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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

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**Form 10-K**

**Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**For the fiscal year ended December 31, 2001**

**Commission File No.: 001-16753**

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**AMN HEALTHCARE SERVICES, INC.**

*(Exact Name of Registrant as Specified in Its Charter)*

**Delaware**

*(State or Other Jurisdiction of  
Incorporation or Organization)*

**12235 El Camino Real, Suite 200**

**San Diego, California**

*(Address of principal executive offices)*

**06-1500476**

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

**92130**

*(Zip Code)*

**Registrant's Telephone Number, Including Area Code: (858) 792-0711**

**Securities registered pursuant to Section 12(b) of the Act: None.**

**Securities registered pursuant to Section 12(g) of the Act: Common Stock, \$0.01 par value**

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 such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

As of March 15, 2002, the approximate aggregate market value of voting stock held by non-affiliates of the registrant was \$381,123,080 based on a closing sale price of \$26.50 per share. As of March 15, 2002, there were 42,289,770 shares of common stock, \$0.01 par value, outstanding.

Documents Incorporated By Reference: None.

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## PART I

### Item 1. *Business*

#### Our Company

We are a leading temporary healthcare staffing company and the largest nationwide provider of travel nurse staffing services, one of the fastest growing segments of the temporary healthcare staffing industry. We recruit nurses and allied health professionals, our “temporary healthcare professionals,” and place them on temporary assignments, typically for 13 weeks away from their permanent homes, at hospitals and healthcare facilities throughout the United States. Approximately 90% of our temporary healthcare professionals are nurses, while the remainder are technicians, therapists and technologists. We are actively working with a pre-screened pool of prospective temporary healthcare professionals, of whom over 6,800 were on assignment during the fourth quarter of 2001.

In recent years our business has grown significantly, outpacing the growth of the temporary healthcare staffing market. From 1996 to 2001, our revenue and Adjusted EBITDA (as defined in footnote (6) of “Item 6. Selected Consolidated Financial and Operating Data” below) increased at compound annual growth rates of 61% and 65%, respectively. Approximately two-thirds of this growth was generated through the organic growth of our operations, while the remaining one-third was generated through strategic acquisitions. On a combined basis, assuming all of our acquisitions had occurred on January 1, 1996, the compound annual growth rate of our revenues from 1996 to 2001 would have been 36%. Additionally, since 1999, the pace of our organic growth has accelerated. On the same combined basis as discussed above, for the year ended December 31, 2001, we generated revenues of \$528.4 million and Adjusted EBITDA of \$59.4 million, representing organic compound annual growth rates of 52% and 72%, respectively, since 1999.

We market our services to two distinct customer bases: (1) temporary healthcare professionals and (2) hospital and healthcare facility clients. We use a multi-brand recruiting strategy to enhance our ability to successfully attract temporary healthcare professionals in the United States and internationally. Our five separate brand names, American Mobile Healthcare, Medical Express, NursesRx, Preferred Healthcare Staffing and O’Grady-Peyton International, have distinct geographic market strengths and brand images. Our large number of hospital and healthcare facility clients allows us to offer traveling positions in all 50 states, and in a variety of work environments. In addition, we provide our temporary healthcare professionals with an attractive benefits package, including free or subsidized housing, travel reimbursement, professional development opportunities, a 401(k) plan and health insurance. We believe that we attract temporary healthcare professionals due to our long-standing reputation for providing a high level of service, our numerous job opportunities, our benefit packages, our innovative marketing programs and our most effective recruiting tool, word-of-mouth referrals from our thousands of current and former temporary healthcare professionals.

We have established a growing and diverse hospital and healthcare facility client base, ranging from national healthcare providers to premier teaching and regional hospitals. At the end of 2001 we had over 2,800 hospital and healthcare facility clients. Over 95% of our temporary healthcare professional assignments are at acute-care hospitals. We currently hold contracts with over 40% of all acute-care hospitals in the United States. Our clients include hospitals and healthcare systems such as Georgetown University Hospital, HCA, Kaiser Permanente, NYU Medical Center, Stanford Health Care, UCLA Medical Center and The University of Chicago Hospitals. We also provide services to sub-acute healthcare facilities, dialysis centers, clinics and schools. Hospital and healthcare facilities utilize our services to help cost-effectively manage staff shortages, new unit openings, seasonal variations, budgeted vacant positions, long-term leaves of absence and other flexible staffing needs.

#### Industry Overview

In 2000, total healthcare expenditures in the United States were estimated at \$1.3 trillion, representing approximately 13% of the U.S. gross domestic product, and had grown approximately 8% over 1999 according to the Centers for Medicare & Medicaid Services. Over the next decade, an aging U.S. population and advances in medical technology are expected to drive increases in hospital patient populations and the

consumption of healthcare services. As a result, total healthcare expenditures are projected to increase to approximately \$2.6 trillion during the next decade.

Within the healthcare staffing sector, temporary staffing has emerged as an increasingly utilized method to efficiently deliver healthcare services. In the mid-1990s, several factors prompted the increased usage of temporary staffing at hospitals. A principal factor was cost containment. Managed care, Medicare, Medicaid and competitive pressures created renewed emphasis on cost containment. Among other responses, this led acute-care hospitals to redesign their staffing models to reduce their levels of fixed staffing and to include a variable staffing component.

The temporary healthcare staffing industry accounted for \$7.2 billion in revenues in 2000 and this amount is projected to increase by 21%, to \$8.7 billion in 2001, according to estimates by *The Staffing Industry Report*. Approximately 70% of the temporary healthcare staffing industry is comprised of nurse staffing and approximately 30% is comprised of allied health, physicians and other healthcare professionals. Temporary healthcare staffing has experienced strong historical growth since 1996, growing at a compound annual growth rate of 13%, but this growth accelerated to approximately 15% during 1999 and 2000. Within the temporary healthcare staffing industry, we believe that travel nurse staffing is one of the fastest growing segments.

### ***Demand and Supply Drivers***

Since the mid-1990s, changes in the healthcare industry prompted a permanent shift in staffing models that led to an increased usage of temporary staffing at hospitals and other healthcare facilities. The supply of professionals choosing travel healthcare as a short-term or long-term career option has also grown alongside increased demand for temporary healthcare professionals. We believe that this expanded demand and supply pattern will continue, particularly in the travel nurse staffing sector, because of the following drivers:

#### ***Demand Drivers***

- ***Demographics and Advances in Medicine and Technology.*** As the U.S. population ages and as advances in medicine result in longer life expectancy, it is likely that chronic illnesses and hospital populations will continue to increase. We believe that these factors will increase the demand for both temporary and permanent nurses, as well as for allied health professionals. In addition, advances in healthcare technology have increased the demand for specialty nurses who are qualified to operate advanced medical equipment or perform complex medical procedures.
- ***Shift to Flexible Staffing Models.*** Nurse wages comprise the largest percentage of hospitals' labor expenses. Cost containment initiatives and a renewed focus on cost-effective healthcare service delivery continue to lead many hospitals and other healthcare facilities to adopt flexible staffing models that include reduced permanent staffing levels and increased utilization of flexible staffing sources, such as traveling nurses.
- ***Nursing Shortage.*** Most regions of the United States are experiencing a shortage of nurses. The American Hospital Association estimated that up to 126,000 position vacancies existed in 2001 for registered nurses, representing approximately 10% of the hospital-based nursing workforce. The *Journal of the American Medical Association* has reported that the registered nurse workforce is expected to be 20% below projected requirements by 2020. Faced with increasing demand for and a shrinking supply of nurses, hospitals are utilizing more temporary nurses to meet staffing requirements. Factors contributing to the current and projected declining supply of nurses include:
  - ***Decreasing Number of Entrants to Nursing School and New Nursing Graduates.*** According to the American Association of Colleges of Nursing, enrollment in all basic nursing education programs (baccalaureate, associate or diploma) fell by approximately 5% each year from 1995 to 2000.
  - ***Nurses Leaving Patient Care Environments for Less Stressful and Demanding Careers.*** Career opportunities for nurses have expanded beyond the traditional bedside role. Pharmaceutical companies, insurance companies, HMOs and hospital service and supply companies increasingly

offer nurses attractive positions which involve less demanding work schedules and physical requirements.

- *Aging Nurse Population.* The average age of a registered nurse is estimated to be 45.2 years old, an increase of 8.4% since 1988. By 2010, 40% of the nurse population is expected to be older than 50, as compared to 29% of nurses that were older than 50 in 2000. As a growing number of nurses retire, the nursing shortage is likely to worsen.
- *Seasonality.* Hospitals in areas that experience significant seasonal fluctuations in population, such as Florida or Arizona during the winter months, must be able to efficiently adjust their staffing levels to accommodate the change in demand. Many of these hospitals utilize temporary healthcare professionals to satisfy these seasonal staffing needs.
- *Family and Medical Leave Act.* The adoption of the Family and Medical Leave Act in 1993, which mandates 12-week job-protected maternity and dependent care leave, continues to create temporary nursing vacancies at healthcare facilities. Approximately 94% of the registered nurses working at healthcare facilities in the United States are women.
- *State Legislation Requiring Healthcare Facilities to Utilize More Nurses.* In response to concerns by consumer groups over the quality of care provided in healthcare facilities and concerns by nursing organizations about the increased workloads and pressures placed upon nurses, several states have passed or introduced legislation that is expected to increase the demand for nurses.
  - *Minimum Nurse-to-Patient Ratios.* California passed legislation in 1999 which is expected to go into effect in January 2003 that requires the establishment of minimum nurse-to-patient ratios throughout all hospitals. Several states are considering similar legislation.
  - *Limitation of Mandatory Overtime.* Many healthcare facilities require their permanent staff to work overtime to cover staffing shortages. Maine, Oregon and New Jersey have passed legislation that limits mandatory overtime for nurses, and similar legislation has already been introduced in several other states.

### *Supply Drivers*

- *Traditional Reasons for a Healthcare Professional to Work on a Travel Assignment.* Traveling allows healthcare professionals to explore new areas of the United States, work at prestigious hospitals, learn new skills, build their resumes and avoid unwanted workplace politics that may accompany a permanent position. Other benefits to temporary healthcare professionals include free or subsidized housing, professional development opportunities, competitive wages, health insurance and completion bonuses for some assignments. All of these opportunities have been constant supply drivers, bringing a growing number of new healthcare professionals into traveling.
- *Word-of-Mouth Referrals.* New applicants are most often referred to travel staffing companies by current or former temporary healthcare professionals. Growth in the number of healthcare professionals that have traveled, as well as the increased number of hospital and healthcare facilities that utilize temporary healthcare professionals, creates more opportunities for referrals.
- *More Nurses Choosing Traveling Due to the Nursing Shortage.* In times of nursing shortages, nurses with permanent jobs generally feel more secure about their employment prospects. They have a higher degree of confidence that they can leave their permanent position to take a travel assignment and have the ability to return to a permanent position in the future. Additionally, during a nursing shortage, permanent staff nurses are often required to assume greater responsibility and patient loads, work mandatory overtime and deal with increased pressures within the hospital. Many experienced nurses consequently choose to leave their permanent employer, and look for a more flexible and rewarding position.
- *New Legislation Allowing Nurses to Become More Mobile.* The Mutual Recognition Compact Legislation, promoted by the National Council of State Boards of Nursing, allows nurses to work more

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freely within states participating in the Compact Legislation without obtaining new state licenses. The recognition legislation began in 1999 and had been passed in 16 states as of December 2001.

### **Growth Strategy**

Our goal is to expand our leadership position within the temporary healthcare staffing sector in the United States. The key components of our business strategy include:

- *Expanding Our Network of Qualified Temporary Healthcare Professionals.* Through our recruiting efforts both in the United States and internationally, we continue to expand our network of qualified temporary healthcare professionals. We have exhibited substantial growth in our temporary healthcare professional network over the past five years primarily through referrals from our current and former temporary healthcare professionals, as well as through advertising and direct mailings. While we expect these methods to continue to gain momentum, we are implementing creative ways to attract additional qualified healthcare professionals. Two recent examples include our acquisition of O'Grady-Peyton International, the leading recruiter of registered nurses from English-speaking foreign countries for placement in the United States, and Internet recruitment tools such as our NurseZone.com website, which is a leading nurse community site on the Internet.
- *Strengthening and Expanding Our Relationships with Hospitals and Healthcare Facilities.* We seek to continue to strengthen and expand our relationships with our hospital and healthcare facility clients, and to develop new relationships. Because we possess one of the largest national networks of temporary nurse and allied health professionals, we are well positioned to offer our hospital and healthcare facility clients effective solutions to meet their staffing needs. We currently hold contracts with over 40% of all acute-care hospitals in the United States and we believe there is an opportunity to further grow our existing relationships and develop new relationships with hospitals and healthcare facilities.
- *Leveraging Our Business Model and Large Hospital and Healthcare Facility Client Base to Increase Productivity.* We seek to increase our productivity through our proven multi-brand recruiting strategy, large network of temporary healthcare professionals, established hospital and healthcare facility client relationships, proprietary information systems, innovative marketing and recruitment programs, training programs and centralized administrative support systems. Our multi-brand recruiting strategy allows a recruiter in any of our brands to take advantage of all of our nationwide placement opportunities. In addition, our information systems and support personnel permit our recruiters to spend more time focused on temporary healthcare professionals' needs and placing them on appropriate assignments in hospitals or healthcare facilities. Implementation of our business model at our acquired brands has resulted in significant increases in our productivity.
- *Expanding Service Offerings Through New Staffing Solutions.* In order to further enhance the growth in our business and improve our competitive position in the healthcare staffing sector, we continue to explore new service offerings. We have most recently introduced temporary and permanent programs for U.S. and Canadian newly- graduated nurses, specialty training opportunities, vendor management for hospitals and healthcare facilities, permanent placement of nurses and placement of temporary healthcare professionals in Canadian hospital and healthcare facilities.
- *Capitalizing on Strategic Acquisition Opportunities.* In order to enhance our competitive position, we will continue to selectively explore strategic acquisitions. In the past after we have made acquisitions, we have sought to leverage our hospital relationships and orders across our brands, integrate back-office functions and maintain brand differentiation for temporary healthcare professional recruitment purposes. We also implement our proven business model in order to achieve greater productivity, operating efficiencies and financial results.



## **Business Overview**

### ***Services Provided***

Hospitals and healthcare facilities generally obtain supplemental staffing from two sources, local temporary (per diem) agencies and national travel healthcare staffing companies. Per diem staffing, which has historically comprised the majority of the temporary healthcare staffing industry, involves the placement of locally-based healthcare professionals on very short-term assignments, such as daily shift work, on an as needed (per diem) basis. Hospitals and healthcare facilities often give minimal advance notice of their per diem assignments, and require a quick turnaround from their staffing agencies, generally less than 24 hours. Travel staffing, on the other hand, provides healthcare facilities with staffing solutions to address anticipated staffing requirements, typically for 13 weeks. In contrast to per diem agencies, travel staffing companies select from a national (and in some cases international) skilled labor pool and provide pre-screened candidates to their hospital and healthcare facility clients, usually at a lower cost. We focus on the travel segment of the temporary healthcare staffing industry, and provide both nurse and allied health temporary healthcare professionals to our hospital and healthcare facility clients.

*Nurses.* We provide medical nurses, surgical nurses, specialty nurses, licensed practical or vocational nurses, and advanced practice nurses in a wide range of specialties for travel assignments throughout the United States. We place our qualified nurse professionals with premier, nationally recognized hospitals and hospital networks. The majority of our assignments are in acute-care hospitals, including teaching institutions, trauma centers and community hospitals. Nurses comprise approximately 90% of the total temporary healthcare professionals currently working for us.

*Allied Health Professionals.* We also provide allied health professionals to acute-care hospitals and other healthcare facilities such as skilled nursing facilities, rehabilitation clinics and schools. Allied health professionals include such disciplines as surgical technologists, respiratory therapists, medical and radiology technologists, dialysis technicians, speech pathologists and rehabilitation assistants. Allied health professionals comprise approximately 10% of the total temporary healthcare professionals currently working for us.

### ***Multi-Brand Recruiting***

In order to enhance our opportunities to expand our network of traveling professionals, we choose to recruit temporary healthcare professionals in the United States and internationally separately under each of our five established and recognized brand names: American Mobile Healthcare, Medical Express, NursesRx, Preferred Healthcare Staffing and O'Grady-Peyton International. While all of our brands have the capability to place temporary healthcare professionals on assignments that we have throughout the United States using the same placement opportunities, or "orders," our brands have distinct geographic market strengths and brand images which enhances our recruitment opportunities.

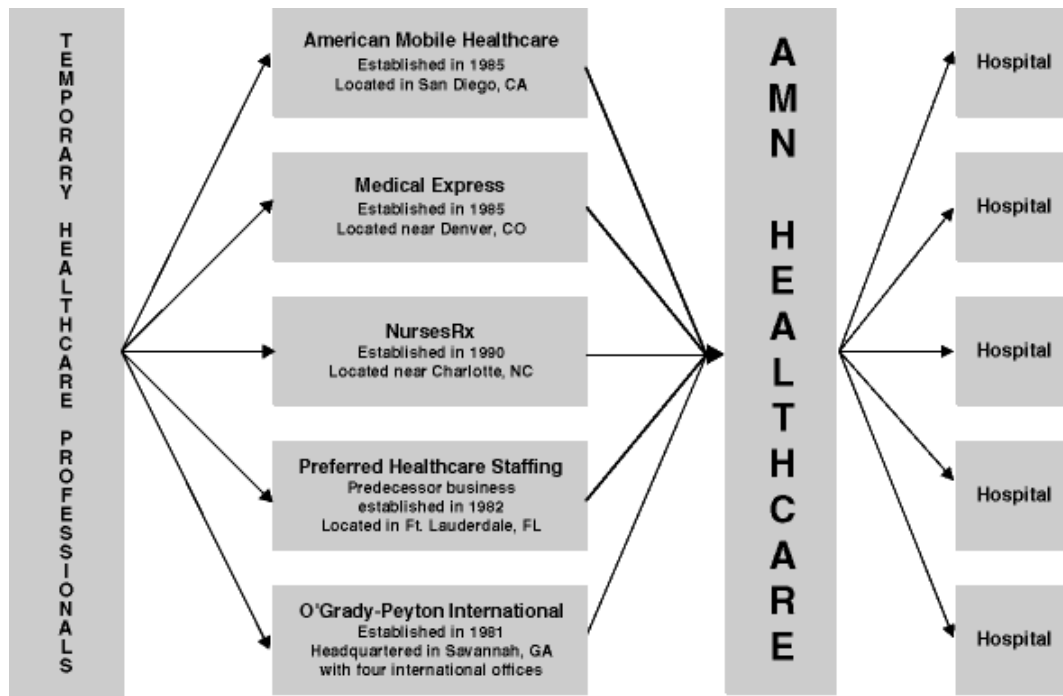
It is common for temporary healthcare professionals to register with more than one brand in order to utilize more than one recruiter. Our multi-brand recruiting strategy provides us with a competitive advantage, as potential temporary healthcare professionals are able to work with more than one of our brand recruiters. Accordingly, we believe that our probability of successfully placing the temporary healthcare professional on assignment is enhanced.

To our hospital and healthcare facility clients, however, we market and administer our services under the single corporate brand of AMN Healthcare. Hospitals and healthcare facility clients in turn have the advantage of managing one contract with us, but receiving the benefit of five nationally known brands that recruit temporary healthcare professionals for their open positions.

The following chart depicts our single staffing provider and multi-brand recruiting model:

**Multi-Brand Recruiting**

**Single Staffing Provider**



***National Presence and Diversified Hospital and Healthcare Facility Client Base***

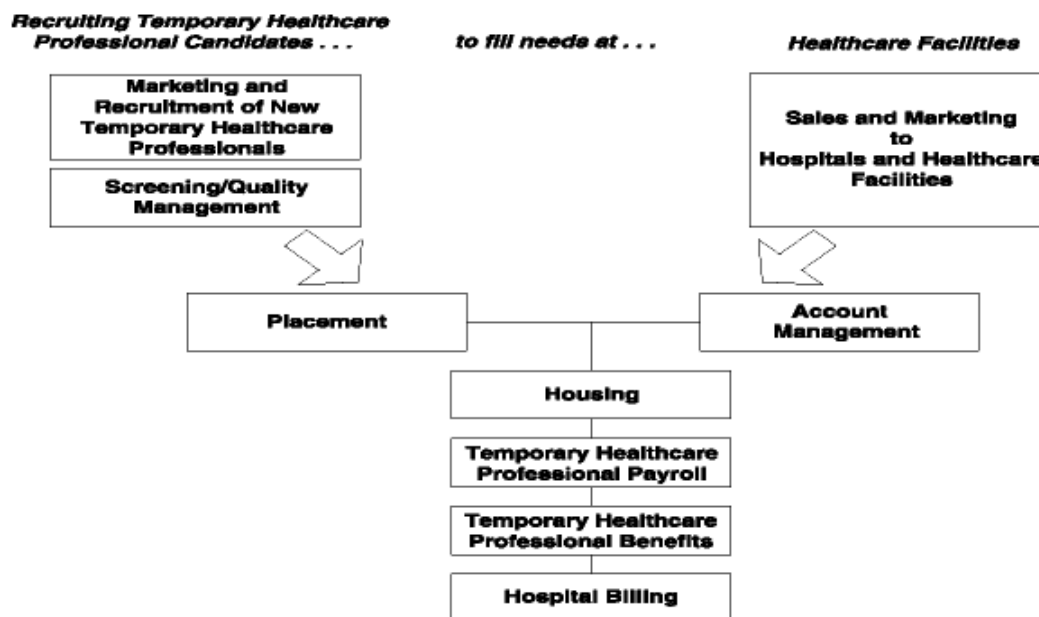
We offer our temporary healthcare professionals nationwide placement opportunities and provide temporary staffing solutions to our hospital and healthcare facility clients that are located throughout the United States. We typically have open temporary healthcare professional requests, or orders, in all 50 states. The largest percentage of these open orders are typically concentrated in the most heavily populated states, including approximately 17% in Florida, 15% in California, 6% in Arizona, 6% in Texas and 5% in Maryland.

The number of our hospital and healthcare facility clients that we serve has grown from approximately 600 in 1993 to over 2,800 hospital and healthcare facility clients at the end of 2001. Over 95% of our temporary healthcare professional assignments are at acute-care hospitals. In addition to acute-care hospitals, we also provide services to sub-acute healthcare facilities, dialysis centers, clinics and schools. We currently hold contracts with over 40% of all acute-care hospitals in the United States. Our clients include hospitals and healthcare systems such as Georgetown University Hospital, HCA, Kaiser Permanente, NYU Medical Center, Scripps Health Systems, Stanford Health Care, Swedish Health Services, Texas Children's Hospital, UCLA Medical Center and The University of Chicago Hospitals. As of December 31, 2001, no single client, including affiliated groups, comprised more than 10% of our temporary healthcare professionals on assignment and no single client facility comprised more than 2% of our temporary healthcare professionals on assignment.

## Our Business Model

We have developed and continually refined our business model to achieve greater levels of productivity and efficiency. Our model is designed to optimize the communication with, and service to, both our temporary healthcare professionals and our hospital and healthcare facility clients.

The following graph illustrates the elements of our business model:



### *Marketing and Recruitment of New Temporary Healthcare Professionals*

We believe that nursing and allied health professionals are attracted to us because of our customer service and relationship-oriented approach, our competitive compensation and benefits package, and our large and diverse offering of work assignments which provide the opportunity to travel to numerous attractive locations throughout the United States.

We believe that our multi-brand recruiting strategy makes us more effective at reaching a larger number of temporary healthcare professionals. Because it is common for these healthcare professionals to register with more than one brand in the industry, we believe that by offering five distinct brands we increase our ability to recruit temporary healthcare professionals. Each brand has its own distinct marketing identity to prospective temporary healthcare professionals, and we utilize different strategies in presenting each of the brands as unique. We tailor the marketing of each of our brands through a combination of websites, journal advertising, conferences and conventions, direct mail, printed marketing material and, most importantly, through personal word-of-mouth referrals from current and former temporary healthcare professionals. Referrals from our current and former temporary healthcare professionals are our largest source of new temporary healthcare professionals applying with us. We also operate NurseZone.com, a leading nurse community website. This website caters to the professional and personal lives of nurses, and offers nursing news and updates, links to other Internet sites, discounted products and services, continuing education courses and career opportunities sponsored by our five recruitment brands, including an online temporary healthcare professional application process. In late 2001, we introduced Travelnursing.com, a website where nurses can learn about benefits and opportunities available in traveling. Our five leading brands are featured on the website, including an easy and efficient online application process where nurses can complete one application online and have it sent to each of the brands of their choice.

