"Borrowing Base Certificate" means a certificate in the form of that attached hereto as Exhibit A.

"Borrowing Date" means a date on which a Subsidiary Borrower Advance is made hereunder.

"Collateral Value of the Subsidiary Borrower Borrowing Base" means on any date __% of the unpaid principal balance (net of any credit balance, trade discount or unbilled amount or retention) of all Eligible Accounts on such date.

"Default" means an event described in Article VII.

"Eligible Account" means an account receivable of the Subsidiary Borrower for which each of the following statements is accurate and complete (and the Subsidiary Borrower by including such account receivable in any computation of the Borrowing Base shall be deemed to so represent and warrant to the Agent and the Lenders):

- (i) Said account receivable is a binding and valid obligation of the obligor thereon, in full force and effect and enforceable in accordance with its terms.
- (ii) Said account receivable is genuine, in all respects as appearing on its face or as represented in the books and records of the Subsidiary Borrower, and all information set forth therein is true and correct.
- (iii) Said account receivable is free of all default of any party thereto, counterclaims, and, to the knowledge of the Subsidiary Borrower,

offsets and defenses and from any rescission, cancellation or avoidance, and all right thereof, whether by operation of law or otherwise.

- (iv) The payment of said account receivable is not more than 90 days past due the invoice date thereof.
- (v) Said account receivable is free of concessions or understandings with the obligor thereon of any kind not disclosed to and approved by the Agent in writing.
- (vi) Said account receivable is, and at all times will be, free and clear of all liens, encumbrances, charges, rights and interests of any kind, except a first priority, perfected security interest in

Page 2

favor of the Agent for the benefit of the Lenders.

- (vii) Said account receivable is derived from sales made or services rendered to the obligor in the ordinary course of the Subsidiary Borrower's business (other than the sale of minerals or the like, including oil and gas, at the wellhead or minehead).
- (viii) The obligor on said account receivable (a) is located within Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Spain, Sweden, Switzerland, The Netherlands or the United Kingdom; (b) is not the subject of any bankruptcy or insolvency proceeding, nor has a trustee or receiver been appointed for all or a substantial part of its property, nor has said obligor made an assignment for the benefit of creditors, admitted its inability to pay its debts as they mature or suspended its business; (c) is not affiliated, directly or indirectly, with the Parent or the Subsidiary Borrower, as a Subsidiary or other Affiliate, employee or otherwise; and (d) is not a state or federal governmental department, commission, board, bureau or agency.
- (ix) Said account receivable did not arise from sales to an obligor as to whom 25% or more of the total accounts receivable owing by such obligor to the Subsidiary Borrower are delinquent more than 90 days from the invoice date thereof.
- (x) Said account receivable did not arise from sales to an obligor whose total accounts receivable owing to the Subsidiary Borrower, to all Other Subsidiary Borrowers and to the Parent constitute more than 5% of all of the Subsidiary Borrower's, the Other Subsidiary Borrowers' and the Parent's outstanding accounts receivable.
- (xi) Said account receivable is otherwise satisfactory to the Agent, in its reasonable credit judgment.

"Eurocurrency Advance" means a Subsidiary Borrower Advance which, except as otherwise provided in Section 2.11, bears interest at the applicable Eurocurrency Rate.

"Eurocurrency Loan" means a Subsidiary Borrower Loan which, except as otherwise provided in Section 2.11, bears interest at the applicable Eurocurrency Rate.

"Floating Rate Advance" means a Subsidiary Borrower Advance which, except as otherwise provided in Section 2.11, bears interest at the Floating Rate.

"Floating Rate Loan" means a Subsidiary Borrower Loan which, except as otherwise provided in Section 2.11, bears interest at the Floating Rate.

"Guaranty" means a guaranty in the form of that attached hereto as Exhibit -----
B executed by the Parent in favor of the Agent, for the ratable benefit of the
-
Lenders, and covering the Subsidiary Borrower Obligations, as it may be amended, extended or replaced from time to time.

"Lenders" means the lending institutions from time to time party to the Parent Credit Agreement, with the current "Lenders" listed on the signature

pages of this Agreement, and their respective successors and assigns.

"Note" means any promissory note issued at the request of a Lender pursuant to Section 2.14 in the form of Exhibit C.

"Other Related Facility Credit Agreements" means each of the Related Facility Credit Agreements other than this Agreement.

"Other Related Facility Loan" means each "Subsidiary Borrower Loan" advanced under (and as the term "Subsidiary Borrower Loan" is defined in) each of the Other Related Facility Credit Agreements.

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"Other Subsidiary Borrowers" means the "Subsidiary Borrowers" under each of the Other Related Facility Credit Agreements.

"Parent" means QAD Inc., a Delaware corporation, its successors and assigns.

"Parent Credit Agreement" means that certain Credit Agreement dated as of April 19, 1999 by and among the Parent, the Agent and the Lenders, as the same may be amended, extended and replaced from time to time.

"Subsidiary Borrower" means _____, a _____, and its successors and assigns.

"Subsidiary Borrower Advance" means a borrowing hereunder, (i) made by the Lenders on the same Borrowing Date, or (ii) converted or continued by the Lenders on the same date of conversion or continuation, consisting, in either case, of the aggregate amount of the several Subsidiary Borrower Loans of the same Type and, in the case of Eurocurrency Loans, in the same Agreed Currency and for the same Interest Period.

"Subsidiary Borrower Collateral Documents" means, collectively and severally, the Subsidiary Borrower Security Agreement and each other document, instrument and agreement delivered by or on behalf of the Subsidiary Borrower pursuant to Section 2.22.

"Subsidiary Borrower Loan" means, with respect to a Lender, such Lender's loan made pursuant to Article II (or any conversion or continuation thereof).

"Subsidiary Borrower Loan Documents" means this Agreement, any Notes issued pursuant to Section 2.14, the Subsidiary Borrower Collateral Documents and any additional documents, instruments and agreements executed by the Subsidiary Borrower in connection herewith or therewith.

"Subsidiary Borrower Obligations" means all unpaid principal of and accrued and unpaid interest on the Subsidiary Borrower Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Subsidiary Borrower to the Lenders or to any Lender, the Agent, or any indemnified party arising under the Subsidiary Borrower Loan Documents.

"Subsidiary Borrower Pledged Shares" is defined in Paragraph 3(a) of the Subsidiary Borrower Security Agreement.

"Subsidiary Borrower Security Agreement" means a security agreement in the form of that attached hereto as Exhibit D.

"Type" means, with respect to any Subsidiary Borrower Advance, its nature as a Floating Rate Advance or a Eurocurrency Advance.

1.3. Inconsistency. In the event of any inconsistency between the _____ definition given a capitalized term hereunder and the definition, if any, given such term under the Parent Credit Agreement, the definition contained herein shall supersede and govern.

ARTICLE II

THE CREDIT

2.1. Commitment. From and including the date of this Agreement and

prior to the Facility Termination Date, each Lender severally agrees, on the terms and conditions set forth in this Agreement, to fund its Pro Rata Share of Subsidiary Borrower Advances to the Subsidiary Borrower in Agreed Currencies, provided that after giving effect to the making of each such Subsidiary Borrower Advance:

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- (i) such Lender's Outstanding Credit Exposure shall not exceed the Dollar Amount of its Commitment;
- (ii) the aggregate Dollar Amount of Subsidiary Borrower Loans outstanding hereunder shall not exceed the lesser of:
 - (1) the Aggregate Commitment minus the sum of: (a) the aggregate Dollar Amount of Loans and Facility LCs outstanding under the Parent Credit Agreement, plus (b) the aggregate Dollar Amount of Other Related Facility Loans outstanding under the Other Related Facility Credit Agreements, and
 - (2) The sum of the Collateral Value of the Borrowing Base under the Parent Credit Agreement plus the Collateral Value of the Subsidiary Borrower Borrowing Base minus the sum of: (a) the aggregate Dollar Amount of Loans and Facility LCs outstanding under the Parent Credit Agreement, plus (b) the aggregate Dollar Amount of Parent Collateral Supported Related Facility Loans outstanding under the Other Related Facility Credit Agreements, plus the outstanding Dollar Amount of Indebtedness permitted under Section 6.11(iv) of the Parent Credit Agreement in excess of \$5,000,000; and
- (iii) the aggregate Dollar Amount of Subsidiary Borrower Loans outstanding hereunder in currencies other than the Dollar plus the Dollar Amount of Loans outstanding under the Parent Credit Agreement and Other Related Facility Loans outstanding under the Other Related Facility Credit Agreements in currencies other than the Dollar shall not exceed \$20,000,000.

