

“**U.S. Person**” means any Person that is a “United States Person as defined in Section 7701(a)(30) of the Code.

“**Wholly-Owned Subsidiary**” of a Person means (i) any Subsidiary of which 100% of the beneficial ownership interests shall at the time be owned or controlled, directly or indirectly, by such Person or one or more Wholly-Owned Subsidiaries of such Person, or by such Person and one or more Wholly-Owned Subsidiaries of such Person, or (ii) any partnership, limited liability company, association, joint venture or similar business organization of which 100% of the beneficial ownership interests shall at the time be so owned or controlled.

1.1 UCC Defined Term. The following terms used in this Agreement shall have the respective meanings provided for in the UCC: “Accounts”, “Account Debtor”, “Chattel Paper”, “Deposit Account”, “Documents”, “General Intangibles”, “Inventory” and “Proceeds”.

1.2 Payments on Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the payment may be made on the next succeeding Business Day and such extension of time shall be included in the computation of the amount of interest or fees due hereunder; provided that if such next succeeding Business Day occurs in a different calendar month than the date on which such payment is due and payable, such payment shall be made on the last Business Day preceding such date.

1.3 Other Definitional Provisions. References to “Articles”, “Sections”, “subsections”, “Exhibits” and “Schedules” and shall be to Articles, Sections, subsections, Exhibits and Schedules, respectively, of this Agreement unless otherwise specifically provided. Any of the terms defined in **Section 1.1** or otherwise in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. In this Agreement, words importing any gender include the other genders; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”; references to organizational documents, agreements (including the Loan Documents), and other contracts shall be deemed to include all subsequent amendments, restatements, amendment, and restatements, extensions, supplements, modifications, replacements, refinancings, renewals, or increases, but only to the extent that such amendments, restatements, amendment, and restatements, extensions, supplements, modifications, replacements, refinancings, renewals, or increases are not prohibited by any of the Loan Documents; references to Persons include their respective permitted successors and assigns or, in the case of any Governmental Authority, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting such statute or regulation. All references to “knowledge” or “awareness” of Borrower or any Subsidiary thereof means the actual knowledge of an Authorized Officer of Borrower or such Subsidiary. The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

1.4 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern Time (daylight or standard, as applicable) of the United States.

ARTICLE II THE CREDITS

2.1 Revolving Loan Facility. Subject to the terms and conditions set forth herein, the Lender agrees to make a revolving line of credit to the Borrower (each such advance thereupon, a “**Loan**”, and collectively, the “**Loans**”) in an aggregate principal amount, not to exceed at any time outstanding, the Loan Amount. Amounts repaid by Borrower in respect of the Loans may be reborrowed from time to time prior to the Maturity Date; provided that, no Default or Event of Default exists or would exist upon the making of such Loan, and in no event shall the principal amount outstanding hereunder at any time exceed the Loan Amount.

2.2 Borrowings. Each Loan shall be made upon the Borrower’s irrevocable written notice to the Lender in the form of **Exhibit C** (the “**Borrowing Notice**”). Each such Borrowing Notice must be received by the Lender not later than 11:00 a.m. one (1) Business Day prior to the requested date of any Borrowing and shall specify (i) the requested date of the Loan (which shall be a Business Day) and (ii) the principal amount to be borrowed. Upon satisfaction of the applicable conditions precedent set forth in **Section 4.1**, the Lender shall make funds available to the Borrower by wire transfer of such funds in accordance with instructions provided to the Lender by the Borrower.

2.3 Prepayments. The Borrower may, upon notice to the Lender, at any time or from time to time voluntarily prepay the Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Lender not later than 11:00 a.m. on the date of any such prepayment of a Loan, and (ii) shall specify the date and the amount of such prepayment. Each prepayment of the Loans pursuant to the foregoing provisions of this **Section 2.3** shall be applied in the inverse order of maturity as to the Loans being prepaid. No prepayment shall affect the regularly scheduled payments of interest on the Loans unless and until such prepayment or prepayments have reduced the amount owing to the Lender for the installment due on the Maturity Date for the Loans to zero.