### ***Screening/Quality Management***

Through our quality management department, we screen each candidate prior to their placement and we continue to evaluate each temporary healthcare professional after they are placed to ensure adequate performance as well as to determine feasibility for future placements. Our internal processes are designed to ensure that each temporary healthcare professional has the appropriate experience, credentials and skills for the assignments that they accept. Our experience has shown us that well-matched placements result in satisfied temporary healthcare professionals and healthcare facility clients. Our screening and quality management process includes three principal stages:

*Initial screening.* Each new temporary healthcare professional candidate who submits an application with us must meet certain criteria, including appropriate prior work experience and proper educational and licensing credentials. We independently verify each applicant's work history and references to reasonably ensure that our hospital and healthcare facility clients may depend on our temporary healthcare professionals for clinical competency and personal reliability. Our proprietary clinical skills checklists, developed for each healthcare specialty area, are used by our hospital and healthcare facility clients' hiring managers as a basis for evaluating candidates and conducting interviews, and for facilitating the selection of a temporary healthcare professional who can meet the hospital or healthcare facility client's specific needs.

*Assignment specific screening.* Once an assignment is accepted by a temporary healthcare professional, our quality management department tracks the necessary documentation and license verification required for the temporary healthcare professional to meet the requirements set forth by us, the hospital or healthcare facility, and, when required, the applicable state board of health or nursing. These requirements may include obtaining copies of specific health records, drug screening, criminal background checks and certain certifications or continuing education courses.

*Ongoing evaluation.* We continually evaluate our temporary healthcare professionals' performance through a verbal and written evaluation process. We receive these evaluations directly from our hospital and healthcare facility clients, and use the feedback to determine appropriate future assignments for each temporary healthcare professional.

### ***Sales and Marketing to Hospitals and Healthcare Facilities***

Our team of regional client service directors markets our services to prospective hospital and healthcare facility clients, and supervises ongoing contract management of existing clients in their territory. We market ourselves to hospitals and healthcare facilities under one corporate brand name, AMN Healthcare, a single staffing provider with five recruitment sources of temporary healthcare professionals: American Mobile Healthcare, Medical Express, NursesRx, Preferred Healthcare Staffing and O'Grady-Peyton International.

The number of our hospital and healthcare facility clients that we serve has grown from approximately 600 in 1993 to over 2,800 clients at the end of 2001. Over 95% of our temporary healthcare professional assignments are at acute-care hospitals. In addition to acute-care hospitals, we also provide services to sub-acute healthcare facilities, dialysis centers, clinics and schools. Our hospital and healthcare facility clients include 15 of the top 16 hospitals in the United States as ranked by *US News and World Report* in its July 2001 Best Hospitals Honor Roll.

### ***Account Management***

Once hospital and healthcare facility contracts are obtained by our regional client service directors, our hospital account managers are responsible for soliciting and receiving orders from these clients and working with our recruiters to fill those orders with qualified temporary healthcare professionals. An "order" is a request from a client hospital or healthcare facility for a temporary healthcare professional to fill an assignment. Hospital account managers regularly call and solicit orders from our clients, who also submit orders via the Internet and by fax. Depending upon their size and specific needs, one hospital or healthcare facility client may have up to 50 open orders at one time.

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Our average number of orders for upcoming assignments has increased significantly during the past three years. The combination of an increasing number of open orders and a greater number of nurses choosing to travel benefits us by providing us with numerous assignments to offer and an increasing supply of new temporary healthcare professional applicants to place. Our growth in open orders can be attributed to factors including:

- continuing increased demand for traveling nurses;
- our extensive network of temporary healthcare professionals;
- our brand recognition and reputation as a quality provider of temporary healthcare staffing services; and
- our increased number of hospital and healthcare facility client relationships.

Because hospitals often list their orders with multiple service providers, open orders may also be listed with our competitors. An order will generally be filled by the company that provides a suitable candidate first, highlighting the need for a large network of temporary healthcare professionals and integrated operating and information systems to quickly and effectively match hospital and healthcare facility client needs with appropriate temporary healthcare professionals.

### ***Placement***

Orders are entered into our information network and are available to the recruiters at all of our recruitment brands. Our recruiters provide our hospital account managers with the personnel profiles of the temporary healthcare professionals who have expressed an interest in a particular assignment. The hospital account manager approves the profiles to be sent to the hospital or healthcare facility client, follows up to arrange a telephone interview between the temporary healthcare professional and the hospital, and confirms offers and placements with the hospital or healthcare facility.

Our recruiters seek to develop and maintain strong and long-lasting relationships with our temporary healthcare professionals. Each recruiter manages a group of pre-screened temporary healthcare professionals and works to understand the unique needs and desires of each healthcare professional. The recruiter will present open order assignments to a temporary healthcare professional, request that the personnel profile be submitted for placement consideration, arrange a telephone interview with assistance from the hospital account managers, make any special requests for housing and generally facilitate each placement.

In the case of our international temporary healthcare professionals, the recruiters at our O'Grady-Peyton International brand, including those located in the United Kingdom, Australia, New Zealand and South Africa, assist candidates in preparing for the national nursing examination and subsequently obtaining a U.S. nursing license. These recruiters also assist our international temporary healthcare professionals to obtain petitions to become lawful permanent residents or to obtain work visas prior to their arrival in the United States.

Throughout the typical 13-week assignment, the recruiter will work with the temporary healthcare professional to review their progress and to determine whether the person would like to extend the length of the current assignment, or move to a new hospital or healthcare facility at the end of the assignment term. Our international temporary healthcare professionals are typically placed on longer-term, 18-month assignments as a result of our substantial investment in bringing them to work in the United States. Near completion of the 18-month assignment, our recruiters will work with these temporary healthcare professionals to explore their options for new assignments, including our more traditional 13-week arrangements.

We share orders among our various brands to increase placement opportunities for our temporary healthcare professionals. Our growth in placement volume has been driven by enabling our recruiters at all of our brands to offer more open assignment orders to their temporary healthcare professionals. For example, we have been successful with this order sharing strategy at Medical Express over the last three years, where 88% of Medical Express placements of temporary healthcare professionals during the fourth quarter of 2001 were with clients who had not been hospital or healthcare facility clients of Medical Express prior to its acquisition.

### ***Housing***

We offer substantially all of our temporary healthcare professionals free or subsidized housing while on assignment. Our housing department is primarily consolidated and managed at our San Diego corporate headquarters. Our housing department facilitates the leasing of all apartments and furniture, manages utilities, and arranges all housing and roommate assignments for the thousands of temporary healthcare professionals that we place each year. We generally offer our temporary healthcare professionals a free two-bedroom apartment to share with another temporary healthcare professional. If a temporary healthcare professional desires to have a private, one-bedroom apartment, they typically pay a housing fee to us to cover the incremental costs. If a temporary healthcare professional chooses not to accept housing provided by us, they receive a monthly housing stipend in lieu of an apartment. Generally, our international temporary healthcare professionals are provided with increased travel reimbursements and assistance with immigration costs in lieu of free or subsidized housing. We currently lease over 3,900 apartments nationwide with a monthly housing expense of over \$4 million.

Housing expenses are typically included in the hourly or weekly fees that we charge to our hospital and healthcare facility clients. Based on the contracted billing rate and gross profit for each hospital or healthcare facility client, we estimate a budget for our housing coordinators to utilize when locating apartments for each assignment. We carefully monitor performance of actual housing costs incurred to the housing costs budgeted for each placement. If housing costs rise in a particular city or region, our housing department tracks these trends and communicates with our regional client service directors to obtain increased billing rates to cover these costs. In the past, we generally have been successful in obtaining rate increases from our hospital and healthcare facility clients to cover the increased housing costs. We also negotiate contracts with national property management and furniture rental companies to leverage our size and obtain more favorable pricing and terms.

### ***Temporary Healthcare Professional Payroll***

During 2001, approximately 93% of our working temporary healthcare professionals were on our payroll, while approximately 7% were paid directly by the hospital or healthcare facility client. Providing payroll services is a value-added and convenient service that hospitals and healthcare facilities increasingly expect from their supplemental staffing sources. To provide convenience and flexibility to our hospital and healthcare facility clients, we accommodate several different payroll cycles, and allow the client to choose the cycle that most closely matches that of their permanent staff. This enables our hospital and healthcare facility clients to integrate management of temporary healthcare professional scheduling and overtime with their permanent staff.

Consistent accuracy and timeliness of making payroll payments is essential to the retention of our temporary healthcare professionals. Our internal payroll service group currently receives and processes timesheets for over 6,400 temporary healthcare professionals. Payroll is typically processed within 72 hours after the completion of each pay period, heightening the importance of having adequately trained and skilled payroll personnel and appropriate operating and information systems. We process our payroll utilizing a leading national payroll processing service that can accommodate our large quantity of transactions and the many federal, state and local withholding and employer taxing requirements across the United States.

Our payroll service group offers our temporary healthcare professionals several service benefits, including multi-account direct deposit, automatic 401(k) deductions, dependent care and flexible spending account deductions and housing co-pays when the temporary healthcare professional chooses to upgrade to a private one-bedroom apartment, rather than a free shared two-bedroom apartment.

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### **Temporary Healthcare Professional Benefits**

In our effort to attract and retain highly qualified traveling professionals, we offer a variety of benefits to our temporary healthcare professionals. These benefits include:

- *Completion Bonuses.* Many of our assignments offer special completion bonuses, which we pay in a lump sum once the temporary healthcare professional has completed his or her 13-week assignment. When offered, completion bonuses usually range from \$500 to \$4,000 for a 13-week assignment and are typically billed as a separate cost to the hospital client, with a small markup to cover employer taxes and overhead.
- *Travel Reimbursement.* Temporary healthcare professionals receive travel reimbursement for each assignment. Reimbursements are calculated on a “per mile” basis with a cap on the total, and are often billed as a separate cost to the hospital or healthcare facility client.
- *Referral Bonuses.* Through our referral bonus program, a temporary healthcare professional receives a bonus if he or she successfully refers a new temporary healthcare professional.
- *401(k) Plan and Dependent Care and Medical Reimbursement.* We offer immediate enrollment in our 401(k) plan, including matching employer contributions after 1,000 hours of continued service. In addition, we provide pre-tax deductions for employee dependent care expenses and a medical spending account.
- *Group Medical, Dental and Life Insurance.* We pay 100% of premium expenses for medical, dental and life insurance.
- *Professional Development Center.* We are a fully accredited provider of continuing education by the American Nurses Credentialing Center. Through our professional development center, our temporary healthcare professionals receive free continuing education courses and seminars. In addition, they can obtain the information needed to apply for licensure in the state where they will travel.
- *24-Hour Management and Clinical Support.* It is our goal to always be available to our temporary healthcare professionals. Professionals with emergencies can be connected 24 hours per day with a clinical liaison, recruitment manager or housing manager to help resolve their problem.

### **Hospital Billing**

To accommodate the needs of our hospital clients, we offer two types of billing: payroll contracts and flat rate contracts. During 2001 we have billed approximately 93% of working temporary healthcare professionals based on payroll contracts and approximately 7% based on flat rate contracts.

*Payroll Contracts.* Under a payroll contract, the temporary healthcare professional is our employee for payroll and benefits purposes. Under this arrangement, we bill our hospital and healthcare facility clients at an hourly rate which effectively includes reimbursement for recruitment fees, wages and benefits for the temporary healthcare professional, employer taxes, and housing expenses. Overtime, shift differential and holiday hours worked are typically billed at a premium rate. We in turn pay the temporary healthcare professional’s wages, housing and travel costs and benefits. Providing payroll services is a value-added and convenient service that hospitals and healthcare facilities increasingly expect from their supplemental staffing sources. Providing these payroll services, which is cash flow intensive, also gives us a competitive edge over smaller staffing firms.

*Flat Rate Contracts.* With flat rate billing, the temporary healthcare professional is placed on the hospital or healthcare facility client’s payroll. We bill the hospital a “flat” weekly rate that includes reimbursement for recruitment fees, temporary healthcare professional benefits and typically housing expenses. Generally, if the temporary healthcare professional works overtime, there is not an opportunity for us to receive increased fees under a flat rate contract.

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### **Information Systems**

Our primary management information and communications systems are centralized and controlled in our corporate headquarters and are utilized in each of our staffing offices. Our financial systems are primarily centralized at our corporate headquarters and our operational reporting is standardized at all of our offices. To facilitate payroll for our corporate employees and our temporary healthcare professionals, we utilize a system provided by a national payroll processing service.

During the past few years, we have developed a proprietary information system called American Mobile Information Exchange, or "AMIE." AMIE is a Windows-based, interactive system that is an important tool in maximizing our productivity and accommodating our multi-brand recruiting strategy. The system was custom-designed for our business model, including integrated processes for temporary healthcare professional and healthcare facility contract management, matching of temporary healthcare professionals to available assignments, temporary healthcare professional file submissions for placements, quality management tracking, controlling compensation packages and managing healthcare facility contract and billing terms. AMIE provides our staff with fast, detailed information regarding individual temporary healthcare professionals and hospital and healthcare facility clients. AMIE also provides a platform for interacting and transacting with temporary healthcare professionals and hospital and healthcare facility clients via the Internet.

### **Risk Management**

We have developed an integrated risk management program that focuses on loss analysis, education and assessment in an effort to reduce our operational costs and risk exposure. We continually analyze our losses on professional liability claims and workers compensation claims to identify trends. This allows us to focus our resources on those areas that may have the greatest impact on us. We have also developed educational materials for distribution to our temporary healthcare professionals that are targeted to address specific work-injury risks. In addition, we have compiled a universal safety manual that every temporary healthcare professional receives each year.

In addition to our proactive measures, we engage in a peer review process of any incidents involving our temporary healthcare professionals. Upon notification of a temporary healthcare professional's involvement in an incident that may result in liability for us, a team of registered nurses reviews the temporary healthcare professional's actions. Our peer review committee makes a prompt determination regarding whether the temporary healthcare professional will continue the assignment and whether we will place the temporary healthcare professional on future assignments.

### **Competition**

The healthcare staffing industry is highly competitive. We compete with both national firms and local and regional firms. We compete with these firms to attract nurses and other healthcare professionals as temporary healthcare professionals and to attract hospital and healthcare facility clients. We compete for temporary healthcare professionals on the basis of customer service and expertise, the quantity, diversity and quality of assignments available, compensation packages, and the benefits that we provide to a temporary healthcare professional while they are on an assignment. We compete for hospital and healthcare facility clients on the basis of the quality of our temporary healthcare professionals, the timely availability of our professionals with requisite skills, the quality, scope and price of our services, our recruitment expertise and the geographic reach of our services.

We believe that larger, nationally established firms enjoy distinct competitive advantages over smaller, local and regional competitors in the travel healthcare staffing industry. Continuing nursing shortages and factors driving the demand for nurses over the past several years have made it increasingly difficult for hospitals to meet their staffing needs. More established firms have a critical mass of available nursing candidates, substantial word-of-mouth referral networks and established brand names, enabling them to attract a consistent flow of new applicants. Larger firms can also more easily provide payroll services billing, which is cash flow intensive, to healthcare providers. As a result, sizable and established firms such as ours have had a significant advantage over smaller participants.



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Some of our competitors in the temporary healthcare staffing sector include Cross Country, IntelliStaf, Medical Staffing Network and RehabCare Group.

### **Government Regulation**

The healthcare industry is subject to extensive and complex federal and state laws and regulations related to professional licensure, conduct of operations, payment for services and payment for referrals. Our business, however, is not directly impacted by or subject to the extensive and complex laws and regulations that generally govern the healthcare industry. The laws and regulations which are applicable to our hospital and healthcare facility clients could indirectly impact our business to a certain extent, but because we provide services on a contract basis and are paid directly by our hospital and healthcare facility clients, we do not have any direct Medicare or managed care reimbursement risk.

Some states require state licensure for businesses that employ and/or assign healthcare personnel to provide healthcare services on-site at hospitals and other healthcare facilities. We are currently licensed in all eleven states that require such licenses.

Most of the temporary healthcare professionals that we employ are required to be individually licensed or certified under applicable state laws. We take reasonable steps to ensure that our employees possess all necessary licenses and certifications in all material respects.

We recruit some temporary healthcare professionals from Canada for placement in the United States. Canadian healthcare professionals can come to the United States on TN Visas under the North American Free Trade Agreement. TN Visas are renewable, one-year temporary work visas, which generally allow immediate entrance into the United States provided the healthcare professional presents at the border proof of waiting employment in the United States and evidence of the necessary healthcare practice licenses.

With respect to our recruitment of international temporary healthcare professionals through our O'Grady-Peyton International brand, we must comply with certain United States immigration law requirements, including the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. We primarily bring temporary healthcare professionals to the United States as immigrants, or lawful permanent residents (commonly referred to as "green card" holders). We screen foreign temporary healthcare professionals and assist them in preparing for the national nursing examination and subsequently obtaining a U.S. nursing license. We file petitions with the Immigration and Naturalization Service for a temporary healthcare professional to become a permanent resident of the United States or obtain necessary work visas. Generally, such petitions are accompanied by proof that the temporary healthcare professional has either passed the Commission on Graduates of Foreign Nursing Schools Examination or holds a full and unrestricted state license to practice professional nursing as well as a contract between us and the temporary healthcare professional demonstrating that there is a bona fide job offer.

### **Employees**

As of December 31, 2001, we had 805 full-time corporate employees. We believe that our employee relations are good. The following chart shows our number of full-time corporate employees by department:

Recruitment	224
Regional Directors and Hospital Account Managers	46
Housing, Quality Management and Traveler Services	194
Customer Accounting and Payroll	205
MIS, Support Services, HR, Marketing and Facilities Staff	115
Corporate and Subsidiary Management	21
	—
Total Corporate Employees	805

During the fourth quarter of 2001, we had over 6,800 temporary healthcare professionals working on assignment.

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### **Item 2. Properties**

We believe that our properties are adequate for our current needs. In addition, we believe that adequate space can be obtained to meet our foreseeable business needs. We are currently negotiating to buy or lease for approximately ten years a new, 125,000 square foot headquarters building in San Diego, California. We currently lease office space in nine locations, as identified in the chart below:

<b>Location</b>	<b>Square Feet</b>
San Diego, California (corporate headquarters)	95,677
Ft. Lauderdale, Florida	34,631
Louisville, Colorado	19,427
Huntersville, North Carolina	15,600
Savannah, Georgia	5,656
Cape Town (South Africa)	1,399
Birmingham (United Kingdom)	988
Canning Vale (Australia)	958
Phoenix, Arizona	767
Total	175,103

### **Item 3. Legal Proceedings**

We are subject to various claims and legal actions in the ordinary course of our business. Some of these matters include professional liability, employee-related matters and inquiries and investigations by governmental agencies regarding our employment practices. We are not aware of any pending or threatened litigation that we believe is reasonably likely to have a material adverse effect on us.

Our hospital and healthcare facility clients may also become subject to claims, governmental inquiries and investigations and legal actions to which we may become a party relating to services provided by our professionals. From time to time, and depending upon the particular facts and circumstances, we may be subject to indemnification obligations under our contracts with our hospital and healthcare facility clients relating to these matters. At this time, we are not aware of any such pending or threatened litigation that we believe is reasonably likely to have a material adverse effect on us.

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

No matters were submitted to a vote of security holders during the fourth quarter of fiscal 2001.

**PART II****Item 5. Market for Registrant's Common Equity and Related Stockholder Matters**

Our common stock has traded on the New York Stock Exchange under the symbol "AHS" since our initial public offering on November 13, 2001. Prior to that time, there was no public trading market for our common stock. The following table sets forth, for the period indicated, the high and low sales prices reported by the New York Stock Exchange.

	<u>High</u>	<u>Low</u>
<b>Year Ended December 31, 2001</b>		
Fourth Quarter (since November 13, 2001)	\$27.90	\$21.00

As of March 15, 2002, there were 42,289,770 shares of our common stock issued and outstanding that were held by 3,481 stockholders of record. There were no sales of unregistered securities during the fourth quarter of 2001.

We have not paid any dividends in the past and currently do not expect to pay cash dividends or make any other distributions in the future. We expect to retain our future earnings, if any, for use in the operation and expansion of our business. Any future determination to pay dividends will be at the discretion of our board of directors and will depend upon our financial condition, results of operations, capital requirements and such other factors as our board deems relevant. In addition, our ability to declare and pay dividends on our common stock is subject to covenants in our revolving credit facility. See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources."

**Item 6. Selected Consolidated Financial and Operating Data**

You should read the selected financial and operating data presented below in conjunction with “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Item 8. Financial Statements and Supplemental Data” appearing elsewhere in this Annual Report on Form 10-K. Our statement of operations data for the years ended December 31, 2001, 2000 and 1999, and the balance sheet data at December 31, 2001 and 2000 are derived from, and are qualified by reference to, the audited financial statements included elsewhere in this Annual Report on Form 10-K. The statement of operations data for the years ended December 31, 1998 and 1997 and the balance sheet data at December 31, 1999, 1998 and 1997 are derived from our audited financial statements that do not appear herein. Our historical results are not necessarily indicative of our results of operations to be expected in the future.

	Predecessor(1)		Years Ended December 31,			
	Period From January 1, Through December 3, 1997	Period From December 4, Through December 31, 1997(2)	1998	1999	2000	2001
(dollars and shares in thousands, except per share data)						
<b>Consolidated Statements of Operations:</b>						
Revenue	\$63,570	\$5,209	\$87,718	\$146,514	\$230,766	\$517,794
Cost of revenue	49,510	4,118	67,244	111,784	170,608	388,284
Gross profit	14,060	1,091	20,474	34,730	60,158	129,510
Expenses:						
Selling, general and administrative (excluding non-cash stock-based compensation)	9,560	845	12,804	20,677	30,728	71,483
Non-cash stock-based compensation(3)	—	—	—	—	22,379	31,881
Amortization	—	90	1,163	1,721	2,387	5,562
Depreciation	68	7	171	325	916	2,151
Transaction costs(4)	—	—	—	12,404	1,500	1,955
Total expenses	9,628	942	14,138	35,127	57,910	113,032
Income (loss) from operations	4,432	149	6,336	(397)	2,248	16,478
Interest expense, net	(174)	(183)	(2,476)	(4,030)	(10,006)	(13,933)
Income (loss) before minority interest, income taxes and extraordinary item	4,258	(34)	3,860	(4,427)	(7,758)	2,545
Minority interest in earnings of subsidiary(5)	—	(9)	(657)	(1,325)	—	—
Income tax (expense) benefit	(195)	(9)	(1,571)	872	2,560	(1,476)
Income (loss) before extraordinary item	4,063	(52)	1,632	(4,880)	(5,198)	1,069
Extraordinary loss on extinguishment of debt, net of income tax benefit	—	—	—	(730)	—	(5,455)
Net income (loss)	\$ 4,063	\$ (52)	\$ 1,632	\$ (5,610)	\$ (5,198)	\$ (4,386)
Net income (loss) per common share:						
Basic and diluted	N/A	N/A	\$ 0.09	\$ (0.26)	\$ (0.23)	\$ (0.14)
Weighted average common shares outstanding:						
Basic and diluted	N/A	N/A	17,751	21,715	22,497	30,641

	Predecessor(1)		Years Ended December 31,			
	Period From January 1, Through December 3, 1997	Period From December 4, Through December 31, 1997(2)				
			1998	1999	2000	2001
(dollars and shares in thousands, except per share data)						
<b>Other Financial and Operating Data:</b>						
Revenue growth	N/A	N/A	N/A	67%	58%	124%
Average temporary healthcare professionals on assignment	1,155	1,194	1,444	2,289	3,166	5,964
Growth in average temporary healthcare professionals on assignment	N/A	N/A	N/A	59%	38%	88%
Capital expenditures	\$ 172	\$ 112	\$ 690	\$ 1,656	\$ 2,358	\$ 4,497
Adjusted EBITDA(6)	\$4,500	\$ 246	\$7,670	\$14,053	\$29,430	\$58,027
Adjusted EBITDA growth	N/A	N/A	N/A	83%	109%	97%
As of December 31,						
	1997	1998	1999	2000	2001	
<b>Consolidated Balance Sheet Data:</b>						
Cash, cash equivalents and short term investments	\$ 1,124	\$ 888	\$ 503	\$ 546	\$ 31,968	
Working capital	9,054	13,159	21,655	44,149	116,478	
Total assets	42,229	65,337	79,878	209,410	308,929	
Total long-term debt, including current portion	25,151	37,596	74,006	122,889	—	
Total stockholders' equity (deficit)	12,348	19,477	(2,111)	67,070	271,905	

- (1) We were incorporated on November 10, 1997. We had no operations until we acquired AMN Healthcare, Inc. on December 4, 1997. Therefore, the statement of operations data for the period January 1, 1997 through December 3, 1997 reflect the activity of AMN Healthcare, Inc. only. See "Item 8. Financial Statements and Supplementary Data — Notes to Consolidated Financial Statements — Note 4."
- (2) Reflects our statement of operations data from December 4, 1997 through December 31, 1997. We were incorporated on November 10, 1997, but had no operations until we acquired AMN Healthcare, Inc. on December 4, 1997. See "Item 8. Financial Statements and Supplementary Data — Notes to Consolidated Financial Statements — Note 4."
- (3) Non-cash stock-based compensation represents compensation expense related to our stock option plans to reflect the difference between the fair market value and the exercise price of stock options previously issued to our officers. See "Item 8. Financial Statements and Supplementary Data — Notes to Consolidated Financial Statements — Note 9."
- (4) Transaction costs represent costs incurred in connection with our 1999 recapitalization, our acquisition of Preferred Healthcare Staffing in 2000, and our initial public offering in 2001.
- (5) On October 18, 1999, the minority stockholder of one of our subsidiaries exchanged his shares of the subsidiary for our shares. As a result, no minority interest is reflected after that date.
- (6) Adjusted EBITDA represents income (loss) from operations plus depreciation, amortization, transaction costs and non-cash stock-based compensation expense. Adjusted EBITDA is presented because we believe that it is a widely accepted financial indicator used by certain investors and securities analysts to analyze and compare companies on the basis of operating performance. Adjusted EBITDA is not intended to represent cash flows for the period, nor has it been presented as an alternative to operating income as an indicator of operating performance and should not be considered in isolation or as a substitute for measures of performance prepared in accordance with accounting principles generally accepted in the United States of America. Adjusted EBITDA, as we define it, is not necessarily comparable to other similarly titled captions of other companies due to potential inconsistencies in the method of calculation.

**Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion should be read in conjunction with, and is qualified in its entirety by, our financial statements and the notes thereto and other financial information included elsewhere in this Annual Report on Form 10-K. Certain statements in this “Management’s Discussion and Analysis of Financial Condition and Results of Operations” are “forward-looking statements.” See “— Special Note Regarding Forward-Looking Statements.”

**Overview**

We are a leading temporary healthcare staffing company and the largest nationwide provider of travel nurse staffing services, one of the fastest growing segments of the temporary healthcare staffing industry. We recruit nurses and allied health professionals, our “temporary healthcare professionals,” and place them on temporary assignments, typically for 13 weeks away from their permanent homes, at hospitals and healthcare facilities throughout the United States.

We derive substantially all of our revenue from fees paid directly by hospitals and healthcare facilities rather than from payments by government or other third parties. We enter into two types of contracts with our hospital and healthcare facility clients: flat rate contracts and payroll contracts. Under a flat rate contract, the temporary healthcare professional becomes an employee of the hospital or healthcare facility and is placed on their payroll. We bill the hospital or healthcare facility a “flat” weekly rate to compensate us for providing recruitment, housing and travel services. Alternatively, under a payroll contract, the temporary healthcare professional is our employee. We then bill our hospital or healthcare facility client at an hourly rate to compensate us for the temporary healthcare professional’s wages and benefits, as well as for recruitment, housing and travel services. Our clients generally prefer payroll contracts because this arrangement eliminates significant employee and payroll administrative burdens for them. Although the temporary healthcare professional wage and benefits billed under a payroll contract primarily represent a pass-through cost component for us, we are able to generate greater profits by providing these value-added services. While payroll contracts generate more gross profit than flat rate contracts, the gross margin generated is lower due to the pass-through of the temporary healthcare professional’s compensation costs. Over the past five years, we, and the industry as a whole, have migrated towards a greater utilization of payroll contracts. During 2001, approximately 93% of our contracts with our hospital and healthcare facility clients have been payroll contracts.

Since 1998 we have completed four strategic acquisitions. We acquired Medical Express, Inc. in November 1998, which strengthened our presence in the Pacific Northwest and Mountain states. During 2000, we completed the acquisitions of Nurses RX, Inc. in June, and Preferred Healthcare Staffing, Inc. in November, which strengthened our presence in the Eastern and Southern regions of the United States. We completed our fourth acquisition in May 2001, acquiring O’Grady-Peyton International (USA), Inc., the leading recruiter of registered nurses from English-speaking foreign countries for placement in the United States. Each of these acquisitions has been accounted for by the purchase method of accounting. Therefore, the operating results of the acquired entities are included in our results of operations commencing on the date of acquisition of each entity. As a result, our results of operations following each acquisition may not be comparable with our prior results.

At the completion of our initial public offering in November 2001, options to purchase 5,182,000 shares of our common stock that we granted to members of our management became immediately vested. These options had an average exercise price \$12.45 below the initial public offering price of \$17.00 per share. As a result, we recorded approximately \$18.8 million of non-cash stock-based compensation expense in the fourth quarter of 2001, of which \$18.7 million was related to these options. In addition, we also recorded \$13.1 million of non-cash stock-based compensation expense in the first three quarters of 2001 and \$22.4 million for 2000. We also retired all of our indebtedness (approximately \$145.2 million) with the proceeds from and upon the completion of our initial public offering. The retirement of debt resulted in an extraordinary charge against earnings of approximately \$5.5 million, net of income tax benefits, related to the write-off of the unamortized discount on our senior subordinated notes and unamortized deferred financing

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costs and loan fees resulting from the early extinguishment of our existing indebtedness, and a prepayment premium resulting from the early extinguishment of the senior subordinated notes.

### Results of Operations

The following table sets forth, for the periods indicated, certain statement of operations data as a percentage of our revenue. Our results of operations are reported as a single business segment.

	Years Ended December 31,		
	1999	2000	2001
<b>Consolidated Statement of Operations:</b>			
Revenue	100.0%	100.0%	100.0%
Cost of revenue	76.3	73.9	75.0
Gross profit	23.7	26.1	25.0
Selling, general and administrative (excluding non-cash stock-based compensation)	14.1	13.3	13.8
Non-cash stock-based compensation	—	9.7	6.2
Amortization and depreciation expense	1.4	1.4	1.5
Transaction costs	8.5	0.7	0.4
Income (loss) from operations	(0.3)	1.0	3.1
Interest expense, net	2.7	4.4	2.7
Income (loss) before minority interest, income taxes and extraordinary item	(3.0)	(3.4)	0.4
Minority interest in earnings of subsidiary	(0.9)	—	—
Income tax (expense) benefit	0.6	1.1	(0.2)
Extraordinary loss on extinguishment of debt, net of income tax benefit	(0.5)	—	(1.0)
Net loss	(3.8)%	(2.3)%	(0.8)%

#### *Comparison of Results for the Year Ended December 31, 2000 to the Year Ended December 31, 2001*

**Revenue.** Revenue increased 124%, from \$230.8 million for 2000 to \$517.8 million for 2001. Of the \$287.0 million increase, approximately \$160.6 million was attributable to expansion of our existing brands through growth in the number of temporary healthcare professionals and enhancements in contract terms with our hospital and healthcare facility clients, representing an organic growth rate for our recurring operations of 70%. The total number of temporary healthcare professionals on assignment in our existing brands grew 40% and contributed approximately \$92.8 million to the increase. Enhancements in contract terms included increases in hourly rates charged to hospital and healthcare facility clients that accounted for approximately \$38.5 million of this increase, and a shift in the mix of payroll versus flat rate temporary healthcare professional contracts that accounted for approximately \$29.3 million of this increase. The remainder of the increase, \$126.4 million, was attributable to the acquisitions of NursesRx in June 2000, Preferred Healthcare Staffing in November 2000 and O'Grady-Peyton International in May 2001.

**Cost of Revenue.** Cost of revenue increased 128%, from \$170.6 million for 2000 to \$388.3 million for 2001. Of the \$217.7 million increase, approximately \$122.6 million was attributable to the organic growth of our existing brands, and approximately \$95.1 million was attributable to the acquisitions of NursesRx, Preferred Healthcare Staffing and O'Grady-Peyton International.

**Gross Profit.** Gross profit increased 115%, from \$60.2 million for 2000 to \$129.5 million for 2001, representing gross margins of 26.1% and 25.0%, respectively. The decrease in the gross margin was primarily attributable to a larger pass-through of price increases in the form of benefits to our temporary healthcare

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professionals as compared to 2000 and the shift in the mix of temporary healthcare professionals from flat rate contracts to payroll contracts.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased 133%, from \$30.7 million for 2000 to \$71.5 million for 2001. Of the \$40.8 million increase, approximately \$18.4 million was attributable to the acquisitions of NursesRx, Preferred Healthcare Staffing and O'Grady-Peyton International. The remaining increase of \$22.4 million was primarily attributable to increases in nurse professional development, information systems development, marketing, recruiting, and administrative and office expenses in support of the recent and anticipated growth in temporary healthcare professionals under contract.

*Non-Cash Stock-Based Compensation.* We recorded non-cash compensation charges of \$22.4 million in 2000 and \$31.9 million in 2001 in connection with our stock option plans to reflect the difference between the fair market value and the exercise price of previously issued stock options.

*Amortization and Depreciation Expense.* Amortization expense increased from \$2.4 million for 2000 to \$5.6 million for 2001. This increase was attributable to the additional goodwill associated with the acquisitions of NursesRx, Preferred Healthcare Staffing and O'Grady-Peyton International. Depreciation expense increased from \$0.9 million for 2000 to \$2.2 million for 2001. This increase was primarily attributable to the acquisitions of NursesRx, Preferred Healthcare Staffing and O'Grady-Peyton International and the purchase of furniture and equipment to support our recent and anticipated growth.

*Transaction Costs.* Transaction costs of \$2.0 million for 2001 relate to the termination of an advisory agreement in conjunction with our initial public offering. Transaction costs of \$1.5 million for 2000 relate to the non-capitalized costs incurred in connection with the acquisition of Preferred Healthcare Staffing.

*Interest Expense, Net.* Interest expense, net increased from \$10.0 million for 2000 to \$13.9 million for 2001. Of the \$3.9 million increase, approximately \$3.7 million was attributable to additional borrowings incurred in conjunction with the acquisitions of NursesRx, Preferred Healthcare Staffing and O'Grady-Peyton International. The remaining increase was primarily due to the new accounting treatment for derivative instruments under SFAS No. 133. Beginning January 1, 2001, SFAS No. 133, as amended, required us to recognize the changes to the fair value of our derivative hedging instruments as a component of interest expense.

*Income Tax (Expense) Benefit.* The provision for income tax for 2000 was a benefit of \$2.6 million as compared to income tax expense of \$1.5 million for 2001, reflecting effective income tax rates of a 33% benefit and 58% expense for these periods, respectively. The differences between these effective tax rates and our expected effective tax rate of 41% are primarily attributable to the effect of various permanent tax difference items, the impact of which is magnified by the reduction in pre-tax income created by the non-cash stock-based compensation charge.

*Extraordinary Loss On Extinguishment of Debt, Net of Income Tax Benefit.* The \$5.5 million extraordinary loss on extinguishment of debt for 2001 was attributable to the retirement of all of our indebtedness (approximately \$145.2 million) with the proceeds from and upon the completion of our initial public offering. This charge was related to the write-off of unamortized discount on our senior subordinated notes and unamortized deferred financing costs and loan fees resulting from the early extinguishment of our existing indebtedness, and a prepayment premium resulting from the early extinguishment of the senior subordinated notes.

### **Comparison of Results for the Year Ended December 31, 1999 to the Year Ended December 31, 2000**

*Revenue.* Revenue increased 58%, from \$146.5 million in 1999 to \$230.8 million for 2000. Of the \$84.3 million increase, approximately \$63.0 million was attributable to expansion of our existing brands through growth in the number of temporary healthcare professionals and enhancements in contract terms with our hospital and healthcare facility clients, representing an organic growth rate for our recurring operations of 43%. The total number of temporary healthcare professionals on assignment in our existing brands grew 27% and contributed approximately \$39.1 million of the increase. Enhancements in contract terms included



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increases in hourly rates charged to our hospital and healthcare facility clients that accounted for approximately \$17.2 million of this increase, and a shift in the mix of payroll versus flat rate temporary healthcare professional contracts that accounted for approximately \$6.7 million of this increase. The remainder of the increase in revenue, \$21.3 million, was attributable to the acquisitions of NursesRx in June 2000 and Preferred Healthcare Staffing in November 2000.

*Cost of Revenue.* Cost of revenue increased 53%, from \$111.8 million for 1999 to \$170.6 million for 2000. Of the \$58.8 million increase, approximately \$43.2 million was primarily attributable to the organic growth of our existing brands and approximately \$15.6 million was attributable to the acquisitions of NursesRx and Preferred Healthcare Staffing.

*Gross Profit.* Gross profit increased 73%, from \$34.7 million for 1999 to \$60.2 million for 2000, representing gross margins of 23.7% and 26.1%, respectively. The increase in gross margin was primarily attributable to increases in hourly rates charged to our hospital and healthcare facility clients and to the acquisition of NursesRx, which historically had higher gross margins than us.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased 49%, from \$20.7 million for 1999 to \$30.7 million for 2000. Of the \$10.0 million increase in selling, general and administrative expenses, approximately \$3.6 million was attributable to the acquisitions of NursesRx and Preferred Healthcare Staffing. The remaining increase, \$6.4 million, was primarily attributable to increases in marketing, recruiting, office and administrative expenses and development and implementation of information systems to support the growth in temporary healthcare professionals under contract.

*Non-Cash Stock-Based Compensation.* We recorded non-cash compensation charges of \$22.4 million in 2000 in connection with our stock option plans to reflect the difference between the fair market value and the exercise price of previously issued stock options. No charge was recorded in 1999.

*Amortization and Depreciation Expense.* Amortization expense increased from \$1.7 million for 1999 to \$2.4 million for 2000. This increase was attributable to the additional goodwill associated with the acquisitions of NursesRx and Preferred Healthcare Staffing. Depreciation expense increased from \$0.3 million for 1999 to \$0.9 million for 2000. This increase was attributable to the acquisitions of NursesRx and Preferred Healthcare Staffing, the purchase of furniture and equipment and the depreciation of internally developed computer software.

*Transaction Costs.* Transaction costs of \$1.5 million for 2000 relate to the non-capitalized costs incurred in connection with the acquisition of Preferred Healthcare Staffing. Transaction costs of \$12.4 million for 1999 relate to costs incurred in connection with our recapitalization in November 1999.

*Interest Expense, Net.* Interest expense, net increased from \$4.0 million for 1999 to \$10.0 million for 2000. The \$6.0 million increase was primarily attributable to additional borrowings incurred in connection with our recapitalization in November 1999 and with the acquisitions of NursesRx and Preferred Healthcare Staffing in 2000.

*Minority Interest in Earnings of Subsidiary.* An officer of ours owned a minority interest in AMN Healthcare, Inc., our primary operating subsidiary, until October 1999. Just prior to our November 1999 recapitalization, this stockholder exchanged his shares of our subsidiary for shares of our common stock, eliminating this minority ownership interest. The \$1.3 million in minority interest in earnings of our subsidiary for 1999 represents this minority interest in the earnings of AMN Healthcare, Inc. for the period January 1, 1999 through October 18, 1999.

*Income Tax (Expense) Benefit.* The income tax benefit for 1999 was \$1.3 million, including the tax benefit of the extraordinary loss on early extinguishment of debt, as compared to a benefit of \$2.6 million for 2000, reflecting effective income tax benefit rates of 18.8% and 33.0% for these periods, respectively. The differences between these effective tax rates and our expected effective rate of 41.0% is primarily attributable to the effect of the minority interest in 1999 and the effect of various permanent tax difference items, the impact of which is magnified by the reduction in pre-tax income resulting from the non-cash stock-based compensation charge in 2000.

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*Extraordinary Loss On Extinguishment of Debt, Net of Income Tax Benefit.* The \$0.7 million extraordinary loss on extinguishment of debt for 1999 was attributable to the write-off of deferred financing costs associated with our November 1999 recapitalization.

### **Liquidity and Capital Resources**

Historically, our primary liquidity requirements have been for debt service under our credit facility, acquisitions and working capital requirements. We have funded these requirements through internally generated cash flow and funds borrowed under our existing credit facility. At December 31, 2001, we had no debt outstanding under our revolving credit facility. Upon the completion of our initial public offering in November 2001, we amended and restated our credit agreement in order to eliminate all of our term loans and to provide for a secured revolving credit facility of up to \$50.0 million in borrowing capacity. The revolving credit facility has a maturity date of November 16, 2004 and contains a letter of credit sub-facility and a swing-line loan sub-facility. Borrowings under this revolving credit facility bear interest at floating rates based upon either a LIBOR or prime interest rate option selected by us, plus a spread, to be determined based on the outstanding amount of the revolving credit facility. Our amended and restated credit agreement contains a minimum fixed charge coverage ratio, a maximum leverage ratio and other customary covenants. Amounts available under our revolving credit facility may be used for working capital and general corporate purposes, subject to various limitations.

We have relatively low capital investment requirements. Capital expenditures were \$1.7 million, \$2.4 million and \$4.5 million in 1999, 2000 and 2001, respectively. In 2001, our primary capital expenditures were \$2.2 million for purchased and internally developed software and \$2.3 million for computers, furniture and equipment and other expenditures. We expect our capital expenditure requirements to be similar in the future, other than costs related to our new corporate headquarters including leasehold improvements, furniture and equipment. See "Item 2. Properties."

Our business acquisition expenditures were \$91.8 million in 2000 and \$13.0 million in 2001. We had no business acquisition expenditures during 1999. During 2000, we completed the acquisitions of NursesRx and Preferred Healthcare Staffing and in May 2001, we acquired O'Grady-Peyton International. These acquisitions were financed through a combination of bank debt and equity investments. In connection with our acquisition of NursesRx, we are obligated to make a \$3.0 million payment to the former shareholders, \$1.0 million of which was paid on June 30, 2001 and the remainder of which is to be paid in two equal installments of \$1.0 million on June 28, 2002 and June 30, 2003. In connection with our acquisition of O'Grady-Peyton International, we are obligated to pay to the former shareholders of O'Grady-Peyton International an aggregate amount of up to \$5.3 million in May 2002 based on O'Grady-Peyton International's revenue and earnings. There is also additional contingent consideration of up to \$2.4 million subject to collection of an outstanding receivable from a customer. We expect to be able to finance any future acquisitions either with cash provided from operations, borrowings under our revolving credit facility, bank loans, debt or equity offerings, or some combination of the foregoing.

Our principal working capital need is for accounts receivable, which has increased with the growth in our business. Our principal sources of cash to fund our working capital needs are cash generated from operating activities and borrowings under our revolving credit facility. Net cash provided by operations for 2001 was \$1.7 million, resulting primarily from cash earnings generated by us offset by the growth in working capital.

We believe that cash generated from operations, the remaining net proceeds from our initial public offering and borrowings under our revolving credit facility will be sufficient to fund our operations for the next 12 months.

At December 31, 2001 and 2000, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts. As such, we are not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships. We do not have relationships or transactions with

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persons or entities that derive benefits from their non-independent relationship with us or our related parties other than what is disclosed in “Item 8. Financial Statements and Supplementary Data — Notes to Consolidated Financial Statements — Note 10.”

### **Critical Accounting Principles and Estimates**

In response to the SEC’s Release Numbers 33-8040 “Cautionary Advice Regarding Disclosure About Critical Accounting Policies” and 33-8056, “Commission Statement about Management’s Discussion and Analysis of Financial Condition and Results of Operations,” we have identified the following critical accounting policies that affect the more significant judgments and estimates used in the preparation of our consolidated financial statements. The preparation of our financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and judgments that affect our reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. On an on-going basis, we evaluate our estimates, including those related to asset impairment, accruals for self-insurance and compensation and related benefits, revenue recognition, allowance for doubtful accounts, and contingencies and litigation. We state these accounting policies in the notes to the consolidated financial statements and at relevant sections in this discussion and analysis. These estimates are based on the information that is currently available to us and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could vary from those estimates under different assumptions or conditions.

We believe that the following critical accounting policies affect the more significant judgments and estimates used in the preparation of our consolidated financial statements:

- We have recorded goodwill and intangibles resulting from our acquisitions completed in the past four years. Through December 31, 2001, goodwill and intangibles have been amortized on a straight-line basis over their respective lives of 25 years and 4 years, respectively. Upon the adoption of SFAS No. 142 on January 1, 2002, we ceased amortizing goodwill and will perform an annual impairment analysis to assess the recoverability of the goodwill, in accordance with the provisions of SFAS No. 142. If we are required to record an impairment charge in the future, it would have an adverse impact on our results of operations.
- We maintain an accrual for our health and workers compensation self-insurance, which is classified in accrued compensation and benefits in our consolidated balance sheets. We determine the adequacy of these accruals by periodically evaluating our historical experience and trends related to both health and workers compensation claims and payments, information provided to us by our insurance broker and industry experience and trends. If such information indicates that our accruals are overstated or understated, we will adjust the assumptions utilized in our methodologies and reduce or provide for additional accruals as appropriate.
- We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments, which results in bad debt expense. We determine the adequacy of this allowance by continually evaluating individual customer receivables, considering the customer’s financial condition, credit history and current economic conditions. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.
- We are subject to various claims and legal actions in the ordinary course of our business. Some of these matters include professional liability, employee-related matters and investigations by governmental agencies regarding our employment practices. Our hospital and healthcare facility clients may also become subject to claims, governmental inquiries and investigations and legal actions to which we may become a party relating to services provided by our professionals. From time to time, and depending upon the particular facts and circumstances, we may be subject to indemnification obligations under our contracts with our hospital and healthcare facility clients relating to these matters. Although we are currently not aware of any such pending or threatened litigation that we believe is reasonably likely to have a material adverse effect on us, if we become aware of such assessments against the Company, we

will evaluate the probability of an adverse outcome and provide accruals for such contingencies as necessary.

### **Potential Fluctuations in Quarterly Results and Seasonality**

Due to the regional and seasonal fluctuations in the hospital patient census of our hospital and healthcare facility clients and due to the seasonal preferences for destinations by our temporary healthcare professionals, the number of temporary healthcare professionals on assignment, revenue and earnings are subject to moderate seasonal fluctuations. Many of our hospital and healthcare facility clients are located in areas that experience seasonal fluctuations in population, such as Florida and Arizona, during the winter and summer months. These facilities adjust their staffing levels to accommodate the change in this seasonal demand and many of these facilities utilize temporary healthcare professionals to satisfy these seasonal staffing needs.

Historically the number of temporary healthcare professionals on assignment has increased during January through March followed by declines or minimal growth during April through August. During September through November, our temporary healthcare professional count has historically increased, followed by a decline in December. Seasonality of revenue and earnings is expected to continue. As a result of all of these factors, results of any one quarter are not necessarily indicative of the results to be expected for any other quarter or for any year.

### **Inflation**

Although inflation has abated during the last several years, the rate of inflation in healthcare related services continues to exceed the rate experienced by the economy as a whole. Our contracts typically provide for an annual increase in the fees paid to us by our clients based on increases in various inflation indices allowing us to pass on inflation costs to our clients. Historically, these increases have generally offset the increases in costs incurred by us.

### **Recent Accounting Pronouncements**

In June 1998, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 133, *Accounting for Derivative Instruments and Hedging Activities*. This statement, as amended, establishes accounting and reporting standards requiring that all derivative instruments (including certain derivative instruments embedded in other contracts) be recorded in the balance sheet as either an asset or a liability measured at its fair value. This statement requires that changes in the derivative's fair value be recognized currently in earnings unless specific hedge accounting criteria are met. The accounting provisions for qualifying hedges allow a derivative's gains and losses to offset related results of the hedged item in the income statement and require that the company must formally document, designate and assess the effectiveness of transactions that qualify for hedge accounting. We implemented this pronouncement in January 2001. At December 31, 2001 we did not hold any derivative instruments.

In July 2001, the FASB issued SFAS No. 141, *Business Combinations*, and SFAS No. 142, *Goodwill and Other Intangible Assets*. SFAS No. 141 requires that the purchase method of accounting be used for all business combinations initiated after June 30, 2001 as well as all purchase method business combinations completed after June 30, 2001. SFAS No. 141 also specifies the criteria that intangible assets acquired in a purchase method business combination must meet to be recognized and reported apart from goodwill, noting that any purchase price allocable to an assembled workforce may not be accounted for separately. SFAS No. 142 requires that goodwill and intangible assets with indefinite useful lives no longer be amortized, but instead tested for impairment at least annually in accordance with the provisions of SFAS No. 142. SFAS No. 142 also requires that intangible assets with definite useful lives be amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment in accordance with SFAS No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of*.