Subject to the terms of this Agreement, the Subsidiary Borrower may borrow, repay and reborrow at any time prior to the Facility Termination Date. The Commitments to extend credit hereunder, under the Parent Credit Agreement and under the Other Related Facility Credit Agreements shall expire on the Facility Termination Date.

2.2. Required Payments; Termination. Subject to the mandatory

prepayment requirements of Section 2.6(ii) below, all outstanding Subsidiary Borrower Loans and all other unpaid Subsidiary Borrower Obligations shall be paid in full by the Subsidiary Borrower on the Facility Termination Date.

2.3. Ratable Subsidiary Borrower Loans. Each Subsidiary Borrower

Advance hereunder shall consist of Subsidiary Borrower Loans made from the several Lenders ratably according to their Pro Rata Shares.

2.4. Types of Advances. The Subsidiary Borrower Advances may be

Floating Rate Advances or Eurocurrency Advances, or a combination thereof, selected by the Subsidiary Borrower in accordance with Sections 2.7 and 2.8.

2.5. Minimum Amount of Each Advance. Each Eurocurrency Advance shall be

in the minimum amount of \$1,000,000 and in multiples of \$500,000 if in excess thereof (or the Approximate Equivalent Amounts if denominated in an Agreed Currency other than Dollars), and each Floating Rate Advance shall be in the minimum amount of \$1,000,000 and in multiples of \$500,000 if in excess thereof, provided, however, that any Floating Rate Advance may, subject to the limitations of Section 2.1, be in the amount of the Available Aggregate Commitment.

2.6. Optional and Mandatory Principal Payments. (i) The Subsidiary

Borrower may from time to time pay, without penalty or premium, all outstanding Floating Rate Advances in their entirety or portions thereof in the minimum amount of \$1,000,000 and multiples of \$500,000 in excess thereof upon one Business Day's prior notice to the Agent. The Subsidiary Borrower may from time to time pay, subject to the payment of any funding indemnification amounts required by Section 3.3 but without penalty or premium, all

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outstanding Eurocurrency Advances in their entirety or portions thereof in the minimum amount of \$1,000,000 and multiples of \$500,000 in excess thereof (or the Approximate Equivalent Amount if denominated in an Agreed Currency other than Dollars), upon three Business Days' prior notice to the Agent.

(ii) If at any time the Dollar Amount of the aggregate principal amount of all outstanding Subsidiary Borrower Advances (calculated, with respect to those Advances denominated in Agreed Currencies other than Dollars, as of the most recent Computation Date with respect to each such Advance) exceeds the amounts permitted under Section 2.1 above, the Subsidiary Borrower shall immediately repay Subsidiary Borrower Advances in an aggregate principal amount sufficient to eliminate any such excess.

2.7. Method of Selecting Types and Interest Periods for New Advances.

The Subsidiary Borrower shall select the Type of Subsidiary Borrower Advance and, in the case of each Eurocurrency Advance, the Interest Period and Agreed Currency applicable thereto from time to time; provided, however, that all Subsidiary Borrower Advances shall be requested by the Subsidiary Borrower through the Parent pursuant to a Borrowing Notice and/or Conversion/Continuation Request presented by the Parent, acting as exclusive representative for the Subsidiary Borrower, to the Agent as provided in Section 2.8 of the Parent Credit Agreement.

2.8. Conversion and Continuation of Outstanding Advances. Outstanding

Subsidiary Borrower Advances may be continued and converted at the election of the Subsidiary Borrower acting through the Parent on the terms and subject to the conditions set forth in Section 2.9 of the Parent Credit Agreement.

2.9. Method of Borrowing. On each Borrowing Date, each Lender shall

make available its Pro Rata Share of Subsidiary Borrower Advances, (i) if such Subsidiary Borrower Advance is denominated in Dollars, not later than noon, Chicago time, in Federal or other funds immediately available to the Agent, in Chicago, Illinois at its address specified in or pursuant to Article XIII, and (ii) if such Subsidiary Borrower Advance is denominated in an Agreed Currency other than Dollars, not later than noon, local time, in the city of the Agent's Eurocurrency Payment Office for such currency, in such funds as may then be customary for the settlement of international transactions in such currency in the city of and at the address of the Agent's Eurocurrency Payment Office for such currency. Unless the Agent determines that any applicable condition specified in Article IV has not been satisfied, the Agent will make the funds so received from the Lenders available to the Subsidiary Borrower at the Agent's aforesaid address. Notwithstanding the foregoing provisions of this Section 2.9, to the extent that a Subsidiary Borrower Loan made by a Lender matures on the Borrowing Date of a requested Subsidiary Borrower Loan, such Lender shall apply the proceeds of the Subsidiary Borrower Loan it is then making to the repayment of principal of the maturing Subsidiary Borrower Loan.

2.10. Changes in Interest Rate, etc. Each Floating Rate Advance shall

bear interest on the outstanding principal amount thereof, for each day from and including the date such Floating Rate Advance is made or is automatically converted from a Eurocurrency Advance into a Floating Rate Advance pursuant to Section 2.8, to but excluding the date it is paid or is converted into a Eurocurrency Advance pursuant to Section 2.8 hereof, at a rate per annum equal to the Floating Rate for such day. Changes in the rate of interest on any Floating Rate Advance will take effect simultaneously with each change in the Alternate Base Rate. Each Eurocurrency Advance shall bear interest on the outstanding principal amount thereof from and including the first day of the Interest Period applicable thereto to (but not including) the last day of such Interest Period at the interest rate determined by the Agent as applicable to

such Eurocurrency Advance based upon the Subsidiary Borrower's selections under Sections 2.7 and 2.8 and otherwise in accordance with the terms hereof. No Interest Period may end after the Facility Termination Date.

2.11. Rates Applicable After Default. Notwithstanding anything to the

contrary contained in Section 2.7 or 2.8, during the continuance of a Default or Unmatured Default the Required Lenders may, at their option, by notice to the Subsidiary Borrower, declare that no Subsidiary Borrower Advance may be made as, converted into or continued as a Eurocurrency Advance. During the continuance of a Default the Required Lenders may, at their option, by notice to the Subsidiary Borrower, declare that (i) each Eurocurrency Advance shall bear interest for the remainder of the applicable Interest Period at the rate otherwise applicable to such Interest Period plus 2% per annum, and (ii) each Floating Rate Advance shall bear interest at a rate per annum equal to the Floating Rate in effect from time to time plus 2% per annum, provided that, during the

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continuance of a Default under Section 7.7 or 7.8, the interest rates set forth in clauses (i) and (ii) above shall be applicable to all Subsidiary Borrower Loans without any election or action on the part of the Agent or any Lender.

