

# LOAN AGREEMENT

This LOAN AGREEMENT (this 'Agreement') is entered into as of [DATE], by and between [LENDER NAME] ('Lender') and [BORROWER NAME] ('Borrower').

## ARTICLE IV

### COVENANTS

#### Section 4.1 Restricted Payments

The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:

(a) declare or pay any dividend or make any other payment or distribution on account of the Borrower's or any of its Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Borrower or any of its Subsidiaries) or to the direct or indirect holders of the Borrower's or any of its Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Borrower and other than dividends or distributions payable to the Borrower or a Subsidiary of the Borrower);

(b) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Borrower) any Equity Interests of the Borrower or any direct or indirect parent of the Borrower;

(c) make any principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Borrower or any Guarantor that is contractually subordinated to the Obligations or to any Guarantee (excluding any intercompany Indebtedness between or among the Borrower and any of its Subsidiaries), except a payment of principal at the Stated Maturity thereof; or

(d) make any Restricted Investment.

#### Section 4.2 Limitation on Incurrence of Indebtedness

The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, 'incur') any Indebtedness (including Acquired Debt), and the Borrower will not issue any Disqualified Stock and will not permit any of its Subsidiaries to issue any shares of preferred stock; provided, however, that the Borrower may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, if the Fixed Charge Coverage Ratio for the Borrower's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock is issued, as the case may be, would have been at least 2.0 to 1.0.

## **Section 4.3 Asset Sales**

The Borrower will not, and will not permit any of its Subsidiaries to, consummate an Asset Sale unless:

- (1) the Borrower (or the Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of;
- (2) at least 75% of the consideration received in the Asset Sale by the Borrower or such Subsidiary is in the form of cash or Cash Equivalents;
- (3) the aggregate Fair Market Value of all assets sold in Asset Sales does not exceed \$50,000,000 in any fiscal year.

## **Section 4.4 Transactions with Affiliates**

The Borrower will not, and will not permit any of its Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each, an 'Affiliate Transaction'), unless:

- (1) the Affiliate Transaction is on terms that are no less favorable to the Borrower or the relevant Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Subsidiary with a Person who is not an Affiliate of the Borrower; and
- (2) the Borrower delivers to the Lender with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$10,000,000, a resolution of the Board of Directors of the Borrower set forth in an officers' certificate certifying that such Affiliate Transaction complies with this covenant.

# **ARTICLE V**

## **EVENTS OF DEFAULT**

### **Section 5.1 Change of Control**

Upon the occurrence of a Change of Control, the Borrower will make an offer (a 'Change of Control Offer') to the Lender to prepay all Obligations at a price in cash equal to 101% of the aggregate principal amount thereof, plus accrued and unpaid interest, if any, to the date of prepayment.

'Change of Control' means the occurrence of any of the following:

(a) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Borrower and its Subsidiaries taken as a whole to any 'person' (as that term is used in Section 13(d) of the Exchange Act);

(b) the adoption of a plan relating to the liquidation or dissolution of the Borrower;

(c) the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any 'person' becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Borrower.

## **Section 5.2 Limitation on Liens**

The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind securing Indebtedness on any asset now owned or hereafter acquired, except Permitted Liens.

'Permitted Liens' means:

- (1) Liens securing the Obligations;
- (2) Liens in favor of the Borrower or any Subsidiary;
- (3) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with the Borrower or any Subsidiary;
- (4) Liens on property existing at the time of acquisition of the property by the Borrower or any Subsidiary;
- (5) Liens to secure Indebtedness permitted to be incurred under Section 4.2.