SFAS No. 141 requires that we evaluate existing intangible assets and goodwill that were acquired in prior purchase business combinations, and make any necessary reclassifications in order to conform with the

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new criteria in SFAS No. 141 for recognition apart from goodwill. We are required to reassess the useful lives and residual values of all intangible assets acquired in purchase business combinations, and make any necessary amortization period adjustments by the end of the first interim period after adoption. In addition, to the extent an intangible asset is identified as having an indefinite useful life, we are required to test the intangible asset for impairment in accordance with the provisions of SFAS No. 142 within the first interim period. Any impairment loss will be measured as of the date of adoption and recognized as the cumulative effect of a change in accounting principle in the first interim period.

As of the date of adoption of FAS No. 142, January 1, 2002, we had unamortized goodwill in the amount of \$127.8 million and unamortized identifiable intangible assets in the amount of \$871,000, all of which are subject to the transition provisions of SFAS Nos. 141 and 142. Amortization expense related to goodwill was \$2.3 million and \$5.3 million for the year ended December 31, 2000 and the year ended December 31, 2001, respectively. We adopted SFAS No. 142 as of January 1, 2002 and determined that we will not recognize any transitional impairment losses in 2002. We have also reevaluated the classifications of our existing intangible assets and goodwill in accordance with SFAS No. 141 and have determined that the current classifications conform with the criteria in SFAS No. 141.

In August 2001, the FASB issued SFAS No. 143, *Accounting for Asset Retirement Obligations*, which addresses financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and for the associated asset retirement costs. The standard applies to tangible long-lived assets that have a legal obligation associated with their retirement that results from the acquisition, construction or development or normal use of the asset. SFAS No. 143 requires that the fair value of a liability for an asset retirement obligation be recognized in the period in which it is incurred if a reasonable estimate of fair value can be made. The fair value of the liability is added to the carrying amount of the associated asset and this additional carrying amount is depreciated over the remaining life of the asset. The liability is accreted at the end of each period through charges to operating expense. SFAS No. 143 is effective for fiscal years beginning after June 15, 2002. We do not anticipate that the financial impact of this statement will have a material effect on our consolidated financial statements.

In October 2001, the FASB issued SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, which addresses financial accounting and reporting for the impairment or disposal of long-lived assets. While SFAS No. 144 supersedes SFAS No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of*, it retains many of the fundamental provisions of SFAS No. 121, including the recognition and measurement of the impairment of long-lived assets to be held and used, and the measurement of long-lived assets to be disposed of by sale. SFAS No. 144 also supersedes the accounting and reporting provisions of Accounting Principles Board Opinion (APB) No. 30, *Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions*, for the disposal of a segment of a business. However, it retains the requirement in APB No. 30 to report separately discontinued operations and extends that reporting to a component of an entity that either has been disposed of (by sale, abandonment, or in a distribution to owners) or is classified as held for sale. SFAS No. 144 is effective for fiscal years beginning after December 15, 2001. We do not anticipate that the financial impact of this statement will have a material effect on our consolidated financial statements.

### **Special Note Regarding Forward-Looking Statements**

This Annual Report on Form 10-K contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements relate to expectations concerning matters that are not historical facts. Such forward-looking statements may be identified by words such as “anticipates,” “believes,” “can,” “continue,” “could,” “estimates,” “expects,” “intends,” “may,” “plans,” “potential,” “predicts,” “should,” or “will” or the negative of these terms or other comparable terminology. These statements and all phases of our operations are subject to known and unknown risks, uncertainties and other factors, some of which are identified herein and in our Form S-1 filed with the Securities and Exchange Commission on November 12, 2001 (File No. 333-65168). Readers are cautioned not to place undue reliance on these forward-looking

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statements. Our actual results, levels of activity, performance or achievements and those of our industry may be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. We undertake no obligation to update the forward-looking statements in this filing. References in this filing to “AMN Healthcare,” the “Company,” “we,” “us,” and “our” refer to AMN Healthcare Services, and its subsidiaries.

### **Risk Factors**

You should read the following risk factors carefully in connection with evaluating us and the forward-looking statements contained in this Annual Report on Form 10-K. Any of the following risks could materially adversely affect our company, operating results, financial condition and the actual outcome of matters as to which forward-looking statements are made in this Annual Report on Form 10-K. Certain statements in “Risk Factors” constitute “forward-looking statements.” Our actual results could differ materially from those projected in the forward-looking statements as a result of certain factors and uncertainties set forth below and elsewhere in this Annual Report on Form 10-K. See “— Special Note Regarding Forward-Looking Statements.”

#### **If we are unable to attract qualified nurses and other allied healthcare professionals for our healthcare staffing business at reasonable costs, it could increase our operating costs and negatively impact our business.**

We rely significantly on our ability to attract and retain nurses and other allied healthcare professionals who possess the skills, experience and licenses necessary to meet the requirements of our hospital and healthcare facility clients. We compete for healthcare staffing personnel with other temporary healthcare staffing companies and with hospitals and healthcare facilities. We must continually evaluate and expand our temporary healthcare professional network to keep pace with our hospital and healthcare facility clients’ needs. Currently, there is a shortage of qualified nurses in most areas of the United States, competition for nursing personnel is increasing, and salaries and benefits have risen. We may be unable to continue to increase the number of temporary healthcare professionals that we recruit, decreasing the potential for growth of our business. Our ability to attract and retain temporary healthcare professionals depends on several factors, including our ability to provide temporary healthcare professionals with assignments that they view as attractive and to provide them with competitive benefits and wages. We cannot assure you that we will be successful in any of these areas. The cost of attracting temporary healthcare professionals and providing them with attractive benefit packages may be higher than we anticipate and, as a result, if we are unable to pass these costs on to our hospital and healthcare facility clients, our profitability could decline. Moreover, if we are unable to attract and retain temporary healthcare professionals, the quality of our services to our hospital and healthcare facility clients may decline and, as a result, we could lose clients.

#### **We operate in a highly competitive market and our success depends on our ability to remain competitive in obtaining and retaining hospital and healthcare facility clients and temporary healthcare professionals.**

The temporary healthcare staffing business is highly competitive. We compete in national, regional and local markets with full-service staffing companies and with specialized temporary staffing agencies. Some of our competitors in the temporary nurse staffing sector include Cross Country, InteliStaf, Medical Staffing Network and RehabCare Group. Some of these companies may have greater marketing and financial resources than us. We believe that the primary competitive factors in obtaining and retaining hospital and healthcare facility clients are identifying qualified healthcare professionals for specific job requirements, providing qualified employees in a timely manner, pricing services competitively and effectively monitoring employees’ job performance. We compete for temporary healthcare professionals based on the quantity, diversity and quality of assignments offered, compensation packages and the benefits that we provide. Competition for hospital and healthcare facility clients and temporary healthcare professionals may increase in the future and, as a result, we may not be able to remain competitive. To the extent competitors seek to gain or retain market share by reducing prices or increasing marketing expenditures, we could lose revenues or hospital and healthcare facility clients and our margins could decline, which could seriously harm our

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operating results and cause the price of our stock to decline. In addition, the development of alternative recruitment channels could lead our hospital and healthcare facility clients to bypass our services, which would also cause our revenues and margins to decline.

### **Our business depends upon our ability to secure and fill new orders from our hospital and healthcare facility clients because we do not have long-term agreements or exclusive contracts with them.**

We do not have long-term agreements or exclusive guaranteed order contracts with our hospital and healthcare facility clients. The success of our business is dependent upon our ability to continually secure new orders from hospitals and other healthcare facilities and to fill those orders with our temporary healthcare professionals. Our hospital and healthcare facility clients are free to place orders with our competitors and choose to use temporary healthcare professionals that our competitors offer them. Therefore, we must maintain positive relationships with our hospital and healthcare facility clients. If we fail to maintain positive relationships with our hospital and healthcare facility clients, we may be unable to generate new temporary healthcare professional orders and our business may be adversely affected.

### **Fluctuations in patient occupancy at the hospital and healthcare facilities of our clients may adversely affect the demand for our services and therefore the profitability of our business.**

Demand for our temporary healthcare staffing services is significantly affected by the general level of patient occupancy at our hospital and healthcare clients' facilities. When occupancy increases, temporary employees are often added before full-time employees are hired. As occupancy decreases, hospital and healthcare facility clients typically will reduce their use of temporary employees before undertaking layoffs of their regular employees. In addition, we may experience more competitive pricing pressure during periods of occupancy downturn. Occupancy at our healthcare clients' facilities also fluctuates due to the seasonality of some elective procedures. We are unable to predict the level of patient occupancy at any particular time and its effect on our revenues and earnings.

### **Healthcare reform could negatively impact our business opportunities, revenues and margins.**

The U.S. government has undertaken efforts to control growing healthcare costs through legislation, regulation and voluntary agreements with medical care providers and drug companies. In the recent past, the U.S. Congress has considered several comprehensive healthcare reform proposals. The proposals were generally intended to expand healthcare coverage for the uninsured and reduce the growth of total healthcare expenditures. While the U.S. Congress did not adopt any comprehensive reform proposals, members of Congress may raise similar proposals in the future. If any of these proposals are approved, hospitals and other healthcare facilities may react by spending less on healthcare staffing, including nurses. If this were to occur, we would have fewer business opportunities, which could have a material adverse effect on our business.

State governments have also attempted to control the growth of healthcare costs. For example, the state of Massachusetts implemented a regulation that limits the hourly rate paid to temporary nursing agencies for registered nurses, licensed practical nurses and certified nurses aides. While the current regulation does not apply to us, if similar regulations were to be applied to longer term contracts in states in which we operate, our revenues and margins could decrease.

Furthermore, third party payors, such as health maintenance organizations, increasingly challenge the prices charged for medical care. Failure by hospitals and other healthcare facilities to obtain full reimbursement from those third party payors could reduce the demand or the price paid for our services.

### **We operate in a regulated industry and changes in regulations or violations of regulations may result in increased costs or sanctions that could reduce our revenues and profitability.**

The healthcare industry is subject to extensive and complex federal and state laws and regulations related to professional licensure, conduct of operations, payment for services and payment for referrals. If we fail to comply with the laws and regulations that are directly applicable to our business, we could suffer civil and/or criminal penalties or be subject to injunctions or cease and desist orders.

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Our business is generally not subject to the extensive and complex laws that apply to our hospital and healthcare facility clients, including laws related to Medicare, Medicaid and other federal and state healthcare programs. However, these laws and regulations could indirectly affect the demand or the prices paid for our services. For example, our hospital and healthcare facility clients could suffer civil and/or criminal penalties and/or be excluded from participating in Medicare, Medicaid and other healthcare programs if they fail to comply with the laws and regulations applicable to their businesses. In addition, our hospital and healthcare facility clients could receive reduced reimbursements, or be excluded from coverage, because of a change in the rates or conditions set by federal or state governments. In turn, violations of or changes to these laws and regulations that adversely affect our hospital and healthcare facility clients could also adversely affect the prices that these clients are willing or able to pay for our services.

### **Significant legal actions could subject us to substantial liabilities.**

In recent years, our hospital and healthcare facility clients have become subject to an increasing number of legal actions alleging malpractice or related legal theories. Because our temporary healthcare professionals provide medical care, claims may be brought against our temporary healthcare professionals and us relating to the quality of medical care provided by our temporary healthcare professionals while on assignment at our hospital and healthcare facility clients. We and our temporary healthcare professionals are at times named in these lawsuits regardless of our contractual obligations or the standard of care provided by our temporary healthcare professionals. In some instances, we are required to indemnify hospital and healthcare facility clients contractually against some or all of these potential legal actions. Also, because most of our temporary healthcare professionals are our employees, we may be subject to various employment claims and contractual disputes regarding the terms of a temporary healthcare professional's employment. We maintain a policy of \$10 million for employment practices coverage with an additional excess coverage of \$10 million. We also have two layers of professional and general liability coverage. The professional and general liability coverage consists of primary coverage with limits of \$1 million per occurrence and \$3 million in the aggregate and an umbrella policy with limits of \$20 million. However, our insurance coverage may not cover all claims against us or continue to be available to us at a reasonable cost. Also, we may not be able to pass on all or any portion of increased insurance costs to our hospital and healthcare facility clients. If we are unable to maintain adequate insurance coverage or if any claims are not covered by insurance, we may be exposed to substantial liabilities.

### **We may be legally liable for damages resulting from our hospital and healthcare facility clients' mistreatment of our traveling healthcare personnel.**

Because we are in the business of placing our temporary healthcare professionals in the workplaces of other companies, we are subject to possible claims by our temporary healthcare professionals alleging discrimination, sexual harassment, negligence and other similar activities by our hospital and healthcare facility clients. The cost of defending such claims, even if groundless, could be substantial and the associated negative publicity could adversely affect our ability to attract and retain qualified individuals in the future.

### **We may not be able to successfully complete the integration of our recent acquisitions.**

We recently acquired two companies in the temporary healthcare staffing industry: Preferred Healthcare Staffing and O'Grady-Peyton International. These acquisitions involve significant risks and uncertainties, including difficulties integrating acquired personnel and other corporate cultures into our business, the potential loss of key employees or customers of acquired companies, the assumption of liabilities and exposure to unforeseen liabilities of acquired companies and the diversion of management attention from existing operations. We may not be able to fully integrate the operations of the acquired businesses with our own in an efficient and cost-effective manner. In addition, through our most recent acquisition, O'Grady-Peyton International, we are now involved in new international temporary healthcare professional recruitment markets where we have limited or no experience. Our failure to effectively integrate either of these businesses could have an adverse effect on our financial condition and results of operations.



**Difficulties in maintaining our management information and communications systems may result in increased costs that reduce our profitability.**

Our ability to deliver our staffing services to our hospital and healthcare facility clients and manage our internal systems depends to a large extent upon the performance of our management information and communications systems. If these systems do not adequately support our operations, or if we are required to incur significant additional costs to maintain or expand these systems, our business and financial results could be materially adversely affected.

**Our operations may deteriorate if we are unable to continue to attract, develop and retain our sales personnel.**

Our success is dependent upon the performance of our sales personnel, especially regional client service directors, hospital account managers and recruiters. The number of individuals who meet our qualifications for these positions is limited and we may experience difficulty in attracting qualified candidates. In addition, we commit substantial resources to the training, development and support of these individuals. Competition for qualified sales personnel in the line of business in which we operate is strong and there is a risk that we may not be able to retain our sales personnel after we have expended the time and expense to recruit and train them.

**The loss of key senior management personnel could adversely affect our ability to remain competitive.**

We believe that the success of our business strategy and our ability to operate profitably depends on the continued employment of our senior management team, led by Steven Francis, Susan Nowakowski and Donald Myll. Other than Steven Francis, none of our senior management team has an employment contract with us. If Steven Francis or other members of our senior management team become unable or unwilling to continue in their present positions, our business and financial results could be materially adversely affected.

**Our existing majority stockholder controls us.**

HWH Capital Partners, L.P. and some of its affiliates, whom we refer to collectively as the “HWP stockholders,” own approximately 62.5% of the outstanding shares of our common stock. As a result, the HWP stockholders are able to control us and direct our affairs, including the election of directors and approval of significant corporate transactions. This concentration of ownership also may delay, defer or even prevent a change in control of our company, and make some transactions more difficult or impossible without the support of these stockholders. These transactions might include proxy contests, tender offers, mergers or other purchases of common stock that could give our other stockholders the opportunity to realize a premium over the then-prevailing market price for shares of our common stock.

**We have a substantial amount of goodwill on our balance sheet. Our level of goodwill may have the effect of decreasing our earnings or increasing our losses.**

As of December 31, 2001, we had \$127.8 million of unamortized goodwill on our balance sheet, which represents the excess of the total purchase price of our acquisitions over the fair value of the net assets acquired. At December 31, 2001, goodwill represented 41% of our total assets.

Through December 31, 2001, we amortized goodwill on a straight-line basis over the estimated period of future benefit of 25 years. In July 2001, the Financial Accounting Standards Board issued SFAS No. 141, *Business Combinations*, and SFAS No. 142, *Goodwill and Other Intangible Assets*. SFAS No. 141 requires that the purchase method of accounting be used for all business combinations initiated after June 30, 2001, as well as all purchase method business combinations completed after June 30, 2001. SFAS No. 142 requires that, subsequent to January 1, 2002, goodwill not be amortized but rather that it be reviewed annually for impairment. In the event impairment is identified, a charge to earnings would be recorded. We have adopted the provisions of SFAS No. 141 and SFAS No. 142. Although it does not affect our cash flow, amortization of goodwill or an impairment charge to earnings has the effect of decreasing our earnings or increasing our losses,

as the case may be. If we are required to record an impairment charge relating to goodwill, our stock price could be adversely affected.

**Item 7A. Quantitative and Qualitative Disclosure About Market Risk**

Market risk is the risk of loss arising from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates and commodity prices. Our primary exposure to market risk has been interest rate risk associated with our debt instruments. In instances where we have had variable (floating) rate debt, we attempted to minimize our interest rate risk by entering into interest rate swap or cap instruments. Our corporate policy is to enter into derivative instruments only if the purpose of such instruments is to hedge a known underlying risk.

A 1% change in interest rates on variable rate debt would have resulted in interest expense fluctuating approximately \$46,000 for 1999, \$73,000 for 2000 and \$58,000 for 2001, respectively. At December 31, 2001, we had no outstanding debt. A 1% change in the interest rates on short-term investments would have resulted in interest income fluctuating by approximately \$50,000 for 2001.

**Item 8. Financial Statements and Supplementary Data**

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**INDEPENDENT AUDITORS' REPORT**

The Board of Directors and Stockholders

AMN Healthcare Services, Inc.:

We have audited the accompanying consolidated balance sheets of AMN Healthcare Services, Inc. and subsidiaries, (the Company), as of December 31, 2000 and 2001, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2001. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of AMN Healthcare Services, Inc. and subsidiaries as of December 31, 2000 and 2001, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2001, in conformity with accounting principles generally accepted in the United States of America.

KPMG LLP

San Diego, California

February 12, 2002

## AMN HEALTHCARE SERVICES, INC.

## CONSOLIDATED BALANCE SHEETS

(in thousands, except par value)

	December 31, 2000	December 31, 2001
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 546	\$ 15,654
Short-term held-to-maturity investments	—	16,314
Accounts receivable, net	63,401	105,416
Income taxes receivable	—	4,803
Prepaid expenses	2,973	7,810
Other current assets	1,839	1,943
	<hr/>	<hr/>
Total current assets	68,759	151,940
Fixed assets, net	5,006	7,713
Deferred income taxes, net	10,565	19,406
Deposits	102	617
Goodwill, net	118,423	127,752
Other intangibles, net	6,555	1,501
	<hr/>	<hr/>
Total assets	\$209,410	\$308,929
	<hr/>	<hr/>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Bank overdraft	\$ 556	\$ 1,643
Accounts payable and accrued expenses	2,431	5,625
Accrued compensation and benefits	11,017	23,965
Income taxes payable	1,745	—
Due to former shareholder	342	—
Current portion of notes payable	7,500	—
Other current liabilities	1,019	4,229
	<hr/>	<hr/>
Total current liabilities	24,610	35,462
Notes payable, less current portion	115,389	—
Other long-term liabilities	2,341	1,562
	<hr/>	<hr/>
Total liabilities	142,340	37,024
	<hr/>	<hr/>
Stockholders' equity:		
Common stock, \$.01 par value; 200,000 shares authorized; 28,835 and 42,290 shares issued and outstanding at December 31, 2000 and 2001, respectively	288	423
Additional paid-in capital	136,735	345,821
Accumulated deficit	(69,953)	(74,339)
	<hr/>	<hr/>
Total stockholders' equity	67,070	271,905
	<hr/>	<hr/>
Commitments and contingencies		
Total liabilities and stockholders' equity	\$209,410	\$308,929
	<hr/>	<hr/>

See accompanying notes to consolidated financial statements.

## AMN HEALTHCARE SERVICES, INC.

## CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)

	Years Ended December 31,		
	1999	2000	2001
Revenue	\$146,514	\$230,766	\$517,794
Cost of revenue	111,784	170,608	388,284
Gross profit	34,730	60,158	129,510
Expenses:			
Selling, general and administrative, excluding non-cash stock-based compensation	20,677	30,728	71,483
Non-cash stock-based compensation	—	22,379	31,881
Amortization	1,721	2,387	5,562
Depreciation	325	916	2,151
Transaction costs	12,404	1,500	1,955
Total expenses	35,127	57,910	113,032
Income (loss) from operations	(397)	2,248	16,478
Interest expense, net	4,030	10,006	13,933
Income (loss) before minority interest, income taxes, and extraordinary item	(4,427)	(7,758)	2,545
Minority interest in earnings of subsidiary	(1,325)	—	—
Income tax (expense) benefit	872	2,560	(1,476)
Income (loss) before extraordinary item	(4,880)	(5,198)	1,069
Extraordinary loss on extinguishment of debt, net of income tax benefit of \$427, \$0 and \$2,810, respectively	(730)	—	(5,455)
Net loss	\$ (5,610)	\$ (5,198)	\$ (4,386)
Basic and diluted net loss per common share:			
Income (loss) before extraordinary item	\$ (0.23)	\$ (0.23)	\$ 0.04
Extraordinary loss	(0.03)	—	(0.18)
Basic and diluted net loss per common share	\$ (0.26)	\$ (0.23)	\$ (0.14)
Weighted average common shares outstanding —			
Basic and diluted	21,715	22,497	30,641

See accompanying notes to consolidated financial statements.

## AMN HEALTHCARE SERVICES, INC.

## CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

Years Ended December 31, 1999, 2000 and 2001  
(in thousands)

	Common Stock		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income (Loss)	Total
	Shares	Amount				
Balance, December 31, 1998	21,451	\$ 214	\$ 17,684	\$ 1,579	\$ —	\$ 19,477
Repurchase of common stock	(21,187)	(212)	(19,143)	(62,915)	—	(82,270)
Issuance of common stock in exchange for minority interest	4,464	45	1,537	2,191	—	3,773
Issuance of common stock	15,647	157	59,362	—	—	59,519
Issuance of warrants	—	—	3,000	—	—	3,000
Net loss	—	—	—	(5,610)	—	(5,610)
Balance, December 31, 1999	20,375	204	62,440	(64,755)	—	(2,111)
Issuance of common stock	8,460	84	51,916	—	—	52,000
Stock-based compensation	—	—	22,379	—	—	22,379
Net loss	—	—	—	(5,198)	—	(5,198)
Balance, December 31, 2000	28,835	288	136,735	(69,953)	—	67,070
Stock-based compensation	—	—	31,881	—	—	31,881
Issuance of common stock for cash, net of issuance costs	11,500	115	177,225	—	—	177,340
Cashless exercise of warrants	1,955	20	(20)	—	—	—
Comprehensive income (loss):						
SFAS No. 133 (derivatives) transition adjustment	—	—	—	—	(589)	(589)
Amortization of SFAS No. 133 transition adjustment	—	—	—	—	123	123
Realized loss for termination of derivative instruments	—	—	—	—	466	466
Net loss	—	—	—	(4,386)	—	(4,386)
Total comprehensive loss	—	—	—	—	—	(4,386)
Balance, December 31, 2001	42,290	\$ 423	\$345,821	\$(74,339)	\$ —	\$271,905

See accompanying notes to consolidated financial statements.