2.12. Method of Payment. (i) Each Subsidiary Borrower Advance shall be

repaid and each payment of interest thereon shall be paid in the currency in which such Subsidiary Borrower Advance was made or, where such currency has converted to the Euro, in the Euro. All payments of the Subsidiary Borrower Obligations hereunder shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Agent at (except as set forth in the next sentence) the Agent's address specified pursuant to Article XIII, or at any other Lending Installation of the Agent specified in writing by the Agent to the Subsidiary Borrower, by noon (local time) on the date when due and shall be applied ratably by the Agent among the Lenders. All payments to be made by the Subsidiary Borrower hereunder in any currency other than Dollars shall be made in such currency on the date due in such funds as may then be customary for the settlement of international transactions in such currency for the account of the Agent, at its Eurocurrency Payment Office for such currency and shall be applied ratably by the Agent among the Lenders. Each payment delivered to the Agent for the account of any Lender shall be delivered promptly by the Agent to such Lender in the same type of funds that the Agent received at, (a) with respect to Floating Rate Loans and Eurocurrency Loans denominated in Dollars, its address specified pursuant to Article XIII or at any Lending Installation specified in a notice received by the Agent from such Lender and (b) with respect to Eurocurrency Loans denominated in an Agreed Currency other than Dollars, in the funds received from the Subsidiary Borrower at the address of the Agent's Eurocurrency Payment Office for such currency. The Agent is hereby authorized to charge any account of the Subsidiary Borrower maintained with First Chicago or any of its Affiliates for each payment of principal, interest and fees as it becomes due hereunder.

(ii) Notwithstanding the foregoing provisions of this Section, if, after the making of any Subsidiary Borrower Advance in any currency other than Dollars, currency control or exchange regulations are imposed in the country which issues such currency with the result that the type of currency in which the Advance was made (the "Original Currency") no longer exists or the Subsidiary Borrower is not able to make payment to the Agent for the account of the Lenders in such Original Currency, then all payments to be made by the Subsidiary Borrower hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Amount (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Subsidiary Borrower take all risks of the imposition of any such currency control or exchange regulations.

2.13. European Economic and Monetary Union. If any Advance made (or to

be made) would, but for the provisions of this Section 2.13, be capable of being made in either the Euro or in a National Currency Unit, such Subsidiary Borrower Advance shall be made in the Euro. Without prejudice to any method of conversion or rounding prescribed by any legislative measures of the Council of the European Union, each reference in this Agreement to a fixed amount or to fixed amounts in a National Currency Unit to be paid to or by the Agent shall, notwithstanding any other provision of this Agreement, be replaced by a

reference to such comparable and convenient fixed amount or fixed amounts in the Euro as the Agent may from time to time specify. The Agent may notify the other parties to this Agreement of any modifications to this Agreement which the Agent (acting reasonably and after consultation with the other parties to this Agreement) determines to be necessary as a result of in relation to the agreement of the Lenders hereunder to include the Euro as an Eligible Currency. Notwithstanding any other provision of this Agreement, any modifications of which the Agent so notifies the other parties shall take effect in accordance with the terms of such notification.

2.14. Noteless Agreement; Evidence of Indebtedness. (i) Each Lender

shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Subsidiary Borrower to such Lender resulting from each Subsidiary Borrower Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(ii) The Agent shall also maintain accounts in which it will record (a) the amount of each Subsidiary Borrower Loan made hereunder, the Type thereof and the Interest Period with respect thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Subsidiary Borrower to each Lender hereunder, and (c) the amount of any sum received by the Agent hereunder from the

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Subsidiary Borrower and each Lender's share thereof.

(iii) The entries maintained in the accounts maintained pursuant to paragraphs (i) and (ii) above shall be prima facie evidence of the existence and amounts of the Subsidiary Borrower Obligations therein recorded; provided, however, that the failure of the Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Subsidiary Borrower to repay the Subsidiary Borrower Obligations in accordance with their terms.

(iv) Any Lender may request that its Subsidiary Borrower Loans be evidenced by a promissory note (a "Note"). In such event, the Subsidiary Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender in a form supplied by the Agent. Thereafter, the Subsidiary Borrower Loans evidenced by such Note and interest thereon shall at all times (including after any assignment pursuant to Section 12.3) be represented by one or more Notes payable to the order of the payee named therein or any assignee pursuant to Section 12.3, except to the extent that any such Lender or assignee subsequently returns any such Note for cancellation and requests that such Subsidiary Borrower Loans once again be evidenced as described in paragraphs (i) and (ii) above.

2.15. Parent as Authorized Person. The Subsidiary Borrower hereby

irrevocably authorizes the Lenders and the Agent to extend, convert or continue Subsidiary Borrower Advances, effect selections of Agreed Currencies and Types of Subsidiary Borrower Advances and to transfer funds based on notices by the Parent, it being agreed and understood that the Agent and the Lenders shall have no obligation to confirm any such notices with the Subsidiary Borrower or any other Person. The Subsidiary Borrower agrees to deliver promptly to the Agent a written confirmation, if such confirmation is requested by the Agent or any Lender, of transactions hereunder; provided, however, that the failure of the Subsidiary Borrower to provide any such confirmation shall not in any manner or to any extent affect the obligations of the Subsidiary Borrower hereunder and under the other Subsidiary Borrower Loan Documents.

2.16. Interest Payment Dates; Interest Basis. Interest accrued on each

Floating Rate Advance shall be payable in arrears on the first day of each calendar month, on any date on which such Floating Rate is prepaid, whether upon mandatory prepayment, by acceleration or otherwise, and at maturity. Interest accrued on each Eurocurrency Advance shall be payable on the last day of its applicable Interest Period, on any date on which the Eurocurrency Advance is prepaid, whether upon mandatory prepayment, by acceleration or otherwise, and at maturity. Interest accrued on each Eurocurrency Advance having an Interest Period longer than three months shall also be payable on the last day of each three-month interval during such Interest Period. Interest on Eurocurrency

Advances (other than interest on Eurocurrency Advances denominated in British Pounds Sterling) shall be calculated for actual days elapsed on the basis of a 360-day year. Interest on Floating Rate Loans and Eurocurrency Loans denominated in British Pounds Sterling shall be calculated for actual days elapsed on the basis of a 365-day year. Interest shall be payable for the day a Subsidiary Borrower Advance is made but not for the day of any payment on the amount paid if payment is received prior to noon (local time) at the place of payment. If any payment of principal or interest on a Subsidiary Borrower Advance shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and, in the case of a principal payment, such extension of time shall be included in computing interest in connection with such payment.

2.17. Notification of Advances, Interest Rates, Prepayments and Commitment

Reductions. Promptly after receipt thereof, the Agent will notify each Lender

of the contents of each Aggregate Commitment reduction notice, Borrowing Notice and/or Conversion/Continuation Request and repayment notice received by it hereunder and under the Parent Credit Agreement. The Agent will notify each Lender of the interest rate applicable to each Eurocurrency Advance promptly upon determination of such interest rate and will give each Lender prompt notice of each change in the Alternate Base Rate.

2.18. Lending Installations. Each Lender will book its Subsidiary

Borrower Loans at the appropriate Lending Installation listed on the administrative information sheets provided to the Agent in connection herewith or such other Lending Installation designated by such Lender in accordance with the final sentence of this Section. All terms of this Agreement shall apply to any such Lending Installation and the Subsidiary Borrower Loans and any Notes issued hereunder shall be deemed held by each Lender for the benefit of any such Lending Installation. Each Lender may, by written notice to the Agent and the Subsidiary

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Borrower in accordance with Article XIII, designate replacement or additional Lending Installations through which Subsidiary Borrower Loans will be made by it and for whose account Subsidiary Borrower Loan payments are to be made.