2.4 Repayment of Loans. The Borrower shall repay the Loans by paying to the Lender (i) on each Interest Payment Date, an amount equal to accrued interest only on the unpaid principal balance of the Loans, and (ii) the entire outstanding principal balance of the Loans shall be due and payable, along with any accrued and unpaid interest, on the Maturity Date.

2.5 Interest Rates.

- (a) Each Loan, while outstanding, shall bear interest from the applicable Borrowing Date at a rate per annum equal to the Eurocurrency Rate.
- (b) If any amount of principal or interest on any Loan or any other amount payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate.
- (c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before as well as after judgment, and before as well as after the commencement of any proceeding under any Debtor Relief Law. Interest on all Loans and fees shall be calculated for actual days elapsed on the basis of a 360-day year. If any payment of principal or interest on a Loan becomes due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day.

2.6 Reserved.

2.7 Rates Applicable After Event of Default. During the continuance of an Event of Default the Lender may, by notice to the Borrower, declare that each Loan shall bear interest at the Default Rate. If an Event of Default has been waived in writing by the Lender, which waiver is subject to the Lender's sole discretion, the interest rates applicable to the Loans shall revert to the rates applicable prior to the occurrence of an Event of Default.

2.8 Method of Payment. All payments of the Obligations under this Agreement and the other Loan Documents shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Lender, at its address specified pursuant to **Article XIII**, or at any other address specified in writing by the Lender to the Borrower, by 10:00 a.m. on the date when due.

2.9 Noteless Agreement; Evidence of Indebtedness.

- (a) The Lender shall maintain accounts in which it will record (i) the amount of each Loan and (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to the Lender hereunder.
- (b) Absent manifest error, the entries maintained in the accounts maintained pursuant to **Section 2.9(a)** shall be *prima facie* evidence of the existence and amounts of the Obligations therein recorded; provided, however, that the failure of the Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms.
- (c) The Lender may request that its Loans be evidenced by a promissory note representing a Loan, as applicable, substantially in the form of **Exhibit D** (each a "Note"). In such event, the Borrower shall prepare, execute and deliver to the Lender such Note or Notes payable to the order of the Lender. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (prior to any assignment pursuant to **Section 12.3**) be represented by one or more Notes payable to the order of the payee named therein, except to the extent that the Lender subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced by a Note or Notes.

2.10 Telephonic Notices. The Borrower hereby authorizes the Lender to make Loans and transfer funds based on telephonic notices made by any Person or Persons the Lender in good faith believes to be an Authorized Officer acting on behalf of the Borrower, it being understood that the foregoing authorization is specifically intended to allow Borrowing Notices to be given telephonically. The Borrower agrees to deliver promptly to the Lender a written confirmation (which may include e-mail) of each telephonic notice authenticated by an Authorized Officer. If the written confirmation differs in any material respect from the action taken by the Lender, the records of the Lender shall govern absent manifest error. The parties agree to prepare appropriate documentation to correct any such error within 10 days after discovery by any party to this Agreement.