## AMN HEALTHCARE SERVICES, INC.

## CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

	Years Ended December 31,		
	1999	2000	2001
Cash flows from operating activities:			
Net loss	\$ (5,610)	\$ (5,198)	\$ (4,386)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	2,046	3,303	7,713
Minority interest in earnings of subsidiary	1,325	—	—
Extraordinary loss on extinguishment of debt	1,157	—	6,996
Provision for bad debts	260	435	2,906
Noncash interest expense	633	4,188	4,381
Deferred income taxes	(1,196)	(9,727)	(8,649)
Stock-based compensation	—	22,379	31,881
Loss (gain) on disposal or sale of fixed assets	1	17	(2)
Changes in assets and liabilities, net of effects from acquisitions:			
Accounts receivable	(7,847)	(23,572)	(39,482)
Income taxes receivable and other current assets	(2,976)	1,921	(4,668)
Deposits	(36)	(63)	(515)
Accounts payable and accrued expenses	(232)	68	2,652
Accrued compensation and benefits	1,195	3,772	11,700
Income taxes payable	—	1,745	(7,548)
Due to former shareholder	1,676	(1,334)	(342)
Other liabilities	42	480	(958)
Net cash provided by (used in) operating activities	(9,562)	(1,586)	1,679
Cash flows from investing activities:			
Purchase of short-term held-to-maturity investments	—	—	(16,314)
Purchase of fixed assets	(1,656)	(2,350)	(4,497)
Acquisitions, including acquisition costs	—	(91,793)	(12,971)
Net cash used in investing activities	(1,656)	(94,143)	(33,782)
Cash flows from financing activities:			
Capital lease repayments	—	(18)	(94)
Proceeds from issuance of notes payable	76,675	48,180	18,000
Payment of financing costs	(5,338)	(1,405)	(1,261)
Payments on notes payable	(37,596)	(2,500)	(147,861)
Repurchase of common stock	(82,270)	—	—
Proceeds from issuance of common stock, net of issuance costs	59,519	52,000	177,340
Change in bank overdraft, net of effects of acquisitions	(157)	(485)	1,087
Net cash provided by financing activities	10,833	95,772	47,211
Net increase (decrease) in cash and cash equivalents	(385)	43	15,108
Cash and cash equivalents at beginning of year	888	503	546
Cash and cash equivalents at end of year	\$ 503	\$ 546	\$ 15,654
Supplemental disclosures of cash flow information:			
Cash paid for interest (net of \$36, \$58, \$69 capitalized in 1999, 2000 and 2001, respectively)	\$ 3,269	\$ 5,853	\$ 10,149
Cash paid for income taxes	\$ 2,723	\$ 4,640	\$ 14,054
Supplemental disclosures of noncash investing and financing activities:			
Common stock issued in exchange for minority interest	\$ 3,773	\$ —	\$ —
Accrued interest on notes payable converted to notes payable	\$ 273	\$ 2,544	\$ 2,116
Fixed assets obtained through capital leases	\$ —	\$ 109	\$ 142



Fair value of assets acquired in acquisitions, net of cash received	\$ —	\$ 16,644	\$ 6,120
Goodwill	—	81,315	14,579
Noncompete covenants	—	1,036	200
Liabilities assumed	—	(4,693)	(4,787)
Earnout provision accrual	—	—	(3,141)
Present value of deferred purchase payments	—	(2,509)	—
	<u>—</u>	<u>—</u>	<u>—</u>
Net cash paid for acquisitions	\$ —	\$ 91,793	\$ 12,971
	<u>—</u>	<u>—</u>	<u>—</u>

See accompanying notes to consolidated financial statements.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 1999, 2000, and 2001

**(1) Summary of Significant Accounting Policies**

***(a) General***

On April 19, 2001, AMN Holdings, Inc. changed its name to AMN Healthcare Services, Inc. (Services). Services was incorporated in Delaware on November 10, 1997. On December 4, 1997, Services acquired 80% of the outstanding common stock of AMN Healthcare, Inc. (AMN). On November 18, 1998, AMN purchased 100% of Medical Express, Inc. (MedEx). Pursuant to a share exchange completed on October 18, 1999, AMN became a wholly owned subsidiary of Services. On June 28, 2000, AMN purchased 100% of Nurses RX, Inc. (NRx). On November 28, 2000, AMN purchased 100% of Preferred Healthcare Staffing, Inc. (PHS). On May 1, 2001, AMN purchased 100% of O'Grady-Peyton International (USA), Inc. (OGP). On July 1, 2001, MedEx and PHS were collapsed into AMN. Also on July 1, 2001, NRx changed its name to Worldview Healthcare, Inc. (Worldview). Services, AMN, Worldview and OGP collectively are referred to herein as the Company. The Company recruits nurses and allied health professionals and places them on temporary assignments at hospitals and other healthcare facilities throughout the United States.

***(b) Principles of Consolidation***

The accompanying consolidated financial statements include the accounts of Services, AMN, Worldview and OGP. All significant intercompany balances and transactions have been eliminated in consolidation.

***(c) Minority Interest***

On October 18, 1999, the minority stockholder of AMN exchanged its shares of AMN for shares of Services resulting in the elimination of the minority interest in AMN and the consolidation of all of the AMN shareholder interests in the Services shareholder group. Services' only asset was its investment in AMN, and no other assets or consideration was exchanged in this transaction. The relative ownership interests in Services and AMN before and after this event remained the same. Following this exchange, AMN became a wholly owned subsidiary. The exchange of shares was accounted for at historical cost and purchase accounting was not applied. The assets, liabilities and earnings of AMN and its subsidiary, MedEx, are consolidated in the accompanying financial statements, and the ownership interests of the minority stockholder of AMN is reported as minority interest through October 18, 1999.

***(d) Cash and Cash Equivalents***

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. Cash and cash equivalents include currency on hand, deposits with financial institutions and highly liquid investments. At December 31, 2000 and 2001, the Company had \$434,000 and \$6,785,000 respectively, in deposits with major financial institutions that exceeded the federally insured limit of \$100,000.

***(e) Short-Term Held-to-Maturity Investments***

The Company invests in highly liquid instruments with strong credit ratings. Investments with a maturity greater than three months, but less than one year, at the time of purchase are considered to be short-term investments. All short-term investments are classified as held-to-maturity because the Company has the ability and intent to hold the securities until maturity. Held-to-maturity securities are stated at amortized cost. Premiums and discounts are amortized or accreted over the life of the related held to maturity investment as adjustments to yield using the effective interest rate method.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**(f) Fixed Assets**

Furniture, equipment, leasehold improvements and software are stated at cost. Equipment acquired under capital leases are stated at the present value of the future minimum lease payments. Additions and improvements are capitalized and maintenance and repairs are expensed when incurred. Depreciation on furniture, equipment and software is calculated using the straight-line method based on the estimated useful lives of the related assets (generally three to five years). Leasehold improvements and equipment obtained under capital leases are amortized over the shorter of the term of the lease or the useful life. Amortization of equipment obtained under capital leases is included in depreciation in the accompanying consolidated financial statements.

**(g) Goodwill**

The excess of purchase price over the fair value of the net assets of entities acquired is recorded as goodwill and amortized on a straight-line basis over the estimated period of future benefit of 25 years. The Company assesses the recoverability of this intangible asset by determining whether the amortization of the goodwill balance over its remaining life can be recovered through future operating cash flows of the acquired operation. The amount of goodwill impairment, if any, is measured based on the projected discounted future operating cash flows using a discount rate reflecting the Company's average cost of funds. The assessment of the recoverability of goodwill will be impacted if estimated future operating cash flows are not achieved. On January 1, 2002, the Company adopted Statement of Financial Accounting Standard (SFAS) No. 142, *Goodwill and Other Intangible Assets* and ceased amortization of goodwill (see Note 1(t)).

**(h) Other Intangibles**

Other intangibles consist of debt issuance costs related to notes payable and the Company's credit facility, and to non-compete covenants. Debt issuance costs are deferred and amortized to interest expense using the effective interest method over the respective term of the notes and credit facility. Non-compete covenants were recorded as a result of acquisitions and are amortized over the life of the related agreements.

**(i) Concentration of Credit Risk**

The majority of the Company's business activity is with hospitals located throughout the United States. Credit is extended based on the evaluation of each entity's financial condition and collateral is generally not required. Credit losses have been within management's expectations.

**(j) Revenue Recognition**

Revenue is recognized in the period in which services are provided. Provisions for discounts to customers and other adjustments are provided for in the period the related revenue is recorded.

**(k) Advertising Expenses**

Advertising costs are expensed as incurred.

**(l) Income Taxes**

The Company records income taxes using the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**(m) Impairment of Long-Lived Assets**

Long-lived assets and certain identifiable intangibles are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net cash flows, undiscounted and without interest, expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

**(n) Fair Value of Financial Instruments**

The carrying amounts of cash and cash equivalents, short-term held-to-maturity investments, accounts receivable, income taxes receivable, other current assets, deposits, bank overdraft, accounts payable and accrued expenses, accrued compensation and benefits and other current liabilities approximates their respective fair values due to the short-term nature and liquidity of these financial instruments.

**(o) Common Stock Split**

On November 19, 1999, the Company effected a 200-for-1 stock split of its common stock. On October 18, 2001, the Company effected a 43.10849-for-1 stock split of its common stock. All references in the consolidated financial statements to number of shares outstanding, price per share and per share amounts related to Services have been retroactively restated to reflect the stock splits for all periods presented.

**(p) Stock-Based Compensation**

The Company applies the intrinsic value-based method of accounting prescribed by Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations including Financial Accounting Standards Board (FASB) Interpretation No. 44, *Accounting for Certain Transactions Involving Stock Compensation an interpretation of APB Opinion No. 25* to account for its stock option plans. Under this method, compensation expense for fixed plans is measured on the date of grant only if the then current market price of the underlying stock exceeded the exercise price and is recorded on a straight-line basis over the applicable vesting period. Compensation expense for variable plans is recorded at the end of each reporting period until the related performance criteria is met in accordance with FIN No. 28, and is measured based on the excess of the then current market price of the underlying stock over the exercise price. SFAS No. 123, *Accounting for Stock-Based Compensation*, established accounting and disclosure requirements using a fair value-based method of accounting for stock-based employee compensation plans. As allowed by SFAS No. 123, the Company has elected to continue to apply the intrinsic value-based method of accounting described above, and has adopted the disclosure requirements of SFAS No. 123.

**(q) Net Loss per Common Share**

Basic net loss per common share is calculated by dividing net loss by the weighted average number of common shares outstanding during the reporting period. Diluted net loss per common share reflects the effects of potentially dilutive securities (common stock options and warrants).

Options to purchase 5,182,000 and 5,815,000 shares of common stock at December 31, 2000 and 2001, respectively, and warrants to purchase 2,518,000 shares of common stock at December 31, 1999 and 2000 and during the year ended December 31, 2001 were not included in the calculation of diluted net loss per common share because the effect of these instruments was anti-dilutive. There were no outstanding warrants at December 31, 2001.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**(r) Other Comprehensive Income**

SFAS No. 130, *Reporting Comprehensive Income*, establishes rules for the reporting of comprehensive income and its components. The Company's net loss is the same as total comprehensive loss for the years ended December 31, 1999, 2000 and 2001.

**(s) Derivative Instruments**

The Company adopted Statement of Financial Accounting Standards No. 133 *Accounting for Derivative Instruments and Hedging Activities* (SFAS 133) on January 1, 2001. SFAS 133 requires that all derivative instruments be recorded on the balance sheet at fair value. Gains or losses resulting from changes in the values of those derivatives are accounted for depending upon the use of the derivative and whether it qualifies for hedge accounting. The Company uses derivative instruments to manage the fluctuations in cash flows resulting from interest rate risk on variable-rate debt financing. These instruments include interest swap and cap agreements. The Company does not hold or issue derivative financial instruments for trading purposes. Prior to the adoption of SFAS 133, net gains or losses were recorded monthly on the date earned and were included in interest expense in the consolidated statements of operations. As the Company did not meet the extensive documentation and administration requirements of SFAS 133, the Company determined it did not qualify for hedge accounting treatment on its existing derivatives.

Although the Company's interest rate swap and cap agreements were designated as cash flow hedges, the Company did not apply hedge accounting treatment. As SFAS 133 requires that all unrealized gains and losses on derivatives not qualifying for hedge accounting be recognized currently through earnings, the Company accounted for all of its interest rate swap and cap agreements in this manner. Upon adoption of SFAS 133 on January 1, 2001, the Company recorded a transition adjustment in the amount of \$589,000 to accumulated other comprehensive loss per SFAS 133 transition guidelines, and began amortizing the transition adjustment to interest expense over the term of the related agreements of four years. Of the \$589,000 transition adjustment, \$123,000 was amortized to interest expense during fiscal 2001.

In November 2001, the Company paid \$896,000 to terminate all derivative instrument agreements. The unamortized value of the transition adjustment at the time the derivative instrument agreements were terminated of \$466,000 was reclassified from other comprehensive loss to interest expense. The Company recorded a net gain of \$140,000, through interest expense, on the change in fair value of its interest rate swap and cap contracts during the year ended December 31, 2001.

**(t) New Accounting Pronouncements**

In July 2001, the FASB issued SFAS No. 141, *Business Combinations*, and SFAS No. 142, *Goodwill and Other Intangible Assets*. SFAS No. 141 requires the use of the purchase method for all business combinations initiated after June 30, 2001 and provides guidance on purchase accounting related to the recognition of intangible assets and accounting for negative goodwill. SFAS No. 142 changes the accounting for goodwill from an amortization method to an impairment-only approach. Under SFAS No. 142, goodwill will be tested annually and whenever events or circumstances occur indicating that goodwill might be impaired.

The Company adopted the provisions of SFAS No. 142 as of January 1, 2002. Upon adoption of SFAS No. 142, the Company ceased amortization of goodwill and performed the two-step transitional impairment test. SFAS No. 142 requires the impairment test be applied to the relevant "reporting unit" which may differ from the specific entities acquired from which the goodwill arose. Due to the integrated nature of the Company's operations and lack of differing economic characteristics between the Company's subsidiaries, the entire Company was determined to be one single reporting unit. Under the provisions of SFAS No. 142, the

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Company performed the transitional goodwill impairment assessment which resulted in no impairment to the carrying value of goodwill as of January 1, 2002.

**(u) Segment Information**

SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, establishes annual and interim reporting standards for an enterprise's operating segments and related disclosures about its products, services, geographic areas and major customers. An operating segment is defined as a component of an enterprise that engages in business activities from which it may earn revenues and incur expenses, and about which separate financial information is regularly evaluated by the chief operating decision maker in deciding how to allocate resources. This statement allows aggregation of similar operating segments into a single operating segment if the businesses are considered similar under the criteria of this statement. For all periods presented, the Company believes it operated in a single segment, temporary healthcare staffing.

**(v) Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make a number of estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

**(w) Reclassifications**

Certain amounts in the 2000 consolidated financial statements have been reclassified to conform to the 2001 presentation.

**(2) Common Stock Offering**

In November 2001, the Company issued 11,500,000 shares of its common stock (common stock offering) in an initial public offering and raised proceeds of \$177,340,000, net of issuance costs. In connection with the common stock offering, the underwriters exercised their over-allotment option representing 1,500,000 shares of the issued common stock. The Company used the net proceeds from the common stock offering for general corporate purposes and included the repayment of indebtedness of \$145,182,000 in November 2001 (see Note 7).

**(3) Leveraged Recapitalization**

On November 19, 1999, Services consummated a leveraged recapitalization (the 1999 Recapitalization) pursuant to which the Company's outstanding debt and capital stock were restructured. As part of the 1999 Recapitalization, the Company obtained \$70.0 million in new and senior debt financing and \$20.0 million in new debt financing through the issuance of senior subordinated notes. The Company also sold 15,647,000 shares to AMN Acquisition Corp. (Acquisition), a newly-formed entity created by the new majority stockholder to effect the 1999 Recapitalization, for cash consideration of \$59.5 million. Acquisition acquired an additional 3,413,000 shares directly from existing shareholders for cash consideration of \$13.0 million. After the reorganization, Acquisition held 19,060,000 shares of Services, representing a 93.5% ownership interest. Existing stockholders retained shares representing the remaining 6.5% ownership interest in Services. Proceeds from the equity and debt financing were used to retire existing debt, repurchase stock of existing stockholders and pay fees and expenses incurred in connection with the recapitalization. These transactions were recognized as capital and debt transactions with no change to recorded amounts for existing assets and liabilities. On March 29, 2001, AMN Acquisition Corp. was merged into AMN Healthcare Services, Inc.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

In conjunction with the 1999 Recapitalization, the Company incurred the following charges which are included in the 1999 results of operations: (i) an extraordinary loss of \$730,000 (net of tax benefit of \$427,000) from the retirement of debt outstanding prior to the 1999 Recapitalization; and (ii) transaction costs of \$12,404,000 comprised of bonus payments and option buyouts of \$6,503,000, a warrant buyout of \$1,077,000 and professional service fees of \$4,824,000 (including the payment of \$2,587,000 to the majority stockholder of Services). In addition, the Company incurred \$5,050,000 in financing costs, which were recorded as deferred financing costs and amortized over the term of the related debt.

**(4) Acquisitions**

**(a) AMN**

On December 4, 1997, Services acquired 80% of the outstanding common stock of AMN for total consideration of \$33,513,000. The transaction has been accounted for in the accompanying consolidated financial statements using the purchase method of accounting, and the assets and liabilities of AMN were recorded at fair value as of the acquisition date. In connection with this transaction, the Company recorded goodwill of \$26,985,000, which is being amortized over 25 years. Also in connection with this transaction, the Company borrowed \$25,151,000 from a bank and incurred deferred financing costs totaling \$1,084,000, which were being amortized over the life of the loans until the 1999 Recapitalization when they were written off.

On November 18, 1998, in connection with the acquisition of MedEx, Services acquired an additional 2.77% of AMN for \$2,050,000.

**(b) MedEx**

On November 18, 1998, Services acquired 100% of the issued and outstanding stock of MedEx in exchange for 2,638,000 shares of Services common stock valued at \$3,448,000 and cash of \$16,362,000, for a total purchase price of \$19,809,000. The transaction was accounted for using the purchase method of accounting, and the assets and liabilities of MedEx were recorded at fair value as of the acquisition date. In connection with this transaction, the Company recorded goodwill of \$15,332,000, which is being amortized over 25 years.

**(c) NRx**

On June 28, 2000, AMN acquired 100% of the issued and outstanding stock of NRx. The acquisition was recorded using the purchase method of accounting. Thus, the results of operations from the acquired assets are included in the Company's consolidated financial statements from the acquisition date. The purchase price to the former shareholders of NRx included a payment of \$16,181,000 in cash and \$3,000,000 to be paid in three equal installments of \$1,000,000 each on June 29, 2001, June 28, 2002, and June 30, 2003, provided that the terms of the agreement are met. Since the deferred payment in the amount of \$3,000,000 is not interest bearing, AMN recorded the present value of the future payments on the date of the acquisition utilizing an interest rate of 9.5%. In June 2001, the Company paid the first installment of \$1,000,000. As of December 31, 2001, the present value of the amount due on June 29, 2002 is \$955,000 and is included in other current liabilities. As of December 31, 2001, the present value of the amounts due on June 30, 2003 is \$876,000 and is included in other long-term liabilities.

AMN acquired NRx's assets of \$4,239,000, assumed its liabilities of \$1,610,000, and recorded goodwill in the amount of \$15,484,000, which is being amortized over 25 years. AMN allocated \$836,000 of the purchase price to the noncompete covenant, which is being amortized over the four-year life of the covenant. As of December 31, 2000 and 2001, the unamortized cost of the covenant was \$730,000 and \$521,000, respectively.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**(d) PHS**

On November 28, 2000, AMN acquired 100% of the issued and outstanding stock of PHS. The acquisition was recorded using the purchase method of accounting. Thus, the results of operations from the acquired assets are included in the Company's consolidated financial statements from the acquisition date. The purchase price to the former stockholders of PHS included a payment of \$75,041,000 in cash (net of cash received), of which \$4,000,000 was delivered to an escrow agent on the acquisition date in accordance with the purchase agreement. The funds held in escrow were released to the former shareholder in the amount of \$2,000,000 on May 31, 2001 and \$2,000,000 on December 31, 2001.

AMN acquired PHS's assets of \$12,405,000 (net of cash received), assumed its liabilities of \$3,083,000, and recorded goodwill in the amount of \$65,831,000, which is being amortized over 25 years. AMN allocated \$200,000 to the noncompete covenant, which is being amortized over the four-year life of the covenant. As of December 31, 2000 and 2001, the unamortized cost of this covenant was \$195,000 and \$145,000, respectively.

**(e) OGP**

On May 1, 2001, AMN acquired 100% of the issued and outstanding stock of OGP, a healthcare staffing company specializing in the recruitment of nurses domestically and from English-speaking foreign countries. The acquisition was recorded using the purchase method of accounting. Thus, the results of operations from the acquired assets are included in the Company's consolidated financial statements from the acquisition date. The purchase price paid to the former stockholders of OGP included a payment of \$12,971,000 in cash (net of cash received), and \$800,000 which was delivered to an escrow agent on the acquisition date in accordance with the purchase agreement. The funds held in escrow are to be released to the former shareholders on November 1, 2002, provided that terms of the agreement are met. The OGP acquisition was financed by an \$18,000,000 term loan bearing interest at a rate of either the higher of (i) the federal funds rate plus 0.5%, (ii) the prime rate plus 2% or (iii) LIBOR plus 3.75%, depending on the composition of the loan. This loan was paid in full in November 2001 with the proceeds from the common stock offering (see Note 7).

Included in the asset purchase agreement is an earn-out provision whereby AMN agreed to pay the OGP selling stockholders additional consideration contingent on certain annual revenue results of OGP. The Company accrued \$3,141,000 for this earn-out provision and has recorded this amount as additional goodwill and other current liabilities as of December 31, 2001. Earn-out payments, if earned, are capped at \$5,340,000 and are to be paid in April 2002. There is also additional contingent consideration of up to \$2,369,000 dependant upon collection of an outstanding receivable from a customer if received prior to May 2002.

AMN acquired OGP's assets of \$6,120,000 (net of cash received), assumed its liabilities of \$4,787,000, and recorded goodwill in the amount of \$14,579,000, including the \$3,141,000 earn-out provision accrual, which is being amortized over 25 years. AMN allocated \$200,000 of the purchase price to the noncompete agreement, which is being amortized over the four-year life of the agreement. As of December 31, 2001, the unamortized cost of this covenant was \$171,000.

**(f) Pro Forma Consolidated Results of Operations**

The following summary presents pro forma consolidated results of operations for the years ended December 31, 1999, 2000, and 2001 as if the NRx, PHS and OGP acquisitions described above had occurred on January 1, 1999. The following unaudited pro forma financial information gives effect to certain adjustments, including the amortization of intangible assets and interest expense on acquisition debt and depreciation on fixed assets. The pro forma financial information is not necessarily indicative of the operating results that would have occurred had the acquisitions been consummated as of the dates indicated, nor are they necessarily indicative of future operating results (in thousands, except per share amounts).



## AMN HEALTHCARE SERVICES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Pro Forma		
	Years Ended December 31,		
	1999	2000	2001
Revenue	\$229,864	\$326,355	\$528,376
Income from operations	\$ 235	\$ 8,492	\$ 17,547
Income (loss) before extraordinary loss	\$ (7,822)	\$ (4,221)	\$ 1,315
Net loss	\$ (8,553)	\$ (4,221)	\$ (4,141)
Loss per share — basic and diluted	\$ (0.39)	\$ (0.19)	\$ (0.14)
Weighted average shares — basic and diluted	21,715	22,497	30,641

**(5) Balance Sheet Details**

The consolidated balance sheets detail is as follows as of December 31, 2000 and 2001 (in thousands):

	December 31,	
	2000	2001
Accounts receivable, net:		
Accounts receivable	\$ 64,331	\$108,658
Allowance for doubtful accounts	(930)	(3,242)
Accounts receivable, net	\$ 63,401	\$105,416
Fixed assets, net:		
Furniture and equipment	\$ 3,538	\$ 6,025
Software	2,798	4,974
Leasehold improvements	432	621
Fixed assets, net	6,768	11,620
Accumulated depreciation and amortization	(1,762)	(3,907)
Fixed assets, net	\$ 5,006	\$ 7,713
Goodwill, net:		
Goodwill	\$123,622	\$138,204
Accumulated amortization	(5,199)	(10,452)
Goodwill, net	\$118,423	\$127,752
Other intangibles, net:		
Debt issuance costs	\$ 6,742	\$ 633
Non-compete covenants	1,136	1,336
Other intangibles, net	7,878	1,969
Accumulated amortization	(1,323)	(468)
Other intangibles, net	\$ 6,555	\$ 1,501

## AMN HEALTHCARE SERVICES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	December 31,	
	2000	2001
Accrued compensation and benefits:		
Accrued payroll	\$ 6,915	\$11,517
Accrued bonuses	1,285	4,857
Accrued health insurance	767	3,352
Accrued workers compensation	475	2,132
Other	1,575	2,107
	<u>          </u>	<u>          </u>
Accrued compensation and benefits	\$11,017	\$23,965

Included in fixed assets is equipment acquired through capital leases in the amount of \$109,000 and \$251,000 as of December 31, 2000 and 2001, respectively. Accumulated amortization on these capital leases is \$48,000 and \$85,000 as of December 31, 2000 and 2001, respectively.