2.19. Non-Receipt of Funds by the Agent. Unless the Subsidiary Borrower or

a Lender, as the case may be, notifies the Agent prior to the date on which it is scheduled to make payment to the Agent of (i) in the case of a Lender, the proceeds of a Subsidiary Borrower Loan or (ii) in the case of the Subsidiary Borrower, a payment of principal, interest or fees to the Agent for the account of the Lenders, that it does not intend to make such payment, the Agent may assume that such payment has been made. The Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or the Subsidiary Borrower, as the case may be, has not in fact made such payment to the Agent, the recipient of such payment shall, on demand by the Agent, repay to the Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Agent until the date the Agent recovers such amount at a rate per annum equal to (a) in the case of payment by a Lender, the Federal Funds Effective Rate for such day for the first three days and, thereafter, the interest rate applicable to the relevant Subsidiary Borrower Loan or (b) in the case of payment by the Subsidiary Borrower, the interest rate applicable to the relevant Subsidiary Borrower Loan.

2.20. Market Disruption. Notwithstanding the satisfaction of all

conditions referred to in Article II and Article IV with respect to any Subsidiary Borrower Advance in any Agreed Currency other than Dollars, if there shall occur on or prior to the date of such Subsidiary Borrower Advance any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which would in the reasonable opinion of the Agent or the Required Lenders make it impracticable for the Eurocurrency Loans comprising such Subsidiary Borrower Advance to be denominated in the Agreed Currency specified by the Subsidiary Borrower, then the Agent shall forthwith give notice thereof to the Subsidiary Borrower and the Lenders, and such Subsidiary Borrower Loans shall not be denominated in such Agreed

Currency but shall, except as otherwise set forth in Section 2.14, be made on such Borrowing Date in Dollars, in an aggregate principal amount equal to the Dollar Amount of the aggregate principal amount specified in the related Borrowing Notice and/or Conversion/Continuation Request or Conversion/Continuation Notice, as the case may be, as Floating Rate Loans, unless the Subsidiary Borrower notifies the Agent at least one Business Day before such date that (i) it elects not to borrow on such date or (ii) it elects to borrow on such date in a different Agreed Currency, as the case may be, in which the denomination of such Subsidiary Borrower Loans would in the opinion of the Agent and the Required Lenders be practicable and in an aggregate principal amount equal to the Dollar Amount of the aggregate principal amount specified in the related Borrowing Notice and/or Conversion/Continuation Request or Conversion/Continuation Notice, as the case may be.

2.21. Judgment Currency. If for the purposes of obtaining judgment in

any court it is necessary to convert a sum due from the Subsidiary Borrower hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Agent could purchase the specified currency with such other currency at the Agent's main Chicago office on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of the Subsidiary Borrower in respect of any sum due to any Lender or the Agent hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Agent (as the case may be) of any sum adjudged to be so due in such other currency such Lender or the Agent (as the case may be) may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Lender or the Agent, as the case may be, in the specified currency, the Subsidiary Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Agent, as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (i) the sum originally due to any Lender or the Agent, as the case may be, in the specified currency and (ii) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 11.2, such Lender or the Agent, as the case may be, agrees to remit such excess to the Subsidiary Borrower.

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2.22. Collateral Security. As collateral security for the Subsidiary

Borrower Obligations, on or before the funding of the first Subsidiary Borrower Loan and as a condition precedent thereto, the Subsidiary Borrower shall execute and deliver, and shall cause to be executed and delivered, to the Agent for the benefit of the Lenders: (i) the Subsidiary Borrower Security Agreement pursuant to which the Subsidiary Borrower shall grant to the Agent for the benefit of the Lenders a first priority perfected security interest in and lien upon the collateral described therein, including, without limitation, all now owned and hereafter acquired capital stock of all directly owned Subsidiaries of the Subsidiary Borrower, and (ii) such additional documents, instruments and agreements, including, without limitation acknowledgments, consents of and notices to third parties, as the Agent may reasonably require. Following the funding of first Subsidiary Borrower Loan the Subsidiary Borrower shall execute and deliver and shall cause to be executed and delivered from time to time such confirmatory and supplementary security agreements, financing statements, acknowledgments, consents of and notices to third parties and such other documents, instruments and agreements as the Agent may reasonably require to obtain and maintain for the Agent and the Lenders the benefit of the Subsidiary Borrower Loan Documents.

ARTICLE III

YIELD PROTECTION; TAXES

3.1. Yield Protection. (i) If, on or after the date of this Agreement,

the adoption of any law or any governmental or quasi-governmental rule,

regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender or applicable Lending Installation with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

- (a) subjects any Lender or any applicable Lending Installation to any Taxes, or changes the basis of taxation of payments (other than with respect to Excluded Taxes) to any Lender in respect of its Eurocurrency Loans, or
- (b) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any applicable Lending Installation (other than reserves and assessments taken into account in determining the interest rate applicable to Eurocurrency Advances), including, without limitation, a change in the amount of capital required or expected to be maintained by any Lender or any Lending Installation of any Lender as a result in a change in the Risk-Based Capital Guidelines, or
- (c) imposes any other condition the result of which is to increase the cost to any Lender or any applicable Lending Installation of making, funding or maintaining its Eurocurrency Loans (including, without limitation, any conversion of any Subsidiary Borrower Loan denominated in an Agreed Currency other than Euro into a Subsidiary Borrower Loan denominated in Euro), or reduces any amount receivable by any Lender or any applicable Lending Installation in connection with its Eurocurrency Loans or requires any Lender or any applicable Lending Installation to make any payment calculated by reference to the amount of Eurocurrency Loans held or interest received by it, by an amount deemed material by such Lender,

and the result of any of the foregoing is to increase the cost to such Lender or applicable Lending Installation of making or maintaining its Eurocurrency Loans (including, without limitation, any conversion of any Subsidiary Borrower Loan denominated in an Agreed Currency other than Euro into a Subsidiary Borrower Loan denominated in Euro) or Commitment or to reduce the return received by such Lender or applicable Lending Installation in connection with such Eurocurrency Loans or its Commitment, then, within 15 days of

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demand by such Lender the Subsidiary Borrower shall pay such Lender such additional amount or amounts as will compensate such Lender for such increased cost or reduction in amount received.

(ii) If any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive of any jurisdiction outside of the United States of America or any subdivision thereof (whether or not having the force of law), imposes or deems applicable any reserve requirement against or fee with respect to assets of, deposits with or for the account of, or credit extended by, any Lender or any applicable Lending Installation, and the result of the foregoing is to increase the cost to such Lender or applicable Lending Installation of making or maintaining its Eurodollar Loans to the Subsidiary Borrower or its Commitment to the Subsidiary Borrower or to reduce the return received by such Lender or applicable Lending Installation in connection with such Eurodollar Loans to or Commitment to the Subsidiary Borrower, then, within 15 days of demand by such Lender, the Subsidiary Borrower shall pay such Lender such additional amount or amounts as will compensate such Lender for such increased cost or reduction in amount received, provided that the Subsidiary Borrower shall not be required to compensate any Lender for such non-U.S. reserve costs or fees to the extent that an amount equal to such reserve costs or fees is received by such Lender as a result of the calculation of the interest rate applicable to Eurodollar Advances pursuant to clause (i)(b) of the definition of "Eurocurrency Rate".

3.2. Availability of Types of Advances. If any Lender reasonably

determines that maintenance of its Eurocurrency Loans at a suitable Lending Installation would violate any applicable law, rule, regulation, or directive, whether or not having the force of law, or if the Required Lenders determine

that (i) deposits of a type, currency and maturity appropriate to match fund Eurocurrency Advances are not available or (ii) the interest rate applicable to Eurocurrency Advances does not accurately reflect the cost of making or maintaining Eurocurrency Advances, then the Agent shall suspend the availability of Eurocurrency Advances and require any affected Eurocurrency Advances to be repaid or converted to Floating Rate Advances, subject to the payment of any funding indemnification amounts required by Section 3.3.