2.11 Limitation of Interest. The Borrower and the Lender intend to strictly comply with all applicable laws, including applicable usury laws. Accordingly, the provisions of this **Section 2.11** shall govern and control over every other provision of this Agreement or any other Loan Document that conflicts or is inconsistent with this **Section 2.11**, even if such provision declares that it controls. As used in this **Section 2.11**, the term “interest” includes the aggregate of all charges, fees, benefits or other compensation that constitute interest under applicable law; provided that, to the maximum extent permitted by applicable law, (a) any non-principal payment shall be characterized as an expense or as compensation for something other than the use, forbearance, or detention of money and not as interest, and (b) all interest at any time contracted for, reserved, charged or received shall be amortized, prorated, allocated and spread, in equal parts during the full term of this Agreement. In no event shall the Borrower or any other Person be obligated to pay, or the Lender have any right or privilege to reserve, receive or retain, (x) any interest in excess of the maximum amount of nonusurious interest permitted under the applicable laws (if any) of the United States or of any applicable state, or (y) total interest in excess of the amount the Lender could lawfully have contracted for, reserved, received, retained or charged had the interest been calculated for the full term of this Agreement at the Highest Lawful Rate. On each day, if any, that the interest rate (the “**Stated Rate**”) called for under this Agreement or any other Loan Document exceeds the Highest Lawful Rate, the rate at which interest accrues shall automatically be fixed by operation of this sentence at the Highest Lawful Rate for that day, and shall remain fixed at the Highest Lawful Rate for each day thereafter until the total amount of interest accrued equals the total amount of interest that would have accrued if there were no such ceiling rate as is imposed by this sentence. Thereafter, interest shall accrue at the Stated Rate unless and until the Stated Rate again exceeds the Highest Lawful Rate, when the provisions of the immediately preceding sentence shall again automatically operate to limit the interest accrual rate. The daily interest rates to be used in calculating interest at the Highest Lawful Rate shall be determined by dividing the applicable Highest Lawful Rate per annum by the number of days in the calendar year for which such calculation is being made. None of the terms and provisions in this Agreement or in any other Loan Document that directly or indirectly relate to interest shall ever be construed without reference to this **Section 2.11**, or be construed to create a contract to pay for the use, forbearance, or detention of money at an interest rate in excess of the Highest Lawful Rate. If the term of any Loan or any other Obligation outstanding hereunder or under the other Loan Documents is shortened by reason of acceleration of maturity as a result of any Event of Default or by any other cause, or by reason of any required or permitted prepayment, and if for that (or any other) reason the Lender at any time, including but not limited to, the stated maturity, is owed or receives (and/or has received) interest in excess of interest calculated at the Highest Lawful Rate, then and in any such event all of such excess interest shall be canceled automatically as of the date of such acceleration, prepayment, or other event that produces the excess, and, if such excess interest has been paid to the Lender, it shall be credited *pro tanto* against the then-outstanding principal balance of the Obligations to the Lender, effective as of the date or dates when the event occurs that causes it to be excess interest, until such excess is exhausted or all of such principal has been fully paid and satisfied, whichever occurs first, and any remaining balance of such excess shall be promptly refunded to its payor.

2.12 Reserved.

2.13 Fees.

(a) The Borrower shall pay to the Lender an upfront fee on or before the Effective Date equal to \$37,500.

(b) The Borrower shall pay to Lender the Undrawn Borrowing Availability Fee on the last Business Day of each calendar month.

YIELD PROTECTION; TAXES

3.1 Yield Protection. If, after the date of this Agreement, there occurs any adoption of or change in any law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) or in the interpretation, promulgation, implementation or administration thereof by any Governmental or quasi-Governmental Authority or comparable agency charged with the interpretation or administration thereof, including, notwithstanding the foregoing, all requests, rules, guidelines or directives (x) in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act or (y) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority), or the United States financial regulatory authorities, in each case of clauses (x) and (y), regardless of the date enacted, adopted, issued, promulgated or implemented, or compliance by the Lender with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency (any of the foregoing, a “**Change in Law**”) that:

- (a) subjects the Lender to any Taxes (other than with respect to Indemnified Taxes, Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes, Connection Income Taxes and Other Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, 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, the Lender,

and the result of any of the foregoing is to increase the cost to the Lender of making, continuing or maintaining its Loans or to reduce the amount received by the Lender in connection with such Loans, then, promptly after demand by the Lender, the Borrower shall pay the Lender, as the case may be, such additional amount or amounts as will compensate the Lender for such increased cost or reduction in amount received; provided, however, that the foregoing obligation shall only be imposed on the Borrower to the extent the same is imposed on similarly-situated borrowers.