**(6) Income Taxes**

The provision (benefit) for income taxes for the years ended December 31, 1999, 2000, and 2001 consists of the following (in thousands):

	December 31,		
	1999	2000	2001
Current income taxes:			
Federal	\$ (103)	\$ 5,954	\$ 6,032
State	—	1,213	1,475
	<u>          </u>	<u>          </u>	<u>          </u>
Total	(103)	7,167	7,507
Deferred income taxes:			
Federal	(925)	(8,550)	(7,566)
State	(271)	(1,177)	(1,275)
	<u>          </u>	<u>          </u>	<u>          </u>
Total	(1,196)	(9,727)	(8,841)
Provision (benefit) for income taxes, including tax benefit of \$427, \$0 and \$2,810 on extraordinary loss in 1999, 2000 and 2001, respectively	\$ (1,299)	\$ (2,560)	\$ (1,334)

## AMN HEALTHCARE SERVICES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The Company's income tax expense (benefit) differs from the amount that would have resulted from applying the federal statutory rate of 35% to pretax income (loss) because of the effect of the following items during the years ended December 31, 1999, 2000, and 2001 (in thousands):

	December 31,		
	1999	2000	2001
Tax benefit at federal statutory rate	\$(2,418)	\$(2,715)	\$(2,002)
State taxes, net of federal benefit	(210)	24	130
Nondeductible transaction costs	730	—	—
Minority interest	464	—	—
Interest	—	171	168
Nondeductible amortization	—	—	127
Other, net	135	(40)	243
	<u>          </u>	<u>          </u>	<u>          </u>
Income tax benefit	\$(1,299)	\$(2,560)	\$(1,334)
	<u>          </u>	<u>          </u>	<u>          </u>

The tax effects of temporary differences that give rise to significant portions of deferred tax assets and deferred tax liabilities are presented below as of December 31, 2000, and 2001 (in thousands):

	December 31,	
	2000	2001
Deferred tax assets:		
Stock compensation	\$ 8,453	\$20,402
Debt issuance costs	1,454	—
Interest and warrants	1,026	—
Accrued expenses	461	815
State taxes	425	421
Allowance for doubtful accounts	314	1,221
Other	506	433
	<u>          </u>	<u>          </u>
Total deferred tax assets	12,639	23,292
	<u>          </u>	<u>          </u>
Deferred tax liabilities:		
Intangibles	(1,232)	(2,601)
Fixed assets, net	(633)	(447)
Other	(209)	(838)
	<u>          </u>	<u>          </u>
Total deferred tax liabilities	(2,074)	(3,886)
	<u>          </u>	<u>          </u>
Net deferred tax assets	\$10,565	\$19,406
	<u>          </u>	<u>          </u>

Management believes it is more likely than not that the results of the future operations will generate sufficient taxable income to realize the deferred tax assets and, accordingly, has not provided a valuation allowance.

**(7) Notes Payable and Related Derivative Instruments and Credit Agreement****(a) Notes Payable and Related Derivative Instruments**

All outstanding debt at December 31, 2000 was repaid in full in fiscal 2001. Of the \$147,861,000 of payments made on notes payable during fiscal 2001, \$145,182,000 was paid with proceeds from the November

## AMN HEALTHCARE SERVICES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2001 common stock offering. In connection with the pay-off of these notes, the Company wrote off the following: \$2,054,000 of unamortized discount on senior subordinated notes, \$4,894,000 of loans fees and \$320,000 of deferred financing costs. The Company also incurred a pre-payment penalty of \$997,000 in connection with the extinguishment of debt. These items have been reflected net of tax in the accompanying consolidated statement of operations as an extraordinary loss on extinguishment of debt. The Company had no outstanding debt at December 31, 2001.

Notes payable consisted of the following:

	December 31,	
	2000	2001
	(in thousands)	
12% Senior subordinated notes issued with attached warrants (see Note 9(b)) due November 19, 2005. Interest payable in cash or through issuance of additional notes	\$ 20,000	\$ —
12% Senior subordinated notes issued for conversion of accrued interest to notes payable due November 19, 2005	2,818	—
\$20,000,000 Revolver due November 19, 2004 with variable interest rates based on LIBOR, federal funds or the prime lending rate ranging from 8.5% to 11.25%. An unused fee of .5% per annum is due quarterly on the unused Revolver commitment	15,045	—
\$50,000,000 Term Loan due in 18 consecutive quarterly installments beginning with a principal payment of \$1,250,000 on September 30, 2000. The quarterly principal payment escalates to \$2,500,000 on March 31, 2002 and to \$3,750,000 and \$4,375,000 on March 31 in the succeeding years, maturing on November 19, 2004. Interest is paid quarterly and varies based on LIBOR plus 2.5% to 3.25%	47,500	—
\$32,500,000 Tranche A Acquisition Loan due March 31, 2005, with interest at LIBOR plus 3%. Principal is due in 17 consecutive quarterly installments beginning with a payment of \$625,000 on March 31, 2001. The quarterly payment escalates to \$1,250,000 on March 31, 2002 until December 31, 2004, with a full payment of \$15,000,000 at the maturity date. Interest is paid quarterly	32,500	—
\$7,500,000 Tranche B Acquisition Loan due March 31, 2005, with interest at LIBOR plus 2.5%. Principal is due at maturity and interest is paid quarterly	7,500	—
	<u>125,363</u>	<u>—</u>
Unamortized discount on senior subordinated notes (See Note 9(b))	(2,474)	—
	<u>122,889</u>	<u>—</u>
Less current portion of notes payable	(7,500)	—
	<u>\$ 115,389</u>	<u>\$ —</u>

The Company's outstanding debt instruments at December 31, 2000 were secured by all assets of the Company and the common stock of its subsidiaries.

During 2000, the Company entered into interest rate swap agreements as a means to hedge its interest rate exposure on debt instruments. In addition, the Company's credit agreement required that the Company maintain protection against fluctuations in interest rates providing coverage in an aggregate notional amount equal to \$25,000,000. At December 31, 2000, the Company had three interest rate swaps outstanding with major financial institutions that effectively converted variable-rate debt to fixed rate. Two swaps had notional amounts of \$25,000,000 each, whereby the Company paid fixed rates of 6.585% and 6.57%, respectively, and

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

received a floating three-month LIBOR. The third swap had a notional amount of \$40,000,000, which decreased by \$325,000 at the end of each three-month period beginning December 29, 2000. Under this agreement, the Company paid a fixed rate of 6.5% and received a floating three-month LIBOR. All agreements were to expire in December 2001 and no initial investments were made to enter into these agreements. These agreements were terminated in November 2001.

Effective December 6, 1999, the Company entered into a three-year interest rate cap agreement. The agreement applied to \$25,000,000, which was 50% of the term loan outstanding on that date. The agreement provided a 7% interest rate cap on the three-month LIBOR rate. The cost of the agreement of \$289,000 was included in deferred financing costs, and was amortized over the three-year term of the agreement. This agreement was terminated in November 2001.

In conjunction with the 1999 Recapitalization, \$37,412,000 of notes payable were repaid in 1999 with proceeds from the new borrowings. In connection with the early pay-off of these notes, debt issuance costs of \$1,157,000 were written off and are reflected net of tax in the accompanying consolidated statements of operations for the year ended December 31, 1999 as an extraordinary loss on extinguishment of debt.

On January 26, 1998, the Company entered into an interest rate collar agreement with a bank to reduce the impact of changes in interest rates on its floating rate long-term debt. The agreement required the Company to make payments to the bank for the difference between the selected interest rate, based on a three-month LIBOR, and the floor rate as specified in the agreement. In addition, the agreement entitled the Company to receive payments from the bank for the difference between the selected interest rate, based on three-month LIBOR, and the cap rate as specified in the agreement. On November 19, 1999, the Company paid \$25,000 to terminate this agreement.

**(b) Credit Agreement**

In November 2001, the Company entered into the Amended and Restated Credit Agreement (Credit Agreement) with various lenders. This credit agreement provides for borrowings up to \$50 million under a revolving credit agreement, which includes up to \$10 million of borrowings under letter of credit obligations and up to \$10 million of borrowings under swingline loans. Borrowings are secured by the Company's pledged assets of facilities and properties owned or leased and the Company's capital stock. The revolving credit agreement provides for various interest rates depending on the type of borrowing (5.25%-5.5% at December 31, 2001) and is due quarterly. The revolving credit agreement carries an unused fee of .5% per annum. The letter of credit obligations provides for various interest rates depending on when the type of borrowing is paid off (6.25%-6.5% at December 31, 2001) and is due annually. The swingline loans provides for interest at a base rate (4.75%-5% at December 31, 2001) and is due quarterly. The Company's amended and restated credit agreement contains a minimum fixed charge coverage ratio, a maximum leverage ratio and other customary covenants. At December 31, 2001, the Company had no borrowings under the credit agreement. The credit agreement expires on November 16, 2004.

**(8) Retirement Plans**

The Company maintains the AMN Healthcare Retirement Savings Plan (the AMN Plan), a profit sharing plan that complies with the Internal Revenue Code Section (IRC) 401(k) provisions. The AMN Plan covers substantially all employees that meet certain age and other eligibility requirements. An annual discretionary matching contribution is determined by the Board of Directors each year and may be up to a maximum 6% of eligible compensation paid to all participants during the plan year. The amount of the employer contributions was \$213,000, \$422,000 and \$1,139,000 for the years ended December 31, 1999, 2000 and 2001, respectively. Employees of PHS became eligible under the AMN Plan at the date of acquisition.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

NRx maintained a separate profit sharing plan and OGP maintained a separate salary deferral plan. Both plans complied with the Internal Revenue Code Section 401(k) provisions and covered substantially all employees that met certain age and service requirements. No matches were provided under this plan. Effective January 1, 2001, NRx employees were eligible to participate in the AMN Plan and the NRx plan was terminated. Effective January 1, 2002, OGP employees were eligible to participate in the AMN Plan and the OGP plan was terminated.

In January 2002, the Company established The Executive Nonqualified Excess Plan of AMN Healthcare, Inc. (the Executive Plan), a deferred compensation plan that replaces the AMN Plan for certain executives and which complies with the IRC 401(k) provisions. The Executive Plan covers employees that meet certain eligibility requirements. An annual discretionary matching contribution will be determined by the Board of Directors each year.

**(9) Stockholders' Equity**

**(a) Stock Option Plans**

In July 2001, the 2001 stock option plan (2001 Plan) was established to provide a means to attract and retain employees. The maximum number of options to be granted under the plan is 2,178,000. Unless the plan is otherwise modified, a maximum of 544,500 options may be granted in any calendar year. Exercise prices will be determined at the time of grant and will be no less than fair market value. The options shall vest and become exercisable in increments of 25% on each of the first four anniversaries of the date of grant. The plan expires on the tenth anniversary of the effective date. At December 31, 2001, 1,545,000 shares of common stock were reserved for future grants related to the 2001 Plan.

In November 1999, Services established two performance stock option plans (the 1999 Plans) to provide for the grant of options to upper management of AMN. Options for a maximum of 4,040,000 shares of common stock were authorized at an exercise price of \$3.80 per option for grants within 120 days of the 1999 Recapitalization and not less than the fair market value in the case of subsequent grants. Options under the plan vest 25% per year beginning in 2000 if certain earnings performance criteria are met and the grantee remains an employee. If the Company does not meet the performance criteria for the particular year, that portion of the option, which was eligible to become vested, will terminate. Options that vest expire in nine to ten years from the grant date. During 2000, options for an additional 1,493,000 shares were reserved under the 1999 Plans. At December 31, 2000 and 2001, 351,000 shares of common stock were reserved for future grants related to the 1999 Plans. Pursuant to the amended provisions of the 1999 Plans, all options previously granted under the 1999 Plans became fully vested upon the November 2001 common stock offering and are exercisable over a four-year term.

In December 1997, AMN established a stock incentive plan to provide an equity-based incentive plan to certain officers and key employees. Options for a maximum of 10,400,000 shares of common stock were authorized. In conjunction with the 1999 Recapitalization, all options previously granted related to this plan were repurchased by the Company for \$3,953,000, which is included in transaction costs for the year ended December 31, 1999 in the accompanying consolidated statements of operations.

In accordance with the provisions of SFAS No. 123, the Company applies APB Opinion No. 25 and related interpretations in accounting for its 1999 Plans and 2001 Plan. Accordingly, because the 1999 Plans were performance based and certain grants under the 2001 Plan were granted at less than fair market value, the Company recorded compensation expense of \$22,379,000 and \$31,881,000 in 2000 and 2001, respectively.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

A summary of stock option activity under the 1999 Plans and the 2001 Plan are as follows:

	1999 Plans		2001 Plan	
	Options Outstanding	Weighted-Average Exercise Price	Options Outstanding	Weighted-Average Exercise Price
Outstanding at December 31, 1998	—	\$ —	—	\$ —
Granted	3,636,000	3.80	—	—
Exercised	—	—	—	—
Canceled	—	—	—	—
Outstanding at December 31, 1999	3,636,000	3.80	—	—
Granted	1,546,000	6.30	—	—
Exercised	—	—	—	—
Canceled	—	—	—	—
Outstanding at December 31, 2000	5,182,000	4.55	—	—
Granted	—	—	633,000	9.46
Exercised	—	—	—	—
Canceled	—	—	—	—
Outstanding at December 31, 2001	5,182,000	\$4.55	633,000	\$9.46
Exercisable at December 31, 2001	—	\$ —	—	\$ —

The following table summarizes options outstanding and exercisable as of December 31, 2001:

	Options Outstanding				Options Exercisable		
	Exercise Price	Number Outstanding	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price	Number Outstanding	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price
<b>1999 Plans</b>	\$ 3.80	3,838,000	8	\$ 3.80	—	—	\$ —
	6.68	1,344,000	8	6.68	—	—	—
		5,182,000			—		
<b>2001 Plan</b>	\$ 9.09	547,000	9	\$ 9.09	—	—	\$ —
	11.92	86,000	10	11.92	—	—	—
		633,000			—		

Under SFAS No. 123, the weighted average per share fair value of the options granted during 1999, 2000 and 2001 was \$0.97, \$1.83 and \$9.90, respectively, on the date of grant. Fair value under SFAS No. 123 is determined using the Black-Scholes option-pricing model with the following assumptions:

	1999	2000	2001
Expected life	5	5	5
Risk-free interest rate	5.95%	5.30%	4.39%
Volatility	60%	60%	60%
Dividend yield	0%	0%	0%

## AMN HEALTHCARE SERVICES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Had compensation expense been recognized for stock-based compensation plans in accordance with SFAS No. 123, the Company would have recorded the following net loss and net loss per share amounts (in thousands, except per share amounts):

	1999	2000	2001
Pro forma net loss	\$(5,610)	\$(4,992)	\$(6,645)
Pro forma loss per common share:			
Basic and diluted	\$ (0.26)	\$ (0.22)	\$ (0.22)

**(b) Common Stock Warrants**

On November 19, 1999, in connection with the issuance of its \$20,000,000 senior subordinated notes, Services issued warrants to purchase 2,518,000 shares of its common stock at \$3.80 per share. These warrants were exercisable upon issuance and were to expire at the earlier of a qualified public stock offering, as defined, or November 19, 2009. The fair value of the warrants of \$3,000,000 was based upon a third-party valuation and was recorded as a discount to the related senior subordinated notes payable. This discount was amortized to interest expense over the term of the notes using the effective interest method. Discount amortization was \$58,000, \$468,000 and \$420,000 in 1999, 2000 and 2001, respectively. In conjunction with the November 2001 common stock offering, these warrants were converted into 1,955,000 shares of common stock. The warrants were converted using the market value of the stock at the first date of the common stock offering of \$17 per share and 563,000 warrants were forfeited in this cashless exercise.

On December 5, 1997, AMN granted warrants to purchase 19,000 shares of AMN's common stock, at \$12.45 per share, to a bank in connection with certain loans. The warrants were immediately exercisable and were to expire ten years from the date of issuance. In conjunction with the 1999 Recapitalization, these warrants were repurchased by the Company for \$1,077,000, which is included in transaction costs for the year ended December 31, 1999 in the accompanying consolidated statements of operations.

**(c) Stockholders' Agreement**

The stockholders of Services entered into various stockholders' agreements and a registration rights agreement conferring certain rights and restrictions, including among others: restrictions on transfers of shares, "tag along" and "drag along" rights, rights to acquire shares, and piggyback registration rights, as defined in the agreement. These agreements each terminated upon the November 2001 common stock offering pursuant to the terms of such agreements and were replaced with a single registration rights agreement with similar terms among the same parties.

**(10) Related Party Transactions****(a) Majority stockholder**

During 2000 and 2001, the Company paid an affiliate of the majority stockholders a fee for management advisory services provided to the Company in the amounts of \$150,000 and \$113,000, respectively, which is included in selling, general and administrative expenses. At the completion of the Company's common stock offering in November 2001, the Company paid a fee to this affiliate of \$1,955,000 and the agreement governing these fees was then terminated. This advisory fee is included as transaction costs for the year ended December 31, 2001 in the accompanying consolidated statement of operations.

In June 2000, the Company issued shares to a controlling stockholder as consideration for an aggregate capital contribution of \$10,061,000 in connection with the Company's acquisition of NRx. In November 2000, the Company issued shares to this same stockholder as consideration for an aggregate capital contribution of \$35,600,000 in connection with the Company's acquisition of PHS. Also in connection with the acquisition of



AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

PHS, the Company paid \$1,500,000 to an affiliate of the controlling stockholder in exchange for advisory services. This advisory fee is included as transaction costs for the year ended December 31, 2000 in the accompanying consolidated statement of operations.

In November 1999, the Company paid \$3,700,000 to a controlling stockholder to reimburse it for expenses incurred in the Company's 1999 recapitalization. Also in connection with the Company's 1999 recapitalization, the Company paid \$1,500,000 in advisory fees and \$32,000 in out-of-pocket expenses to its previous majority stockholder. These costs are included as transaction costs for the year ended December 31, 1999 in the accompanying consolidated statement of operations.

**(b) Minority stockholders**

In June 2000, the Company issued shares to two minority stockholders as consideration for aggregate capital contributions of \$1,320,000 and \$619,000 in connection with the acquisition of NRx. In November 2000, the Company issued shares to one of the minority stockholders as consideration for an aggregate capital contribution of \$4,400,000 in connection with the acquisition of PHS.

In connection with the Company's 1999 recapitalization, the Company paid \$100,000 in advisory fees to a minority stockholder.

The Company received services from an advertising agency which was 30% owned by a minority stockholder during 1999, 2000 and 2001. The Company incurred expenses of \$31,000, \$40,000 and \$39,000 in 1999, 2000 and 2001, respectively related to these services.

**(11) Commitments and Contingencies**

**(a) Legal**

The Company is party to legal actions in the normal course of business. In the opinion of management and legal counsel, the outcome of legal actions will not have a material impact on the financial position or results of operations of the Company.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

(b) Leases

The Company leases certain office facilities and equipment under various operating and capital leases that expire over the next five years. Future minimum lease payments under noncancelable operating leases (with initial or remaining lease terms in excess of one year) and future minimum capital lease payments as of December 31, 2001 are as follows (in thousands):

	Capital Leases	Operating Leases
Years ending December 31:		
2002	\$ 141	\$4,139
2003	89	2,817
2004	16	1,613
2005	3	741
Total minimum lease payments	249	\$9,310
Less amount representing interest (at rates ranging from 5.5% to 11.25%)	(12)	
Present value of minimum lease payments	237	
Less current installments of obligations under capital leases	(133)	
Obligations under capital leases, excluding current installments	\$ 104	

Obligations under capital leases are included in other current and other long-term liabilities, respectively, in the accompanying financial statements. Rent expense was \$1,077,000, \$1,810,000 and \$3,282,000 for the years ended December 31, 1999, 2000, and 2001, respectively.

(12) Quarterly Financial Data (Unaudited)

	Year Ended December 31, 2001				
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter(a)	Total Year
	(In thousands, except per share data)				
Revenue	\$103,055	\$116,114	\$137,939	\$160,686	\$517,794
Gross profit	\$ 25,126	\$ 29,809	\$ 34,840	\$ 39,735	\$129,510
Income (loss) before extraordinary item	\$ 655	\$ 1,174	\$ 2,749	\$ (3,509)	\$ 1,069
Net income (loss)	\$ 655	\$ 1,174	\$ 2,749	\$ (8,964)	\$ (4,386)
Basic and diluted income (loss) per share:					
Income (loss) before extraordinary item	\$ 0.02	\$ 0.04	\$ 0.10	\$ (0.10)	\$ 0.04
Net income (loss)	\$ 0.02	\$ 0.04	\$ 0.10	\$ (0.25)	\$ (0.14)

## AMN HEALTHCARE SERVICES, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Year Ended December 31, 2000

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total Year
(In thousands, except per share data)					
Revenue	\$44,951	\$46,045	\$60,717	\$79,053	\$230,766
Gross profit	\$11,381	\$11,137	\$16,466	\$21,174	\$ 60,158
Income (loss) before extraordinary item	\$ (1,546)	\$ (2,560)	\$ 194	\$ (1,286)	\$ (5,198)
Net income (loss)	\$ (1,546)	\$ (2,560)	\$ 194	\$ (1,286)	\$ (5,198)
Basic and diluted income (loss) per share:					
Income (loss) before extraordinary item	\$ 0.07	\$ (0.12)	\$ 0.01	\$ (0.05)	\$ (0.23)
Net income (loss)	\$ 0.07	\$ (0.12)	\$ 0.01	\$ (0.05)	\$ (0.23)

(a) Fourth quarter 2001 net loss includes an after-tax extraordinary charge of \$5.5 million (\$0.15 per share) for the early extinguishment of debt.

AMN HEALTHCARE SERVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Item 9. *Changes In and Disagreements With Accountants on Accounting and Financial Disclosure***

In February 2000, in connection with our recapitalization, our board of directors elected to change our independent auditors from Deloitte & Touche LLP to KPMG LLP. In connection with Deloitte & Touche LLP's audit of the financial statements for the year ended December 31, 1998, there were no disagreements with Deloitte & Touche LLP on any matters of accounting principles or practices, financial statement disclosures or auditing scope or procedures, nor any reportable events. Deloitte & Touche LLP's report on our financial statements for the year ended December 31, 1998 contained no adverse opinions or disclaimers of opinion and was not modified or qualified as to uncertainty, audit scope or accounting principles. We have provided Deloitte & Touche LLP with a copy of the disclosure contained in this section of this Annual Report on Form 10K. Prior to retaining KPMG LLP, we did not consult with KPMG LLP regarding the application of accounting principles to a specified transaction or the type of audit opinion that might be rendered on our financial statements.

**PART III**

**Item 10. *Directors and Executive Officers of the Registrant***

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

**Item 11. *Executive Compensation***

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

**Item 12. *Security Ownership of Certain Beneficial Owners and Management***

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

**Item 13. *Certain Relationships and Related Transactions***

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

**PART IV**

**Item 14. *Exhibits, Financial Statement Schedules and Reports on Form 8-K***

(a) Documents filed as part of the report.