3.3. Funding Indemnification. If any payment of a Eurocurrency Advance

occurs on a date which is not the last day of the applicable Interest Period, whether because of acceleration, prepayment or otherwise, or a Eurocurrency Advance is not made on the date specified by the Subsidiary Borrower for any reason other than default by the Lenders, the Subsidiary Borrower will indemnify each Lender for any loss or cost incurred by it resulting therefrom, including, without limitation, any loss or cost in liquidating or employing deposits acquired to fund or maintain such Eurocurrency Advance.

3.4. Taxes. (i) All payments by the Subsidiary Borrower to or for the

account of any Lender or the Agent hereunder or under any Note shall be made free and clear of and without deduction for any and all Taxes. If the Subsidiary Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Lender or the Agent, (a) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.4) such Lender or the Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (b) the Subsidiary Borrower shall make such deductions, (c) the Subsidiary Borrower shall pay the full amount deducted to the relevant authority in accordance with applicable law and (d) the Subsidiary Borrower shall furnish to the Agent the original copy of a receipt evidencing payment thereof within 30 days after such payment is made.

(ii) In addition, the Subsidiary Borrower hereby agrees to pay any present or future stamp or documentary taxes and any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or under any Note or from the execution or delivery of, or otherwise with respect to, this Agreement or any Note ("Other Taxes").

(iii) The Subsidiary Borrower hereby agrees to indemnify the Agent and each Lender for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed on amounts payable under this Section 3.4) paid by the Agent or such Lender and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. Payments due under this indemnification shall be made within 30 days of the date the Agent or such Lender makes demand therefor pursuant to Section 3.5.

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(iv) Each Lender that is not incorporated under the laws of the United States of America or a state thereof (each a "Non-U.S. Lender") agrees that it will, not less than ten Business Days after the date of this Agreement, (a) deliver to each of the Subsidiary Borrower and the Agent two duly completed copies of United States Internal Revenue Service Form 1001 or 4224, certifying in either case that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, and (b) deliver to each of the Subsidiary Borrower and the Agent a United States Internal Revenue Form W-8 or W-9, as the case may be, and certify that it is entitled to an exemption from United States backup withholding tax. Each Non-U.S. Lender further undertakes to deliver to each of the Subsidiary Borrower and the Agent (y) renewals or additional copies of such form (or any successor form) on or before the date that such form expires or becomes obsolete, and (z) after the occurrence of any event requiring a change in the most recent forms so delivered by it, such additional forms or amendments thereto as may be reasonably requested by the Subsidiary Borrower or the Agent. All forms or amendments described in the preceding sentence shall certify that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, unless an event (including without limitation any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such form or amendment with respect to it and such Lender advises the Subsidiary Borrower and the Agent that

it is not capable of receiving payments without any deduction or withholding of United States federal income tax.

(v) For any period during which a Non-U.S. Lender has failed to provide the Subsidiary Borrower with an appropriate form pursuant to clause (iv), above (unless such failure is due to a change in treaty, law or regulation, or any change in the interpretation or administration thereof by any governmental authority, occurring subsequent to the date on which a form originally was required to be provided), such Non-U.S. Lender shall not be entitled to indemnification under this Section 3.4 with respect to Taxes imposed by the United States; provided that, should a Non-U.S. Lender which is otherwise exempt from or subject to a reduced rate of withholding tax become subject to Taxes because of its failure to deliver a form required under clause (iv), above, the Subsidiary Borrower shall take such steps as such Non-U.S. Lender shall reasonably request to assist such Non-U.S. Lender to recover such Taxes.

(vi) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments under this Agreement or any Note pursuant to the law of any relevant jurisdiction or any treaty shall deliver to the Subsidiary Borrower (with a copy to the Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate.

(vii) If the U.S. Internal Revenue Service or any other governmental authority of the United States or any other country or any political subdivision thereof asserts a claim that the Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered or properly completed, because such Lender failed to notify the Agent of a change in circumstances which rendered its exemption from withholding ineffective, or for any other reason), such Lender shall indemnify the Agent fully for all amounts paid, directly or indirectly, by the Agent as tax, withholding therefor, or otherwise, including penalties and interest, and including taxes imposed by any jurisdiction on amounts payable to the Agent under this subsection, together with all costs and expenses related thereto (including attorneys fees and time charges of attorneys for the Agent, which attorneys may be employees of the Agent). The obligations of the Lenders under this Section 3.4(vii) shall survive the payment of the Subsidiary Borrower Obligations and termination of this Agreement.

3.5. Lender Statements; Survival of Indemnity. To the extent reasonably

possible, each Lender shall designate an alternate Lending Installation with respect to its Eurocurrency Loans to reduce any liability of the Subsidiary Borrower to such Lender under Sections 3.1, 3.3 and 3.4 or to avoid the unavailability of Eurocurrency Advances under Section 3.2, so long as such designation is not, in the judgment of such Lender, disadvantageous to such Lender. Each Lender shall deliver a written statement of such Lender to the Subsidiary Borrower (with a copy to the Agent) as to the amount due, if any, under Section 3.1, 3.3 or 3.4. Such written statement shall set forth in reasonable detail the calculations upon which such Lender determined such amount and shall be final, conclusive and binding on the Subsidiary Borrower in the absence of manifest error. Determination of amounts payable under such Sections in connection with a Eurocurrency Loan shall

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be calculated as though each Lender funded its Eurocurrency Loan through the purchase of a deposit of the type, currency and maturity corresponding to the deposit used as a reference in determining the Eurocurrency Rate applicable to such Subsidiary Borrower Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement of any Lender shall be payable on demand after receipt by the Subsidiary Borrower of such written statement. The obligations of the Subsidiary Borrower under Sections 3.1, 3.3 and 3.4 shall survive payment of the Subsidiary Borrower Obligations and termination of this Agreement.

ARTICLE IV

CONDITIONS PRECEDENT

4.1. Initial Subsidiary Borrower Loan. The Lenders shall not be required

to make the initial Subsidiary Borrower Loan hereunder unless the Subsidiary Borrower has furnished to the Agent, duly executed by the appropriate Persons and with sufficient copies for the Lenders:

- (i) This Agreement.
- (ii) To the extent requested by any Lender, the Note payable to such Lender.
- (iii) The Subsidiary Borrower Security Agreement.
- (iv) The Subsidiary Borrower Pledged Shares, if any, outstanding on the date of funding of the initial Subsidiary Borrower Loan to the extent certificated or otherwise evidenced by a writing, accompanied by stock transfer powers therefor executed in blank.
- (v) Such documents, instruments and agreements as counsel to the Agent and the Lenders licensed to practice in the jurisdictions in which the Subsidiary Borrower operates or which are otherwise relevant to the priority and perfection of the Lien of the Agent for the benefit of the Lenders under the Subsidiary Borrower Security Agreement may require.
- (v) The Guaranty.
- (vi) Copies of the articles or certificate of incorporation of the Subsidiary Borrower, together with all amendments, and a certificate of good standing, each certified by the appropriate governmental officer in its jurisdiction of incorporation.
- (vi) Copies, certified by the Secretary or Assistant Secretary of the Subsidiary Borrower, of its by-laws and of its Board of Directors' resolutions and of resolutions or actions of any other body authorizing the execution of the Subsidiary Borrower Loan Documents.
- (vii) An incumbency certificate, executed by the Secretary or Assistant Secretary of the Subsidiary Borrower, which shall identify by name and title and bear the signatures of the officer(s) of the Subsidiary Borrower authorized to sign the Subsidiary Borrower Loan Documents, upon which certificate the Agent and the Lenders shall be entitled to rely until informed of any change in writing by the Parent.
- (viii) Copies, certified by the Secretary or Assistant Secretary of the Parent of its Board of Directors' resolutions and of resolutions or actions of any other body authorizing the execution of the Guaranty.
- (ix) An incumbency certificate, executed by the Secretary or Assistant Secretary of the Parent, which shall identify by name and title and bear the signatures of the officer(s) of the Parent authorized to sign the Guaranty.