3.2 Changes in Capital Adequacy Regulations. If the Lender determines that the amount of capital or liquidity required or expected to be maintained by the Lender, any lending office of the Lender, or any corporation or holding company controlling the Lender is increased as a result of (i) a Change in Law or (ii) any change after the Effective Date in the Risk-Based Capital Guidelines, or the foregoing would have the effect of reducing the rate of the Lender’s return (or the rate of return of any corporation or holding company controlling the Lender) on the Lender’s capital or liquidity (or the capital or liquidity of any corporation or holding company controlling the Lender), then, promptly after demand by the Lender, the Borrower shall pay the Lender the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital or liquidity that the Lender determines is attributable to this Agreement (after taking into account the Lender’s policies as to capital adequacy or liquidity), in each case that is attributable to such Change in Law or change in the Risk-Based Capital Guidelines, as applicable; provided, however, that the foregoing obligation shall only be imposed on the Borrower to the extent the same is imposed on similarly-situated borrowers.

3.3 Inability to Determine Rate. If the Lender determines that for any reason in connection with any request for a Loan that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount of such Loan, (b) adequate and reasonable means do not exist for determining the London Interbank Offered Rate with respect to a proposed Loan, or (c) the London Interbank Offered Rate with respect to a proposed Loan does not adequately and fairly reflect the cost to the Lender of funding such Loan, the Lender will promptly notify the Borrower in writing. Thereafter, the obligation of the Lender to make or maintain Loans shall be suspended until the Lender revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for the

Borrowing of a Loan. While any such notice is outstanding, each Loan shall bear interest at a rate per annum equal to the Lender's cost of funds plus the Applicable Margin.

3.4 Funding Indemnification. If (a) any payment of principal of a Loan occurs on a date that is not the last day of the applicable Interest Period, because of acceleration or prepayment, (b) a Loan is not made on the date specified by the Borrower for any reason other than default by the Lender, (c) the Borrower fails to borrow or prepay any Loan on the date specified in any notice delivered pursuant hereto, or (d) any Loan is assigned other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower, the Borrower will indemnify the Lender for the Lender's costs, expenses, and Interest Differential (as determined by the Lender) incurred as a result of such prepayment. The term "**Interest Differential**" means the greater of zero and the actual, documented financial loss incurred by the Lender resulting from prepayment, calculated as the positive difference between the amount of interest the Lender would have earned (from the investments in money markets as of the Borrowing Date of such Loan) had prepayment not occurred and the interest the Lender will actually earn (from like investments in money markets as of the date of prepayment) as a result of the redeployment of funds from the prepayment. Because of the short-term nature of this facility, Borrower agrees that Interest Differential shall not be discounted to its present value.

3.5 Taxes.

- (a) Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith of the Borrower) requires the deduction or withholding of any Tax from any such payment, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax or Other Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 3.5**) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.
- (b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse it for the payment of, any Other Taxes.

- (c) The Borrower shall indemnify the Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this **Section 3.5**) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender and any reasonable actually incurred expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.
- (d) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this **Section 3.5**, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, and a copy of the return reporting such payment or other evidence of such payment (in a form reasonably satisfactory to the Lender).
- (e) (i) If the Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document, the Lender shall deliver to the Borrower, immediately prior to becoming a Lender hereunder and at such other times reasonably requested by the Borrower, such properly completed and executed documentation reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, if reasonably requested by the Borrower, the Lender shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether the Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (e)(ii)(A), (e)(ii)(B) and (e)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject the Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of the Lender.
- (ii) Without limiting the generality of the foregoing:
- (A) any Lender that is a U.S. Person shall deliver to such Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;
- (B) any Non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the Borrower) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), whichever of the following is applicable;