(1) Consolidated Financial Statements

Independent Auditors' Report  
Consolidated Balance Sheets  
Consolidated Statements of Operations  
Consolidated Statements of Stockholders' Equity  
Consolidated Statements of Cash Flows  
Notes to Consolidated Financial Statements

(2) Financial Statement Schedules

Schedule II — Valuation and Qualifying Accounts

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### (3) Exhibits

<b>Exhibit Number</b>	<b>Description</b>
3.1	Amended and Restated Certificate of Incorporation of AMN Healthcare Services, Inc.*
3.2	By-laws of AMN Healthcare Services, Inc.*
4.1	Specimen Stock Certificate.*
4.2	Registration Rights Agreement, dated as of November 16, 2001, among the Registrant, HWH Capital Partners, L.P., HWH Nightingale Partners, L.P., HWP Nightingale Partners II, L.P., HWP Capital Partners II, L.P., BancAmerica Capital Investors SBIC I, L.P., the Francis Family Trust dated May 24, 1996 and Steven Francis.*
10.1	Acquisition Agreement, dated as of October 1, 1999, among the Registrant, AMN Healthcare, Inc., AMN Acquisition Corp., Olympus Growth Fund II, L.P., Olympus Growth Executive Fund, L.P., Steven Francis, as Trustee of the Francis Family Trust dated May 24, 1996, Gayle Francis, as Trustee of the Francis Family Trust dated May 24, 1996, Todd Johnson and Deborah Johnson.**
10.2	Stock Purchase Agreement, dated as of June 23, 2000, by and between AMN Healthcare, Inc., Suzanne Confoy and George Robert Kraus, Jr.**
10.3	Stock Purchase Agreement, dated as of October 12, 2000, by and between AMN Healthcare, Inc. and Preferred Employers Holdings, Inc.**
10.4	Stock Purchase Agreement, dated as of April 3, 2001, by and between AMN Healthcare, Inc., Joseph O'Grady and Teresa O'Grady-Peyton.**
10.5	Note and Warrant Purchase Agreement, dated as of November 19, 1999, between the Registrant and BancAmerica Capital Investors SBIC I, L.P.**
10.6	First Amendment to Note and Warrant Purchase Agreement, dated as of November 21, 2000, by and among the Registrant and BancAmerica Capital Investors SBIC I, L.P.**
10.7	Subscription Agreement, dated as of November 28, 2000, between the Registrant and BancAmerica Capital Investors SBIC I, L.P.**
10.8	Warrant Agreement, dated as of November 19, 1999, among the Registrant, BancAmerica Capital Investors SBIC I, L.P. and each of the warrant holders who are or may become a party thereto.**
10.9	AMN Holdings, Inc. 1999 Performance Stock Option Plan, as amended.**
10.10	AMN Holdings, Inc. 1999 Super-Performance Stock Option Plan, as amended.**
10.11	AMN Healthcare Services, Inc. 2001 Stock Option Plan.**
10.12	Employment and Non-Competition Agreement, dated as of November 19, 1999, among AMN Holdings, Inc., AMN Acquisition Corp. and Steven Francis.**
10.13	Executive Severance Agreement, dated as of November 19, 1999, between AMN Healthcare, Inc. and Susan Nowakowski.**
10.14	Executive Severance Agreement, dated as of May 21, 2001, between AMN Healthcare, Inc. and Donald Myll.**
10.15	1999 Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, between the Registrant and Steven Francis.**
10.16	Amendment, dated as of December 13, 2000, to the 1999 Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, between the Registrant and Steven Francis.**
10.17	Amendment No. 2, dated as of July 24, 2001, to the 1999 Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, as amended December 13, 2000, between the Registrant and Steven Francis.**
10.18	1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, between the Registrant and Steven Francis.**
10.19	Amendment, dated as of December 13, 2000, to the Super-Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, between the Registrant and Steven Francis.**

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<b>Exhibit Number</b>	<b>Description</b>
10.20	Amendment No. 2, dated as of July 24, 2001, to the 1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, as amended December 13, 2000, between the Registrant and Steven Francis.**
10.21	1999 Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, between the Registrant and Susan Nowakowski.**
10.22	Amendment, dated as of December 13, 2000, to the 1999 Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, between the Registrant and Susan Nowakowski.**
10.23	Amendment No. 2, dated as of July 24, 2001, to the 1999 Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, as amended December 13, 2000, between the Registrant and Susan Nowakowski.**
10.24	1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, between the Registrant and Susan Nowakowski.**
10.25	Amendment, dated as of December 13, 2000, to the Super-Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, between the Registrant and Susan Nowakowski.**
10.26	Amendment No. 2, dated as of July 24, 2001, to the 1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of November 19, 1999, as amended December 13, 2000, between the Registrant and Susan Nowakowski.**
10.27	1999 Performance Stock Option Plan Stock Option Agreement, dated as of November 20, 2000, between the Registrant and Susan Nowakowski.**
10.28	Amendment, dated as of July 24, 2001, to the 1999 Performance Stock Option Plan Stock Option Agreement, dated as of November 20, 2000, between the Registrant and Susan Nowakowski.**
10.29	1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of November 20, 2000, between the Registrant and Susan Nowakowski.**
10.30	Amendment, dated as of July 24, 2001, to the 1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of November 20, 2000, between the Registrant and Susan Nowakowski.**
10.31	1999 Performance Stock Option Plan Stock Option Agreement, dated as of December 13, 2000, between the Registrant and Steven Francis.**
10.32	Amendment, dated as of July 24, 2001, to the 1999 Performance Stock Option Plan Stock Option Agreement, dated as of December 13, 2000, between the Registrant and Steven Francis.**
10.33	1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of December 13, 2000, between the Registrant and Steven Francis.**
10.34	Amendment, dated as of July 24, 2001, to the 1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of December 13, 2000, between the Registrant and Steven Francis.**
10.35	1999 Performance Stock Option Plan Stock Option Agreement, dated as of December 13, 2000, between the Registrant and Susan Nowakowski.**
10.36	Amendment, dated as of July 24, 2001, to the 1999 Performance Stock Option Plan Stock Option Agreement, dated as of December 13, 2000, between the Registrant and Susan Nowakowski.**
10.37	1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of December 13, 2000, between the Registrant and Susan Nowakowski.**
10.38	Amendment, dated as of July 24, 2001, to the 1999 Super-Performance Stock Option Plan Stock Option Agreement, dated as of December 13, 2000, between the Registrant and Susan Nowakowski.**
10.39	2001 Stock Option Plan Stock Option Agreement, dated as of May 21, 2001, between the Registrant and Donald Myll.**
10.40	AMN Healthcare Services, Inc. 2001 Senior Management Bonus Plan.**
10.41	Amended and Restated Financial Advisory Agreement, dated as of November 16, 2001, between the Registrant and Haas Wheat & Partners, L.P.*

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<b>Exhibit Number</b>	<b>Description</b>
10.42	Amended and Restated Credit Agreement, dated as of November 16, 2001, by and among AMN Healthcare, Inc., as borrower, AMN Healthcare Services, Inc., Worldview Healthcare, Inc. and O'Grady-Peyton International (USA), Inc., as guarantors, and the lenders party thereto.*
16.1	Letter from Deloitte & Touche LLP regarding change in certifying accountant.**
21.1	Subsidiaries of the Registrant.**
23.1	Independent Auditors' Report on Schedule and Consent.*
24.1	Power of Attorney (included on signature pages).

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\* Filed herewith.

\*\* Incorporated by reference to the exhibits filed with the Registrant's Registration Statement on Form S-1 (File No. 333-65168).

(b) Reports on Form 8-K

No reports on Form 8-K were filed during the quarter ended December 31, 2001.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) 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.

**AMN HEALTHCARE SERVICES, INC.**

/s/ STEVEN FRANCIS

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Name: Steven Francis  
Title: Director, President and Chief Executive Officer  
Officer

We, the undersigned officers and directors of AMN Healthcare Services, Inc., hereby severally constitute Steven Francis, Susan Nowakowski and Donald Myll and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below, any and all amendments to this Annual Report on Form 10-K, and generally do all such things in our name and behalf in such capacities to enable AMN Healthcare Services, Inc. to comply with the applicable provisions of the Securities Exchange Act of 1934, and all requirements of the Securities and Exchange Commission, and we hereby ratify and confirm our signatures as they may be signed by our said attorneys, or any of them, to any and all such amendments.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons in the capacities indicated and on the 15th day of March, 2002.

/s/ ROBERT HAAS

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Name: Robert Haas  
Title: Chairman of the Board and Director

/s/ STEVEN FRANCIS

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Name: Steven Francis  
Title: Director, President and Chief Executive Officer

/s/ MICHAEL GALLAGHER

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Name: Michael Gallagher  
Title: Director

/s/ WILLIAM MILLER III

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Name: William Miller III  
Title: Director

/s/ ANDREW STERN

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Name: Andrew Stern  
Title: Director

/s/ DOUGLAS WHEAT

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Name: Douglas Wheat  
Title: Director

/s/ DONALD MYLL

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Name: Donald Myll  
Title: Chief Accounting Officer and Chief Financial Officer



## AMN HEALTHCARE SERVICES, INC.

## VALUATION AND QUALIFYING ACCOUNTS

For Years Ended December 31, 1999, 2000 and 2001

Allowance for Doubtful Accounts	Balance at the Beginning of Year	Provision	Provision from Acquisitions	Deductions(*)	Balance at End of Year
			(in thousands)		
Year ended December 31, 1999	\$135	\$ 260	—	\$(139)	\$ 256
Year ended December 31, 2000	\$256	\$ 435	\$441	\$(202)	\$ 930
Year ended December 31, 2001	\$930	\$2,906	\$171	\$(765)	\$3,242

(\*) Accounts written off

See accompanying independent auditors' report

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
of  
AMN HEALTHCARE SERVICES, INC.

AMN Healthcare Services, Inc., a corporation duly incorporated under the laws of the State of Delaware, hereby certifies as follows:

FIRST: The present name of the corporation is AMN Healthcare Services, Inc. (the "Corporation"). The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on the 10th day of November, 1997, under the name AMN Holdings, Inc.

SECOND: This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 228, 242 and 245 of the Delaware General Corporation Law (the "General Corporation Law").

THIRD: This Amended and Restated Certificate of Incorporation restates, integrates and further amends the Certificate of Incorporation of the Corporation as follows:

1. Name. The name of the corporation is "AMN Healthcare Services, Inc."

2. Address; Registered Office and Agent. The address of the Corporation's registered office is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of Newcastle, State of Delaware, and the name of its registered agent at such address is The Corporation Trust Company.

3. Purposes. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

4. Number of Shares. The total number of shares of stock that the Corporation shall have authority to issue is: two hundred and ten million (210,000,000), divided as follows: ten million (10,000,000) shares of Preferred Stock, of the par value of \$0.01 per share (the "Preferred Stock"), and two hundred million (200,000,000) shares of Common Stock, of the par value of \$0.01 per share (the "Common Stock").

Upon this Amended and Restated Certificate of Incorporation becoming effective pursuant to the General Corporation Law (the "Effective Time"), each share of Common Stock issued and outstanding immediately prior to the Effective Time (the "Old Common Stock") shall, without any action on the part of the holder thereof, be automatically reclassified as and converted into 43.10849 shares of Common Stock (the "New Common Stock").

The number of authorized shares, the number of shares of treasury stock and the par value of the Common Stock shall not be affected. Each stock certificate that immediately prior to the Effective Time represented shares of Old Common Stock shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent the number of shares of New Common Stock as equals the product obtained by multiplying the number of shares of Old Common Stock represented by such certificate immediately prior to the Effective Time by 43.10849.

4.1 The designation, relative rights, preferences and limitations of the shares of each class are as follows:

4.1.1 The shares of Preferred Stock may be issued from time to time in one or more series of any number of shares, provided that the aggregate number of shares issued and not cancelled of any and all such series shall not exceed the total number of shares of Preferred Stock hereinabove authorized, and with such powers, including voting powers, if any, and the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, all as shall hereafter be stated and expressed in the resolution or resolutions providing for the designation and issue of such shares of Preferred Stock from time to time adopted by the Board of Directors (the "Board") pursuant to authority so to do which is hereby expressly vested in the Board. The powers, including voting powers, if any, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. Each series of shares of Preferred Stock: (a) may have such voting rights or powers, full or limited, if any; (b) may be subject to redemption at such time or times and at such prices, if any; (c) may be entitled to receive dividends (which may be cumulative or non-cumulative) at such rate or rates, on such conditions and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or series of stock, if any; (d) may have such rights upon the voluntary or involuntary liquidation, winding up or dissolution of, or upon any distribution of the assets of, the Corporation, if any; (e) may be made convertible into or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of stock of the Corporation (or any other securities of the Corporation or any other person) at such price or prices or at such rates

of exchange and with such adjustments, if any; (f) may be entitled to the benefit of a sinking fund to be applied to the purchase or redemption of shares of such series in such amount or amounts, if any; (g) may be entitled to the benefit of conditions and restrictions upon the creation of indebtedness of the Corporation or any subsidiary, upon the issue of any additional shares (including additional shares of such series or of any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by the Corporation or any subsidiary of, any outstanding shares of the Corporation, if any; and (h) may have such other relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof, if any; all as shall be stated in said resolution or resolutions of the Board providing for the designation and issue of such shares of Preferred Stock. Any of the voting powers, designations, preferences, rights and any qualifications, limitations or restrictions of any such series of Preferred Stock may be made dependent upon facts ascertainable outside of the resolution or resolutions providing for the issue of such Preferred Stock adopted by the Board pursuant to the authority vested in it by this Section 4.1.1, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such series of Preferred Stock is clearly and expressly set forth in the resolution or resolutions providing for the issue of such Preferred Stock. The term "facts" as used in the preceding sentence shall have the meaning set forth in Section 151(a) of the General Corporation Law.

4.1.2 Except as otherwise provided by law or by this Certificate of Incorporation and subject to the express terms of any series of shares of

Preferred Stock, the holders of outstanding shares of Common Stock shall exclusively possess voting power for the election of Directors and for all other purposes, each holder of record of shares of Common Stock being entitled to one vote for each share of Common Stock standing in his or her name on the books of the Corporation. Except as otherwise provided by law or by this Certificate of Incorporation and subject to the express terms of any series of shares of Preferred Stock, the holders of shares of Common Stock shall be entitled, to the exclusion of the holders of shares of Preferred Stock of any and all series, to receive such dividends as from time to time may be declared by the Board. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to share ratably according to the number of shares of Common Stock held by them in all remaining assets of the Corporation available for distribution to its stockholders.

4.1.3 Subject to the provisions of this Certificate of Incorporation and the express terms of any series of Preferred Stock and except as otherwise provided by law, the stock of the Corporation, regardless of class, may be issued for such consideration and for such corporate purposes as the Board may from time to time determine.

5. Election of Directors. Unless and except to the extent that the By-laws of the Corporation (the "By-laws") shall so require, the election of the directors of the Corporation need not be by written ballot.

6. Limitation of Liability. No Director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, provided that this provision shall not eliminate or limit the liability of a Director (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under section 174 of the General Corporation Law or (d) for any transaction from which the Director derived any improper personal benefits. If the General Corporation Law is hereafter amended to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any repeal or modification of the foregoing provision shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

7. Indemnification.

7.1 To the extent not prohibited by applicable law, the Corporation shall indemnify any person (a "Covered Person") who is or was made, or threatened to be made, a party to any threatened, pending or completed action, suit or proceeding (a "Proceeding"), whether civil, criminal, administrative or investigative, including, without limitation, an action by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that such person, or a person of whom such person is the legal representative, is or was a Director or officer of the Corporation, or, while a Director or officer of the Corporation, is or was serving at the request of the

Corporation as a director or officer of any other corporation or in a capacity with comparable authority or responsibilities for any partnership, joint venture, trust, employee benefit plan or other enterprise (an "Other Entity"), against expenses (including attorneys' fees) in the event of an action by or in the right of the Corporation and against judgments, fines, and amounts paid in settlement and expenses (including attorneys' fees), in the event of any other proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interest of the Corporation, and, with respect to any criminal proceeding, had no reason to believe the person's conduct was unlawful; and except that no indemnification shall be made, in the event of an action by or in the right of the Corporation, if prohibited by the General Corporation Law. Persons who are not Directors or officers of the Corporation (or otherwise entitled to indemnification pursuant to the preceding sentence) may be similarly indemnified in respect of service to the Corporation or to an Other Entity at the request of the Corporation to the extent the Board at any time specifies that such persons are entitled to the benefits of this Section 7.

7.2 The Corporation shall, from time to time, reimburse or advance to any Covered Person the funds necessary for payment of expenses, including attorneys' fees and disbursements, incurred in connection with any Proceeding, in advance of the final disposition of such Proceeding; provided, however, that, if required by the General Corporation Law, such payment of expenses in advance of the final disposition of a Proceeding shall be made only upon receipt by the Corporation of an undertaking, by the Covered Person, to repay any such amount so advanced if it shall



ultimately be determined that such Covered Person is not entitled to be indemnified for such expenses.

7.3 The rights to indemnification or advancement of expenses provided by, or granted pursuant to, this Section 7 shall not be deemed exclusive of any other rights to which a person seeking indemnification or reimbursement or advancement of expenses may have or hereafter be entitled under applicable law, this Certificate of Incorporation, the By-laws, any agreement, any vote of stockholders or disinterested Directors or otherwise.

7.4 The rights to indemnification or advancement of expenses provided by, or granted pursuant to, this Section 7 shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the executors, administrators, legatees and distributees of such person.

7.5 The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of an Other Entity, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Section 7, the By-laws or under Section 145 of the General Corporation Law or any other provision of law.

7.6 Any repeal or modification of the provisions of this Section 7 shall not adversely affect any right or protection hereunder of any Covered

Person in respect of any act or omission occurring prior to the time of such repeal or modification.

7.7 The rights to indemnification or advancement of expenses provided by, or granted pursuant to, this Section 7 shall be enforceable by any Covered Person in the Court of Chancery of the State of Delaware. The burden of proving that such indemnification or advancement of expenses is not appropriate shall be on the Corporation. Neither the failure of the Corporation (including its Board, its independent legal counsel and its stockholders) to have made a determination prior to the commencement of such action that such indemnification or reimbursement or advancement of expenses is proper in the circumstances nor an actual determination by the Corporation (including its Board, its independent legal counsel and its stockholders) that such person is not entitled to such indemnification or reimbursement or advancement of expenses shall constitute a defense to the action or create a presumption that such person is not so entitled. Such a person shall also be indemnified for any expenses incurred in connection with successfully establishing his or her right to such indemnification or advancement of expenses, in whole or in part, in any such proceeding.

7.8 The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at the Corporation's request as a director, officer, employee or agent of any Other Entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such Other Entity.

7.9 This Section 7 shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and advance

expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

8. Section 203. The Corporation hereby expressly elects not to be governed by the provisions of Section 203 of the General Corporation Law (or any successor provision thereof), and the restrictions and limitations set forth therein.

9. Adoption, Amendment and/or Repeal of By-Laws. The Board may from time to time adopt, amend or repeal the By-laws; provided, however, that any By-laws adopted or amended by the Board may be amended or repealed, and any By-laws may be adopted, by the stockholders of the Corporation by vote of the holders of stock of the Corporation entitled to vote in the election of Directors of the Corporation and representing a majority of the voting power.

IN WITNESS WHEREOF, the undersigned has executed this Restated Certification of Incorporation this 17th day of October, 2001.

AMN HEALTHCARE SERVICES, INC.

By: /s/ Steven C. Francis

-----  
Name: Steven C. Francis  
Title: President and Chief  
Executive Officer

AMENDED AND RESTATED  
BY-LAWS  
of  
AMN HEALTHCARE SERVICES, INC.  
(A Delaware Corporation)

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ARTICLE 1

DEFINITIONS

As used in these By-laws, unless the context otherwise requires, the term:

- 1.1 "Assistant Secretary" means an Assistant Secretary of the Corporation.
- 1.2 "Assistant Treasurer" means an Assistant Treasurer of the Corporation.
- 1.3 "Board" means the Board of Directors of the Corporation.
- 1.4 "Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are authorized to close in the City of New York, State of New York.
- 1.5 "By-laws" means the by-laws of the Corporation, as amended from time to time.
- 1.6 "Certificate of Incorporation" means the certificate of incorporation of the Corporation, as amended, supplemented or restated from time to time.
- 1.7 "Chairman" means the Chairman of the Board.

1.8 "Corporation" means AMN Healthcare Services, Inc.

1.9 "Directors" means directors of the Corporation.

1.10 "Entire Board" means all Directors of the Corporation then in office, whether or not present at a meeting of the Board, but disregarding vacancies.

1.11 "General Corporation Law" means the General Corporation Law of the State of Delaware, as amended from time to time.

1.12 "Office of the Corporation" means the principal place of business of the Corporation, anything in Section 131 of the General Corporation Law to the contrary notwithstanding.

1.13 "President" means the President of the Corporation.

1.14 "Secretary" means the Secretary of the Corporation.

1.15 "Stockholders" means stockholders of the Corporation.

1.16 "Treasurer" means the Treasurer of the Corporation.

1.17 "Vice President" means a Vice President of the Corporation.

## ARTICLE 2

### STOCKHOLDERS

2.1 Place of Meetings. Every meeting of Stockholders shall be held at a place, within or without the State of Delaware, as may be designated by resolution of the Board from time to time.

2.2 Annual Meeting. If required by applicable law, a meeting of Stockholders shall be held annually for the election of Directors and the transaction of other business at such hour and on such Business Day as may be designated by resolution of the Board from time to time.

2.3 Other Special Meetings. Unless otherwise prescribed by applicable law, special meetings of Stockholders may be called at any time by only the Board or the Chairman and may not be called by any other person or persons. Business transacted at any special meeting of Stockholders shall be limited to the purpose stated in the notice.

2.4 Fixing Record Date. For the purpose of (a) determining the Stockholders entitled (i) to notice of or to vote at any meeting of Stockholders or any adjournment thereof, (ii) to express consent to corporate action in writing without a meeting, unless otherwise provided in the Certificate of Incorporation or (iii) to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock; or (b) any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date was adopted by the Board and which record date shall not be (x) in the case of clause (a)(i) above, unless otherwise required by applicable law, more than sixty (60) nor less than ten (10) days before the date of such meeting, (y) in the case of clause (a)(ii) above, more than ten (10) days after the date upon which the resolution fixing the record date was adopted by the Board and (z) in the case of clause (a)(iii) or (b) above, more than sixty (60) days prior to such action. If no such record date is fixed:

2.4.1 the record date for determining Stockholders entitled to notice of or to vote at a meeting of Stockholders shall be at the close of business on the Business Day next preceding the Business Day on which notice is given,

or, if notice is waived, at the close of business on the Business Day next preceding the Business Day on which the meeting is held;

2.4.2 the record date for determining Stockholders entitled to express consent to corporate action in writing without a meeting (unless otherwise provided in the Certificate of Incorporation), when no prior action by the Board is required by applicable law, shall be the first day on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of Stockholders are recorded; and when prior action by the Board is required by applicable law, the record date for determining Stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board adopts the resolution taking such prior action; and

2.4.3 the record date for determining Stockholders for any purpose other than those specified in Sections 2.4.1 and 2.4.2 hereof shall be at the close of business on the Business Day on which the Board adopts the resolution relating thereto.

When a determination of Stockholders entitled to notice of or to vote at any meeting of Stockholders has been made as provided in this Section 2.4, such determination shall apply to any adjournment thereof unless the Board fixes a new record date for the adjourned meeting. Delivery made to the Corporation's registered office in accordance



with Section 2.4.2 shall be by hand or by certified or registered mail, return receipt requested.

2.5 Notice of Meetings of Stockholders. Whenever under the provisions of applicable law, the Certificate of Incorporation or these By-laws, Stockholders are required or permitted to take any action at a meeting, written notice shall be given stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which Stockholders and proxyholders may be deemed to be present in person and vote at such meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by applicable law, the Certificate of Incorporation or these By-laws, the notice of any meeting shall be given, not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each Stockholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, with postage prepaid, directed to the Stockholder at his or her address as it appears on the records of the Corporation. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice required by this Section 2.5 has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which Stockholders and proxyholders may be deemed to be present in person and vote at such meeting are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted at the meeting as originally called. If, however, the

adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Stockholder of record entitled to vote at the meeting.

2.6 Waivers of Notice. Whenever the giving of any notice to Stockholders is required by applicable law, the Certificate of Incorporation or these By-laws, a waiver thereof, in writing, signed by the person entitled to said notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the event as to which such notice is required, shall be deemed equivalent to notice. Attendance by a Stockholder at a meeting shall constitute a waiver of notice of such meeting except when the Stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by applicable law, the Certificate of Incorporation or these By-laws.

2.7 List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of Stockholders, a complete list of the Stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. Such list shall be open to the examination of any Stockholder, the Stockholder's agent or attorney, at the Stockholder's expense, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting, either on a reasonably accessible electronic network as permitted by applicable law (provided that

the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the Office of the Corporation at the election of the Secretary. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to Stockholders of the Corporation. If the meeting is to be held at a place, the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any Stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Upon the willful neglect or refusal of the Directors to produce such a list at any meeting for the election of Directors held at a place, or to open such a list to examination on a reasonably accessible electronic network during any meeting for the election of Directors held solely by means of remote communication, they shall be ineligible for election to any office at such meeting. The stock ledger shall be the only evidence as to who are the Stockholders entitled to examine the stock ledger, the list of Stockholders or the books of the Corporation, or to vote in person or by proxy at any meeting of Stockholders.

2.8 Quorum of Stockholders; Adjournment. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-laws, at each meeting of Stockholders, the presence in person or by proxy of the holders of a majority of all outstanding shares of stock entitled to vote at the meeting of Stockholders shall constitute a quorum for the transaction of any business at such meeting, except that,

where a separate vote by a class or series or classes or series is required, a quorum shall consist of no less than a majority of the shares of such class or series or classes or series. When a quorum is present to organize a meeting of Stockholders and for purposes of voting on any matter, the quorum for such meeting or matter is not broken by the subsequent withdrawal of any Stockholders. In the absence of a quorum, the holders of a majority of the shares of stock present in person or represented by proxy at any meeting of Stockholders, including an adjourned meeting, whether or not a quorum is present, may adjourn such meeting to another time and place. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of Directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

2.9 Voting; Proxies. Unless otherwise provided in the Certificate of Incorporation, every Stockholder entitled to vote at any meeting of Stockholders shall be entitled to one vote for each share of stock held by such Stockholders which has voting power upon the matter in question. If the Certificate of Incorporation provides for more or less than one (1) vote for any share on any matter, each reference in the By-laws or the General Corporation Law to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock. The provisions of Sections 212 and 217 of the General Corporation Law shall apply in determining whether any shares of stock may be voted and the persons, if any, entitled to vote such shares; but the Corporation shall be protected in assuming that the persons in whose names shares of

stock stand on the stock ledger of the Corporation are entitled to vote such shares. At any meeting of Stockholders (at which a quorum was present to organize the meeting), all matters, except as otherwise provided by applicable law, pursuant to any regulation applicable to the Corporation or its securities or by the Certificate of Incorporation or by these By-laws, shall be decided by the affirmative vote of a majority in voting power of shares present in person or represented by proxy and entitled to vote thereon. At all meetings of Stockholders for the election of Directors, a plurality of the votes cast shall be sufficient to elect. Except as otherwise provided by the Certificate of Incorporation, each Stockholder entitled to vote at a meeting of Stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such Stockholder by proxy. The validity and enforceability of any proxy shall be determined in accordance with Section 212 of the General Corporation Law. A Stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary an instrument in writing revoking the proxy or by delivering a proxy in accordance with applicable law bearing a later date to the Secretary.