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- (viii) A written opinion of the Subsidiary Borrower's counsel, addressed to the Agent and the Lenders in substantially the form of Exhibit E.

E.
-
- (ix) Written money transfer instructions, in the form of Exhibit F,

addressed to the Agent and signed by an authorized officer of the Parent, together with such other related money transfer authorizations as the Agent may have reasonably requested.
- (x) A Borrowing Base Certificate dated as of the date of the initial Subsidiary Borrower Loan, duly executed by the chief financial officer of the Subsidiary Borrower, setting forth in form and detail satisfactory to the Agent that the Collateral Value of the Subsidiary Borrower Borrowing Base, if any, at and as of such date.

- (xi) Such other documents as any Lender or its counsel may have reasonably requested.

4.2. Each Subsidiary Borrower Loan. The Lenders shall not be required

to make any Subsidiary Borrower Loan unless on the applicable Borrowing Date:

- (i) There exists no Default or Unmatured Default.
- (ii) The representations and warranties contained in Article V are true and correct as of such Borrowing Date except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct on and as of such earlier date.
- (iii) After giving effect thereto and to the funding of all Loans under the Parent Credit Facility and Other Related Facility Loans to be advanced under the Other Related Facility Credit Agreements and to the issuance of all Facility LCs on such Borrowing Date, the Subsidiary Borrower shall be in compliance with the limitations of Section 2.1.
- (iv) All legal matters incident to the making of such Subsidiary Borrower Loan shall be satisfactory to the Lenders and their counsel.

Each Borrowing Notice and/or Conversion/Continuation Request submitted on behalf of the Subsidiary Borrower by the Parent shall constitute a representation and warranty by the Subsidiary Borrower that the conditions contained in Sections 4.2(i) through (iii) have been satisfied. Any Lender may require a duly completed Compliance Certificate as a condition to making a Subsidiary Borrower Loan.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Subsidiary Borrower represents and warrants to the Lenders that:

5.1. Review and Approval of Parent Credit Agreement. The Subsidiary

Borrower has reviewed the Parent Credit Agreement and all Exhibits and Schedules referred to therein and has approved all terms and conditions relating to or affecting the Subsidiary Borrower contained therein. The Subsidiary Borrower acknowledges and agrees that the credit facility evidenced hereby shall automatically terminate and be of no further effect in the event the Parent Credit Agreement shall terminate for any reason, including, without limitation, by reason of the Parent's election to reduce the Aggregate Commitment to zero as permitted thereunder.

5.2. Authorization and Validity. The Subsidiary Borrower has the power

and authority and legal right to execute and deliver the Subsidiary Borrower Loan Documents and to perform its obligations thereunder. The execution and delivery by the Subsidiary Borrower of the Subsidiary Borrower Loan Documents and the performance of its obligations thereunder have been duly authorized by proper corporate

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proceedings, and the Subsidiary Borrower Loan Documents constitute legal, valid and binding obligations of the Subsidiary Borrower enforceable against the Subsidiary Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and general principles of equity.

5.3. No Conflict; Government Consent. Neither the execution and delivery

by the Subsidiary Borrower of the Subsidiary Borrower Loan Documents, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate (i) any law, rule, regulation, order, writ,

judgment, injunction, decree or award binding on the Subsidiary Borrower or (ii) the Subsidiary Borrower's articles or certificate of incorporation or other organizational documents, or (iii) the provisions of any indenture, instrument or agreement to which the Subsidiary Borrower or any of its Subsidiaries is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, or result in, or require, the creation or imposition of any Lien in, of or on the Property of the Subsidiary Borrower or a Subsidiary pursuant to the terms of any such indenture, instrument or agreement. No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority, or any subdivision thereof, which has not been obtained by the Subsidiary Borrower or any of its Subsidiaries, is required to be obtained by the Subsidiary Borrower or any of its Subsidiaries in connection with the execution and delivery of the Subsidiary Borrower Loan Documents, the borrowings under this Agreement, the payment and performance by the Subsidiary Borrower of the Subsidiary Borrower Obligations or the legality, validity, binding effect or enforceability of any of the Subsidiary Borrower Loan Documents.

5.4. Subsidiaries. The Subsidiary Borrower has no Subsidiaries.

5.5. Reaffirmation. All representations and warranties set forth in

Article VI of the Parent Credit Agreement as they relate to the Subsidiary Borrower are accurate and complete in all respects and, to the knowledge of the Subsidiary Borrower, all other representations and warranties set forth therein as they relate to the Parent and other Subsidiaries of the Parent are accurate and complete in all respects.

ARTICLE VI

COVENANTS -----

During the term of this Agreement:

6.1. Financial Reporting. The Subsidiary Borrower will furnish to the

Lenders:

- (i) Within 10 Business Days after the end of each calendar month, a Borrowing Base Certificate as of the last day of such calendar month, signed by the Subsidiary Borrower's chief financial officer.
- (ii) Promptly, such other information (including financial and non-financial information) as the Agent or any Lender may from time to time reasonably request.

6.2. Use of Proceeds. The Subsidiary Borrower will use the proceeds of

the Advances for general corporate purposes. The Subsidiary Borrower will not use any of the proceeds of the Advances to purchase or carry any "margin stock" (as defined in Regulation U).

6.3. Notice of Default. The Subsidiary Borrower will give prompt notice

in writing to the Lenders of the occurrence of any Default or Unmatured Default and of any other development, financial or otherwise (including, without limitation, developments with respect to Year 2000 Issues), which could reasonably be expected to have a Material Adverse Effect.

6.4. Compliance with Covenants of Parent Credit Agreement. The

Subsidiary Borrower will take all such actions as are necessary to assure that as a Subsidiary of the Parent it is in compliance with all

requirements applicable to Subsidiaries of the Parent pursuant to the Parent Credit Agreement and will not take any action which would cause the Parent to be in violation of any term or provision set forth therein.

ARTICLE VII

DEFAULTS

The occurrence of any one or more of the following events shall constitute a Default:

7.1. Any representation or warranty made or deemed made by or on behalf of the Subsidiary Borrower under or in connection with this Agreement, any Subsidiary Borrower Loan, or any certificate or information delivered in connection with this Agreement or any other Subsidiary Borrower Loan Document shall be inaccurate or incomplete in any material respect on the date as of which made.

7.2. Nonpayment of principal of any Subsidiary Borrower Loan when due or nonpayment of interest upon any Subsidiary Borrower Loan or other Obligations under any of the Subsidiary Borrower Loan Documents within five days after the same becomes due.

7.3. The failure of the Subsidiary Borrower to observe or perform any of its obligations under the Subsidiary Borrower Security Agreement.

7.4. The breach by the Subsidiary Borrower (other than a breach which constitutes a Default under another Section of this Article VII) of any of the terms or provisions of this Agreement or any other Subsidiary Borrower Loan Document which is not remedied within five Business Days after written notice from the Agent or any Lender.

7.5. The Subsidiary Borrower Security Agreement shall for any reason fail to create or there shall otherwise cease to be in existence a valid and perfected first priority security interest in the collateral purported to be covered thereby (other than as a direct result of the release thereof by the Agent or the failure of the Agent to file a continuation statement) or the Subsidiary Borrower Security Agreement shall fail to remain in full force or effect or any action shall be taken to rescind or revoke the Subsidiary Borrower Security Agreement or to assert the invalidity or unenforceability of the Subsidiary Borrower Security Agreement or any term or provisions thereof.