- (1) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;
 - (2) executed originals of IRS Form W-8ECI;
 - (3) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate of substantially in the form of Exhibit E-1 to the effect that such Non-U.S. Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of such Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable; or
 - (4) to the extent a Non-U.S. Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Non-U.S. Lender is a partnership and one or more direct or indirect partners of such Non-U.S. Lender are claiming the portfolio interest exemption, such Non-U.S. Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct or indirect partner;
- (C) any Non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon reasonable request of the Borrower), executed copies of any other form prescribed by law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit such Borrower to determine the withholding or deduction required to be made; and

- (D) if a payment made to the Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if the Lender failed to comply with the applicable reporting requirements of FATCA (including those in Section 1471(b) or 1472(b) of the Code, as applicable), the Lender shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with their obligations under FATCA and to determine that the Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e)(ii)(D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.
- (iii) The Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower in writing of its legal inability to do so.
- (f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 3.5** (including by the payment of additional amounts pursuant to this **Section 3.5**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 3.5(f)** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 3.5(f)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 3.5(f)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.
- (g) Each party’s obligations under this **Section 3.5** shall survive any assignment of rights by, or the replacement of the Lender and the repayment, satisfaction or discharge of all obligations under any Loan Document.

3.6 Selection of Lending Office; Mitigation Obligations; Lender Statements; Survival of Indemnity.

The Lender shall, if requested by the Borrower, use reasonable efforts to designate an alternate lending office to reduce any liability of the Borrower to the Lender under **Sections 3.1, 3.2 and 3.5** or to avoid the unavailability of Loans under **Section 3.3**, so long as such designation is not, in the commercially-reasonable judgment of the Lender, (x) disadvantageous to the Lender and (y) would eliminate or reduce amounts payable under **Sections 3.1, 3.2 and 3.5**, as

the case may be, in the future. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation. The Lender shall deliver a written statement to the Borrower as to the amount due, if any, under **Section 3.1, 3.2, 3.4 or 3.5**. Such written statement shall set forth in reasonable detail the calculations upon which the Lender determined such amount and shall be final, conclusive and binding on the Borrower in the absence of manifest error. Determination of amounts payable under such Sections in connection with a Loan shall be calculated as though the Lender funded its Loan through the purchase of a deposit of the type and maturity corresponding to the deposit used as a reference in determining the Eurocurrency Rate applicable to such Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement of the Lender shall be payable on demand after receipt by the Borrower of such written statement. The obligations of the Borrower under **Sections 3.1, 3.2, 3.4 and 3.5** shall survive payment of the Obligations and termination of this Agreement.

3.7 Limitation on Compensation. The Borrower will not be required to compensate the Lender pursuant to **Section 3.1** or **Section 3.2** for any increased cost or reduction in the amount received or shortfall in the rate of return in respect of a period occurring more than 180 days prior to the date on which the Lender notifies the Borrower of such Change in Law or change in the Risk-Based Capital Guidelines and the Lender's intention to claim compensation therefor, except, if the Change in Law giving rise to such increased cost or reduction or the change in Risk-Based Capital Guidelines giving rise to a shortfall in the rate of return is retroactive, no such time limitation will apply so long as the Lender requests compensation within 180 days from the date on which the applicable Government Authority informed the Lender of such change.

ARTICLE IV CONDITIONS PRECEDENT

4.1 Conditions to Effectiveness. This Agreement shall become effective on and as of the first Business Day on which the following conditions precedent have been satisfied:

- (a) The Lender shall have received executed counterparts of this Agreement.
- (b) The Lender shall have received a certificate, signed by the chief financial officer of the Borrower, stating that on the Effective Date (1) no Default or Event of Default is continuing and (2) the representations and warranties in **Article V** are (x) with respect to any representations or warranties that contain a materiality qualifier, true and correct in all respects as of such 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 in all respects on and as of such earlier date and (y) with respect to any representations or warranties that do not contain a materiality qualifier, true and correct in all material respects as of such 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 in all material respects on and as of such earlier date.
- (c) The Lender shall have received a written opinion of the Borrower's counsel, addressed to the Lender, in form and substance reasonably satisfactory to the Lender.