7.6. The occurrence of a "Default" under (and as that term is defined in) the Parent Credit Agreement.

ARTICLE VIII

ACCELERATION, WAIVERS, AMENDMENTS AND REMEDIES

8.1. Acceleration. If any Default described in Section 7.7 or 7.8 of the Parent Credit Agreement occurs with respect to the Subsidiary Borrower, the obligations of the Lenders to make Subsidiary Borrower Loans hereunder shall automatically terminate and the Subsidiary Borrower Obligations shall immediately become due and payable without any election or action on the part of the Agent or any Lender. If any other Default occurs, the Required Lenders (or the Agent with the consent of the Required Lenders) may terminate or suspend the obligations of the Lenders to make Subsidiary Borrower Loans hereunder or declare the Subsidiary Borrower Obligations to be due and payable, or both, whereupon the Subsidiary Borrower Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which the Subsidiary Borrower hereby expressly waives.

8.2. Amendments. Subject to the provisions of this Article VIII, the Required Lenders (or the Agent with the consent in writing of the Required Lenders) and the Subsidiary Borrower may enter into

agreements supplemental hereto for the purpose of adding or modifying any provisions to the Subsidiary Borrower Loan Documents or changing in any manner the rights of the Lenders or the Subsidiary Borrower hereunder or waiving any Default hereunder; provided, however, that no such supplemental agreement shall,

without the consent of all of the Lenders:

- (i) Extend the final maturity of any Subsidiary Borrower Loan or postpone any regularly scheduled payment of principal of any Subsidiary Borrower Loan or forgive all or any portion of the principal amount thereof or reduce the rate or extend the time of payment of interest or fees thereon.
- (ii) Reduce the percentage specified in the definition of Required Lenders.
- (iii) Extend the Facility Termination Date, or reduce the amount or extend the payment date for, any mandatory prepayment required under Section 2.2, or increase the amount of the Aggregate Commitment or the Commitment of any Lender or permit the Subsidiary Borrower to assign its rights under this Agreement.
- (iv) Amend this Section 8.2.
- (v) Release all or substantially all of the collateral purported to be covered by the Subsidiary Borrower Security Agreement.
- (vi) Release the Parent from any obligations under the Guaranty.

No amendment of any provision of this Agreement relating to the Agent shall be effective without the written consent of the Agent.

8.3. Preservation of Rights. No delay or omission of the Lenders or the

Agent to exercise any right under the Subsidiary Borrower Loan Documents or the Guaranty shall impair such right or be construed to be a waiver of any Default or an acquiescence therein, and the making of a Subsidiary Borrower Loan notwithstanding the existence of a Default or the inability of the Subsidiary Borrower to satisfy the conditions precedent to such Subsidiary Borrower Loan shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Subsidiary Borrower Loan Documents or the Guaranty whatsoever shall be valid unless in writing signed by the Lenders required pursuant to Section 8.2, and then only to the extent in such writing specifically set forth. All remedies contained in the Subsidiary Borrower Loan Documents or the Guaranty or by law afforded shall be cumulative and all shall be available to the Agent and the Lenders until the Subsidiary Borrower Obligations have been paid in full.

ARTICLE IX

GENERAL PROVISIONS

9.1. Survival of Representations. All representations and warranties of the Subsidiary Borrower contained in this Agreement shall survive the making of the Subsidiary Borrower Loans herein contemplated.

9.2. Governmental Regulation. Anything contained in this Agreement to

the contrary notwithstanding, no Lender shall be obligated to extend credit to the Subsidiary Borrower in violation of any limitation or prohibition provided by any applicable statute or regulation.

9.3. Headings. Section headings in the Subsidiary Borrower Loan

Documents are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Subsidiary Borrower Loan Documents.

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9.4. Entire Agreement. The Parent Credit Agreement, Subsidiary Borrower

Loan Documents and the Other Related Facility Subsidiary Borrower Loan Documents and each Guaranty delivered in connection with the Related Facility Credit

Agreements embody the entire agreement and understanding among the Subsidiary Borrower, the Agent and the Lenders and supersede all prior agreements and understandings among the Subsidiary Borrower, the Agent and the Lenders relating to the subject matter thereof.

9.5. Several Subsidiary Borrower Obligations; Benefits of this Agreement.

The respective obligations of the Lenders hereunder are several and not joint and no Lender shall be the partner or agent of any other (except to the extent to which the Agent is authorized to act as such). The failure of any Lender to perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. This Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and their respective successors and assigns, provided, however, that the parties hereto expressly agree that the Arranger shall enjoy the benefits of the provisions of Section 9.6 hereof and Sections 9.10 and 10.11 of the Parent Credit Agreement to the extent specifically set forth therein and shall have the right to enforce such provisions on its own behalf and in its own name to the same extent as if it were a party to this Agreement.

9.6. Expenses; Indemnification. (i) The Subsidiary Borrower shall

reimburse the Agent and the Arranger for any costs, internal charges and out-of-pocket expenses (including attorneys' fees and time charges of attorneys for the Agent, which attorneys may be employees of the Agent) paid or incurred by the Agent or the Arranger in connection with the preparation, negotiation, execution, delivery, syndication, review, amendment, modification, and administration of the Subsidiary Borrower Loan Documents and the Guaranty, including, without limitation, costs, charges and expenses incident to audits by the Agent of the books and records of the Subsidiary Borrower, including preparation and distribution of reports relating to the same to the Lenders, provided, that prior to the occurrence of a Default or an Unmatured Default, the Subsidiary Borrower shall not be obligated to pay the costs, charges and expenses for more than a single audit during each consecutive 12-month period. The Subsidiary Borrower also agrees to reimburse the Agent, the Arranger and the Lenders for any costs, internal charges and out-of-pocket expenses (including attorneys' fees and time charges of attorneys for the Agent, the Arranger and the Lenders, which attorneys may be employees of the Agent, the Arranger or the Lenders) paid or incurred by the Agent, the Arranger or any Lender in connection with the collection and enforcement of the Subsidiary Borrower Loan Documents and the Guaranty following the occurrence of a Default.

(ii) The Subsidiary Borrower hereby further agrees to indemnify the Agent, the Arranger and each Lender, its directors, officers and employees against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor whether or not the Agent, the Arranger or any Lender is a party thereto) which any of them may pay or incur arising out of or relating to this Agreement, the other Subsidiary Borrower Loan Documents, the Guaranty, the transactions contemplated hereby and thereby or the direct or indirect application or proposed application of the proceeds of any Subsidiary Borrower Loan hereunder except to the extent that they are determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the party seeking indemnification. The obligations of the Subsidiary Borrower under this Section 9.6 shall survive the termination of this Agreement.

9.7. Severability of Provisions. Any provision in any Subsidiary

Borrower Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Subsidiary Borrower Loan Documents are declared to be severable.

9.8. Nonliability of Lenders. The relationship between the Subsidiary

Borrower on the one hand and the Lenders and the Agent on the other hand shall be solely that of Subsidiary Borrower and lender. Neither the Agent, the Arranger nor any Lender shall have any fiduciary responsibilities to the Subsidiary Borrower. Neither the Agent, the Arranger nor any Lender undertakes any responsibility to the Subsidiary Borrower to review or inform the Subsidiary Borrower of any matter in connection with any phase of the Subsidiary Borrower's business or operations. The Subsidiary Borrower agrees that neither the Agent,

the

Arranger nor any Lender shall have liability to the Subsidiary Borrower (whether sounding in tort, contract or otherwise) for losses suffered by the Subsidiary Borrower in connection with, arising out of, or in any way related to, the transactions contemplated and the relationship established by the Subsidiary Borrower Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought. Neither the Agent, the Arranger nor any Lender shall have any liability with respect to, and the Subsidiary Borrower hereby waives, releases and agrees not to sue for, any special, indirect or consequential damages suffered by the Subsidiary Borrower in connection with, arising out of, or in any way related to the Subsidiary Borrower Loan Documents, the Guaranty or the transactions contemplated thereby.

9.9. Confidentiality. Each Lender agrees to hold any confidential

information which it may receive from the Subsidiary Borrower pursuant to this Agreement in confidence, except for disclosure (i) to its Affiliates and to other Lenders and their respective Affiliates, (ii) to legal counsel, accountants, and other professional advisors to such Lender or to a Transferee, (iii) to regulatory officials, (iv) to any Person as requested pursuant to or as required by law, regulation, or legal process, (v) to any Person in connection with any legal proceeding to which such Lender is a party, (vi) to such Lender's direct or indirect contractual counterparties in swap agreements or to legal counsel, accountants and other professional advisors to such counterparties, and (vii) permitted by Section 12.4.

ARTICLE X

THE AGENT

The First National Bank of Chicago has been appointed to act as Agent for the Lenders hereunder pursuant to Article X of the Parent Credit Agreement, the terms and provisions of which are hereby incorporated herein by this reference.

ARTICLE XI

SETOFF; RATABLE PAYMENTS

11.1. Setoff. In addition to, and without limitation of, any rights of

the Lenders under applicable law, if the Subsidiary Borrower becomes insolvent, however evidenced, or any Default occurs, any and all deposits (including all account balances, whether provisional or final and whether or not collected or available) and any other Indebtedness at any time held or owing by any Lender or any Affiliate of any Lender to or for the credit or account of the Subsidiary Borrower may be offset and applied toward the payment of the Subsidiary Borrower Obligations owing to such Lender, whether or not the Subsidiary Borrower Obligations, or any part hereof, shall then be due.

11.2. Ratable Payments. If any Lender, whether by setoff or otherwise,

has payment made to it upon its Outstanding Credit Exposure (other than payments received pursuant to Section 3.1, 3.3 or 3.4) in a greater proportion than that received by any other Lender, such Lender agrees, promptly upon demand, to purchase a portion of the Aggregate Outstanding Credit Exposure held by the other Lenders so that after such purchase each Lender will hold its Pro Rata Share of the Aggregate Outstanding Credit Exposure. If any Lender, whether in connection with setoff or amounts which might be subject to setoff or otherwise, receives collateral or other protection for its Subsidiary Borrower Obligations or such amounts which may be subject to setoff, such Lender agrees, promptly upon demand, to take such action necessary such that all Lenders share in the benefits of such collateral ratably in proportion to their respective Pro Rata Shares of the Aggregate Outstanding Credit Exposure. In case any such payment is disturbed by legal process, or otherwise, appropriate further adjustments

shall be made.

ARTICLE XII

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BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

12.1. Successors and Assigns. The terms and provisions of the

Subsidiary Borrower Loan Documents shall be binding upon and inure to the benefit of the Subsidiary Borrower and the Lenders and their respective successors and assigns, except that (i) the Subsidiary Borrower shall not have the right to assign its rights or obligations under the Subsidiary Borrower Loan Documents.

12.2. Participations. Any Lender may at any time sell participating

interests in any Outstanding Credit Exposure of such Lender as provided in Section 12.2 of the Parent Credit Agreement.

12.3. Assignments. Any Lender may assign all or any part of its rights

and obligations under the Subsidiary Borrower Loan Documents in accordance with the provisions of Section 12.3 of the Parent Credit Agreement.

12.4. Dissemination of Information. The Subsidiary Borrower authorizes

each Lender to disclose to any Person acquiring an interest in the Subsidiary Borrower Loan Documents by operation of law (each a "Transferee") and any prospective Transferee any and all information in such Lender's possession concerning the creditworthiness of the Subsidiary Borrower; provided that each Transferee and prospective Transferee agrees to be bound by Section 9.11 of this Agreement.

12.5. Tax Treatment. If any interest in any Subsidiary Borrower Loan

Document is transferred to any Transferee which is organized under the laws of any jurisdiction other than the United States or any State thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of Section 3.4(iv).

ARTICLE XIII

NOTICES

All notices, requests and other communications to any party hereunder shall be in writing (including electronic transmission, facsimile transmission or similar writing) and shall be given to such party: (i) in the case of the Subsidiary Borrower, to the Parent at its address specified in the Parent Credit Agreement, and (ii) in the case of the Agent and each Lender, at its address or facsimile number specified in the Parent Credit Agreement. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified in this Section and confirmation of receipt is received, (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (iii) if given by any other means, when delivered (or, in the case of electronic transmission, received) at the address specified in this Section; provided that notices to the Agent under Article II shall not be effective until received.

ARTICLE XIV

COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may

execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by the Subsidiary Borrower, the Agent and the Lenders and each party has notified the Agent by facsimile transmission or telephone that it has taken such action.

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ARTICLE XV

CHOICE OF LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL

15.1. CHOICE OF LAW. THE SUBSIDIARY BORROWER LOAN DOCUMENTS (OTHER THAN

THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS, OF THE STATE OF CALIFORNIA, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

15.2. CONSENT TO JURISDICTION. THE SUBSIDIARY BORROWER HEREBY

IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR CALIFORNIA STATE COURT SITTING IN LOS ANGELES, CALIFORNIA IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY SUBSIDIARY BORROWER LOAN DOCUMENTS AND THE SUBSIDIARY BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST THE SUBSIDIARY BORROWER IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE SUBSIDIARY BORROWER AGAINST THE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY SUBSIDIARY BORROWER LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN LOS ANGELES, CALIFORNIA.

15.3. WAIVER OF JURY TRIAL. THE SUBSIDIARY BORROWER, THE AGENT AND EACH

LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY SUBSIDIARY BORROWER LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

IN WITNESS WHEREOF, the Subsidiary Borrower, the Lenders and the Agent have executed this Agreement as of the date first above written.

a _____

Commitments

\$30,000,000

THE FIRST NATIONAL BANK OF CHICAGO,
Individually and as Agent

By: _____
Title: _____

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<ARTICLE> 5

<LEGEND>

THE SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE CONDENSED CONSOLIDATED BALANCE SHEET AS OF JULY 31, 1999 AND THE CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS FOR THE SIX MONTHS ENDED JULY 31, 1999 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

</LEGEND>

<MULTIPLIER> 1,000

<PERIOD-TYPE>	6-MOS	
<FISCAL-YEAR-END>		JAN-31-2000
<PERIOD-START>		FEB-01-1999
<PERIOD-END>		JUL-31-1999
<CASH>		15,292
<SECURITIES>		0
<RECEIVABLES>		83,703
<ALLOWANCES>		6,944
<INVENTORY>		707
<CURRENT-ASSETS>		111,972
<PP&E>		66,407
<DEPRECIATION>		32,404
<TOTAL-ASSETS>		177,165
<CURRENT-LIABILITIES>		93,882
<BONDS>		0
<PREFERRED-MANDATORY>		0
<PREFERRED>		0
<COMMON>		30
<OTHER-SE>		65,794
<TOTAL-LIABILITY-AND-EQUITY>		177,165
<SALES>		3,232
<TOTAL-REVENUES>		111,652
<CGS>		2,529
<TOTAL-COSTS>		51,767
<OTHER-EXPENSES>		71,911
<LOSS-PROVISION>		(365)
<INTEREST-EXPENSE>		793
<INCOME-PRETAX>		(12,770)
<INCOME-TAX>		1,142
<INCOME-CONTINUING>		(13,912)
<DISCONTINUED>		0
<EXTRAORDINARY>		0
<CHANGES>		0
<NET-INCOME>		(13,912)
<EPS-BASIC>		(0.46)
<EPS-DILUTED>		(0.46)