2.10 Voting Procedures and Inspectors of Election at Meetings of Stockholders. The Board, in advance of any meeting of Stockholders, may, and shall, if required by applicable law, appoint one or more inspectors to act at the meeting and make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If required by applicable law, if no inspector or alternate is able to act at a meeting, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering

upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. At the meeting the inspectors shall (a) ascertain the number of shares outstanding and the voting power of each, (b) determine the shares represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties. Unless otherwise provided by the Board, the date and time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting shall be determined by the person presiding at the meeting and shall be announced at the meeting. No ballot, proxies or votes, or any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery of the State of Delaware upon application by a Stockholder shall determine otherwise. In determining the validity and counting of proxies and ballots cast at any meeting of Stockholders, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for office at an election may serve as an inspector at such election.

2.11 Conduct of Meetings. (a) The Board may adopt by resolution such rules and regulations for the conduct of the meeting of Stockholders as it shall deem appropriate. At each meeting of Stockholders, the Chairman, or in the absence of the Chairman or if one shall not have been appointed, the President, or if the President is

absent, a Vice President, and in case more than one (1) Vice President shall be present, that Vice President designated by the Board (or in the absence of any such designation, the most senior Vice President, based on age, present), shall act as chairman of the meeting. Except to the extent inconsistent with any rules and regulations for the conduct of the meeting of Stockholders adopted by the Board, the chairman of the meeting shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules and regulations for the conduct of the meeting and to do such acts as, in the judgment of the chairman of the meeting, are appropriate for the proper conduct of the meeting. The Secretary, or in his or her absence, one of the Assistant Secretaries, shall act as secretary of the meeting. In the absence of the Secretary or one of the Assistant Secretaries, the chairman of the meeting shall appoint a person to act as secretary of the meeting. In case none of the officers above designated to act as chairman or secretary of the meeting, respectively, shall be present, a chairman or a secretary of the meeting, as the case may be, shall be chosen by resolution of the Board, and in case the Board has not so acted, by a majority of the votes cast at such meeting by the holders of shares of stock present in person or represented by proxy and entitled to vote at the meeting.

(b) Only persons who are nominated in accordance with the following procedures shall be eligible for election as Directors. Nominations of persons for election to the Board may be made at an annual meeting or special meeting of Stockholders only (i) by or at the direction of the Board, (ii) by any nominating committee designated by the Board or (iii) by any Stockholder of the Corporation who was a Stockholder of record of the Corporation at the time the notice provided for in this Section 2.11 is delivered to the Secretary, who is entitled to vote for the election of

Directors at the meeting and who complies with the applicable provisions of Section 2.11(d) hereof (persons nominated in accordance with (iii) above are referred to herein as "Stockholder nominees").

(c) At any annual meeting of Stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting of Stockholders, (i) business must be specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the meeting by or at the direction of the Board or (iii) otherwise properly brought before the meeting by a Stockholder who was a Stockholder of record of the Corporation at the time the notice provided for in this Section 2.11 is delivered to the Secretary, who is entitled to vote at the meeting and who complies with the applicable provisions of Section 2.11(d) hereof (business brought before the meeting in accordance with (iii) above is referred to as "Stockholder business").

(d) In addition to any other applicable requirements, (i) all nominations of Stockholder nominees must be made by timely written notice given by or on behalf of a Stockholder of record of the Corporation (the "Notice of Nomination") and (ii) all proposals of Stockholder business must be made by timely written notice given by or on behalf of a Stockholder of record of the Corporation (the "Notice of Business"). To be timely, the Notice of Nomination or the Notice of Business, as the case may be, must be delivered personally to, or mailed to, and received at the Office of the Corporation, addressed to the attention of the Secretary, (i) in the case of the nomination of a person for election to the Board, or business to be conducted, at an annual meeting of



Stockholders, not less than sixty (60) days nor more than one hundred and thirty (130) days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the prior year's annual meeting of Stockholders, except in the case of the Corporation's first annual meeting of Stockholders as a public corporation, in which case a Notice of Nomination or Notice of Business, as the case may be, shall be delivered not less than seventy (70) nor more than one hundred and thirty (130) days prior to the scheduled date of the annual meeting, regardless of any postponement, deferral or adjournment of that meeting to a later date, or (ii) in the case of the nomination of a person for election to the Board at a special meeting of Stockholders, not less than the later of (a) ninety (90) nor more than one hundred and thirty (130) days prior to such special meeting or (b) the tenth day following the day on which the notice of such special meeting was made by mail or Public Disclosure; provided, however, that in the event that the annual meeting of Stockholders is advanced or delayed by more than thirty (30) days from the first anniversary of the prior year's annual meeting of Stockholders or if no annual meeting was held during the prior year, notice by the Stockholder to be timely must be received (i) no earlier than one hundred and thirty (130) days prior to such annual meeting and no later than ninety (90) days prior to such annual meeting or (ii) no later than ten (10) days following the day the notice of such annual meeting was made by mail or Public Disclosure. In no event shall the public disclosure of an adjournment or postponement of an annual or special meeting commence a new time period (or extend any time period) for the giving of the Notice of Nomination or Notice of Business, as applicable.

The Notice of Nomination shall set forth (i) the name and record address of the Stockholder and/or beneficial owner proposing to make nominations, as they appear on the Corporation's books, (ii) the class and number of shares of stock held of record and beneficially by such Stockholder and/or such beneficial owner, (iii) a representation that the Stockholder is a holder of record of stock of the Corporation entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to propose such nomination, (iv) all information regarding each Stockholder nominee that would be required to be set forth in a definitive proxy statement filed with the Securities and Exchange Commission pursuant to Section 14 of the Securities Exchange Act of 1934, as amended, or any successor statute thereto (the "Exchange Act"), and the written consent of each such Stockholder nominee to being named in a proxy statement as a nominee and to serve if elected and (v) all other information that would be required to be filed with the Securities and Exchange Commission if the person proposing such nominations were a participant in a solicitation subject to Section 14 of the Exchange Act or any successor statute thereto. The Corporation may require any Stockholder nominee to furnish such other information as it may reasonably require to determine the eligibility of such Stockholder nominee to serve as a Director of the Corporation. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that any proposed nomination of a Stockholder nominee was not made in accordance with the foregoing procedures and, if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

The Notice of Business shall set forth (i) the name and record address of the Stockholder and/or beneficial owner proposing such Stockholder business, as they

appear on the Corporation's books, (ii) the class and number of shares of stock held of record and beneficially by such Stockholder and/or such beneficial owner, (iii) a representation that the Stockholder is a holder of record of stock of the Corporation entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to propose such business, (iv) a brief description of the Stockholder business desired to be brought before the annual meeting, the text of the proposal (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the By-laws, the language of the proposed amendment, and the reasons for conducting such Stockholder business at the annual meeting, (v) any material interest of the Stockholder and/or beneficial owner in such Stockholder business and (vi) all other information that would be required to be filed with the Securities and Exchange Commission if the person proposing such Stockholder business were a participant in a solicitation subject to Section 14 of the Exchange Act. Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at the annual meeting of Stockholders except in accordance with the procedures set forth in this Section 2.11(d), provided, however, that nothing in this Section 2.11(d) shall be deemed to preclude discussion by any Stockholder of any business properly brought before the annual meeting in accordance with said procedure. Nevertheless, it is understood that Stockholder business may be excluded if the exclusion of such Stockholder business is permitted by the applicable regulations of the Securities and Exchange Commission. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting, that business was not properly brought before the meeting in accordance with the

foregoing procedures and, if he should so determine, he shall declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Notwithstanding the foregoing provisions of this Section 2.11, if the Stockholder (or a qualified representative of the Stockholder) does not appear at the annual or special meeting of Stockholders to present the Stockholder nomination or the Stockholder business, as applicable, such nomination shall be disregarded and such business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

For purposes of this Section 2.11, "Public Disclosure" shall be deemed to be first made when disclosure of such date of the annual or special meeting of Stockholders, as the case may be, is first made in a press release reported by the Dow Jones News Services, Associated Press or comparable national news service, or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act or any successor statute thereto.

Notwithstanding the foregoing, a Stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.11. Nothing in this Section 2.11 shall be deemed to affect any rights of the holders of any series of preferred stock of the Corporation pursuant to any applicable provision of the Certificate of Incorporation.

2.12 Order of Business. The order of business at all meetings of Stockholders shall be as determined by the chairman of the meeting.

2.13 Written Consent of Stockholders Without a Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required by the General Corporation Law to be taken at any annual or special meeting of Stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered (by hand or by certified or registered mail, return receipt requested) to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of Stockholders are recorded. Every written consent shall bear the date of signature of each Stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 2.13, written consents signed by a sufficient number of holders to take action are delivered to the Corporation as aforesaid. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by applicable law, be given to those Stockholders who have not consented in writing and who, if the action had been taken at a meeting, had been Stockholders the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation. Written consent may take the form of a cablegram, telegram or other electronic transmission to the extent such written consent complies with the applicable provisions of the General Corporation Law.

In the event of the delivery to the Corporation of a written consent, the Secretary shall provide for the safe-keeping of such written consent and shall promptly conduct such ministerial review of the sufficiency of the written consent and of the validity of the action to be taken by written consent as he deems necessary or appropriate, including, without limitation, whether the holders of a number of shares having the requisite voting power to authorize or take the action specified in the written consent have given consent; provided, however, that if the corporate action to which the written consent relates is the removal or replacement of one or more members of the Board, the Secretary shall promptly designate two persons, who shall not be members of the Board, to serve as inspectors with respect to such written consent and such inspectors shall discharge the functions of the Secretary under this Section 2.13. If after such investigation the Secretary or the inspectors, as the case may be, shall determine that the written consent is valid and that the action therein specified has been validly authorized, that fact shall forthwith be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of Stockholders, and the written consent shall be filed in such records, at which time the written consent shall become effective as Stockholder action. In conducting the investigation required by this Section 2.13, the Secretary or the inspectors, as the case may be, may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors, and such other personnel as they may deem necessary or appropriate to assist them, and shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

The record date for determining Stockholders entitled to express consent to corporate action in writing without a meeting shall be as fixed by the Board or as otherwise established under this Section 2.13. Any person seeking to have the Stockholders authorize or take corporate action by written consent without a meeting shall, by written notice addressed to the Secretary and delivered to the Corporation, request that a record date be fixed for such purpose. The Board may fix a record date for such purpose which shall be no more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board and shall not precede the date such resolution is adopted. If the Board fails, within ten (10) days after the Corporation receives such notice, to fix a record date for such purpose, the record date shall be the day on which the first written consent is delivered to the Corporation in the manner described above unless prior action by the Board is required under the General Corporation Law, in which event the record date shall be at the close of business on the Business Day on which the Board adopts the resolution taking such prior action.

### ARTICLE 3

#### Directors

3.1 General Powers. Except as otherwise provided in the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board. The Board may adopt such rules and regulations, not inconsistent with the Certificate of Incorporation or these By-laws or applicable law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

3.2 Number; Qualification; Term of Office. The Board shall consist of one or more members, the number thereof to be determined from time to time by

resolution of the Board. Directors need not be Stockholders. Each Director shall hold office until a successor is duly elected and qualified or until the Director's death, resignation or removal.

3.3 Election. Directors shall, except as otherwise required by applicable law or by the Certificate of Incorporation, be elected by a plurality of the votes cast at a meeting of Stockholders by the holders of shares present in person or represented by proxy at the meeting and entitled to vote in the election.

3.4 Newly Created Directorships and Vacancies. Unless otherwise provided by applicable law or the Certificate of Incorporation and subject to the rights of the holders of any series of Preferred Stock then outstanding, any newly created Directorships resulting from any increase in the authorized number of Directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled by a majority vote of the remaining Directors then in office although less than a quorum, or by a sole remaining Director, and Directors so chosen shall hold office until the expiration of the term of office of the Director whom he or she has replaced or until his or her successor is duly elected and qualified. No decrease in the number of Directors constituting the Board shall shorten the term of any incumbent Director. When any Director shall give notice of resignation effective at a future date, the Board may fill such vacancy to take effect when such resignation shall become effective in accordance with the General Corporation Law.

3.5 Resignation. Any Director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Such resignation shall



take effect at the time therein specified, and, unless otherwise specified in such resignation, the acceptance of such resignation shall not be necessary to make it effective.

3.6 Removal. Subject to the provisions of Section 141(k) of the General Corporation Law, any or all of the Directors may be removed with or without cause by vote of the holders of a majority of the shares then entitled to vote at an election of Directors.

3.7 Compensation. Each Director, in consideration of his or her service as such, shall be entitled to receive from the Corporation such amount per annum or such fees for attendance at Directors' meetings, or both, as the Board may from time to time determine, together with reimbursement for the reasonable out-of-pocket expenses, if any, incurred by such Director in connection with the performance of his or her duties. Each Director who shall serve as a member of any committee of Directors in consideration of serving as such shall be entitled to such additional amount per annum or such fees for attendance at committee meetings, or both, as the Board may from time to time determine, together with reimbursement for the reasonable out-of-pocket expenses, if any, incurred by such Director in the performance of his or her duties. Nothing contained in this Section 3.7 shall preclude any Director from serving the Corporation or its subsidiaries in any other capacity and receiving proper compensation therefor.

3.8 Regular Meetings. Regular meetings of the Board may be held without notice at such times and at such places within or without the State of Delaware as shall from time to time be determined by the Board.

3.9 Special Meetings. Special meetings of the Board may be held at any time or place, within or without the State of Delaware, whenever called by the

Chairman, the President or the Secretary or by any two or more Directors then serving as Directors on at least twenty-four hours' notice to each Director given by one of the means specified in Section 3.12 hereof other than by mail, or on at least three (3) days' notice if given by mail. Special meetings shall be called by the Chairman, President or Secretary in like manner and on like notice on the written request of any two or more of the Directors then serving as Directors.

3.10 Telephone Meetings. Directors or members of any committee designated by the Board may participate in a meeting of the Board or of such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.10 shall constitute presence in person at such meeting.

3.11 Adjourned Meetings. A majority of the Directors present at any meeting of the Board, including an adjourned meeting, whether or not a quorum is present, may adjourn such meeting to another time and place. At least one (1) day's notice of any adjourned meeting of the Board shall be given to each Director whether or not present at the time of the adjournment, if such notice shall be given by one of the means specified in Section 3.12 hereof other than by mail, or at least three (3) days' notice if by mail. Any business may be transacted at an adjourned meeting that might have been transacted at the meeting as originally called.

3.12 Notice Procedure. Subject to Sections 3.9 and 3.15 hereof, whenever, under the provisions of applicable law, the Certificate of Incorporation or these By-laws, notice is required to be given to any Director, such notice shall be deemed given effectively if given in person or by telephone, by mail addressed to such Director at

such Director's address as it appears on the records of the Corporation, with postage thereon prepaid, or by telegram, telex, telecopy or other means of electronic transmission.

3.13 Waiver of Notice. Whenever the giving of any notice to Directors is required by applicable law, the Certificate of Incorporation or these By-laws, a waiver thereof, in writing, signed by the person or persons entitled to said notice, whether before or after the event as to which such notice is required, shall be deemed equivalent to notice. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors or a committee of Directors need be specified in any written waiver of notice unless so required by applicable law, the Certificate of Incorporation or these By-laws.

3.14 Organization. At each meeting of the Board, the Chairman, or in the absence of the Chairman, the President, or in the absence of the President, a chairman chosen by a majority of the Directors present, shall preside. The Secretary shall act as secretary at each meeting of the Board. In case the Secretary shall be absent from any meeting of the Board, an Assistant Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all Assistant Secretaries, the person presiding at the meeting may appoint any person to act as secretary of the meeting.

3.15 Quorum of Directors. The presence in person of a majority of the Entire Board shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board.

3.16 Action by Majority Vote. Except as otherwise expressly required by applicable law, the Certificate of Incorporation or these By-laws, the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

3.17 Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By-laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all Directors or members of such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

#### ARTICLE 4 COMMITTEES OF THE BOARD

The Board may designate one or more committees, each committee to consist of one or more of the Directors. The Board may remove any Director from any committee at any time, with or without cause. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. If a member of a committee shall be absent from any meeting, or disqualified from voting thereat, the remaining

member or members present and not disqualified from voting, whether or not such member or members constitute a quorum, may, by a unanimous vote, appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board passed as aforesaid, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be impressed on all papers that may require it, but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the Stockholders, any action or matter expressly required by the General Corporation Law to be submitted to Stockholders for approval or (ii) adopting, amending or repealing the By-laws. Unless the Board provides otherwise, at all meetings of such committee a majority of the total number of members of the committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the committee present at any meeting at which there is a quorum shall be the act of the committee. Each committee shall keep regular minutes of its meetings. Unless the Board provides otherwise, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article 3 of these By-laws.

#### ARTICLE 5 OFFICERS

5.1 Positions. The officers of the Corporation shall be a President, a Secretary, a Treasurer and such other officers as the Board may appoint, including a

Chairman, one or more Vice Presidents and one or more Assistant Secretaries and Assistant Treasurers, who shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The Board may designate one or more Vice Presidents as Executive Vice Presidents and may use descriptive words or phrases to designate the standing, seniority or areas of special competence of the Vice Presidents elected or appointed by it. Any number of offices may be held by the same person unless the Certificate of Incorporation or these By-laws otherwise provide.

5.2 Appointment. The officers of the Corporation shall be chosen by the Board at its annual meeting or at such other time or times as the Board shall determine.

5.3 Compensation. The compensation of all officers of the Corporation shall be fixed by the Board. No officer shall be prevented from receiving a salary or other compensation by reason of the fact that the officer is also a Director.

5.4 Term of Office. Each officer of the Corporation shall hold office for the term for which he or she is elected and until such officer's successor is chosen and qualifies or until such officer's earlier death, resignation or removal. Any officer may resign at any time upon written notice to the Corporation. Such resignation shall take effect at the date of receipt of such notice or at such later time as is therein specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The resignation of an officer shall be without prejudice to the contract rights of the Corporation, if any. Any officer elected or appointed by the Board may be removed at any time, with or without cause, by the Board. Any vacancy occurring in any office of the Corporation shall be filled by the Board. The removal of an officer without

cause shall be without prejudice to the officer's contract rights, if any. The election or appointment of an officer shall not of itself create contract rights.

5.5 Fidelity Bonds. The Corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

5.6 Chairman. The Chairman, if one shall have been appointed, shall preside at all meetings of the Board and Stockholders and shall exercise such powers and perform such other duties as shall be determined from time to time by the Board.

5.7 President. The President shall be the Chief Executive Officer of the Corporation and shall have general supervision over the business of the Corporation, subject, however, to the control of the Board and of any duly authorized committee of Directors. The President shall preside at all meetings of Stockholders and the Board at which the Chairman (if there be one) is not present. The President may sign and execute in the name of the Corporation deeds, mortgages, bonds, contracts and other instruments except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these By-laws to some other officer or agent of the Corporation or shall be required by applicable law otherwise to be signed or executed and, in general, the President shall perform all duties incident to the office of President of a corporation and such other duties as may from time to time be assigned to the President by the Board.

5.8 Vice Presidents. At the request of the President, or, in the President's absence, at the request of the Board, the Vice Presidents shall (in such order as may be designated by the Board or, in the absence of any such designation, in order of seniority based on age) perform all of the duties of the President and, in so performing, shall have all the powers of, and be subject to all restrictions upon, the President. Any

Vice President may sign and execute in the name of the Corporation deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these By-laws to some other officer or agent of the Corporation, or shall be required by applicable law otherwise to be signed or executed, and each Vice President shall perform such other duties as from time to time may be assigned to such Vice President by the Board or by the President.

5.9 Secretary. The Secretary shall attend all meetings of the Board and of the Stockholders and shall record all the proceedings of the meetings of the Board and of the Stockholders in a book to be kept for that purpose, and shall perform like duties for committees of the Board, when required. The Secretary shall give, or cause to be given, notice of all special meetings of the Board and of the Stockholders and shall perform such other duties as may be prescribed by the Board or by the President, under whose supervision the Secretary shall be. The Secretary shall have custody of the corporate seal of the Corporation, and the Secretary, or an Assistant Secretary, shall have authority to impress the same on any instrument requiring it, and when so impressed the seal may be attested by the signature of the Secretary or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to impress the seal of the Corporation and to attest the same by such officer's signature. The Secretary or an Assistant Secretary may also attest all instruments signed by the President or any Vice President. The Secretary shall have charge of all the books, records and papers of the Corporation relating to its organization and management, shall see that the reports, statements and other documents required by applicable law are properly kept and filed and, in general, shall perform all duties incident to the office of Secretary of a corporation



and such other duties as may from time to time be assigned to the Secretary by the Board or by the President.

5.10 Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds, securities and notes of the Corporation; receive and give receipts for moneys due and payable to the Corporation from any sources whatsoever; deposit all such moneys and valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board; against proper vouchers, cause such funds to be disbursed by checks or drafts on the authorized depositories of the Corporation signed in such manner as shall be determined by the Board and be responsible for the accuracy of the amounts of all moneys so disbursed; regularly enter or cause to be entered in books or other records maintained for the purpose full and adequate account of all moneys received or paid for the account of the Corporation; have the right to require from time to time reports or statements giving such information as the Treasurer may desire with respect to any and all financial transactions of the Corporation from the officers or agents transacting the same; render to the President or the Board, whenever the President or the Board shall require the Treasurer so to do, an account of the financial condition of the Corporation and of all financial transactions of the Corporation; exhibit at all reasonable times the records and books of account to any of the Directors upon application at the Office of the Corporation where such records and books are kept; disburse the funds of the Corporation as ordered by the Board; and, in general, perform all duties incident to the office of Treasurer of a corporation and such other duties as may from time to time be assigned to the Treasurer by the Board or the President.

5.11 Assistant Secretaries and Assistant Treasurers. Assistant Secretaries and Assistant Treasurers shall perform such duties as shall be assigned to them by the Secretary or by the Treasurer, respectively, or by the Board or by the President.

## ARTICLE 6

### CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

6.1 Execution of Contracts. The Board, except as otherwise provided in these By-laws, may prospectively or retroactively authorize any officer or officers, employee or employees or agent or agents, in the name and on behalf of the Corporation, to enter into any contract or execute and deliver any instrument, and any such authority may be general or confined to specific instances, or otherwise limited.

6.2 Loans. The Board may prospectively or retroactively authorize the President or any other officer, employee or agent of the Corporation to effect loans and advances at any time for the Corporation from any bank, trust company or other institution, or from any firm, corporation or individual, and for such loans and advances the person so authorized may make, execute and deliver promissory notes, bonds or other certificates or evidences of indebtedness of the Corporation, and, when authorized by the Board so to do, may pledge and hypothecate or transfer any securities or other property of the Corporation as security for any such loans or advances. Such authority conferred by the Board may be general or confined to specific instances, or otherwise limited.

6.3 Checks, Drafts, Etc. All checks, drafts and other orders for the payment of money out of the funds of the Corporation and all evidences of indebtedness

of the Corporation shall be signed on behalf of the Corporation in such manner as shall from time to time be determined by resolution of the Board.

6.4 Deposits. The funds of the Corporation not otherwise employed shall be deposited from time to time to the order of the Corporation with such banks, trust companies, investment banking firms, financial institutions or other depositories as the Board may select or as may be selected by an officer, employee or agent of the Corporation to whom such power to select may from time to time be delegated by the Board.

#### ARTICLE 7

##### STOCK AND DIVIDENDS

7.1 Certificates Representing Shares. The shares of stock of the Corporation shall be represented by certificates in such form (consistent with the provisions of Section 158 of the General Corporation Law) as shall be approved by the Board. Such certificates shall be signed by the Chairman, the President or a Vice President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and may be impressed with the seal of the Corporation or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may, unless otherwise ordered by the Board, be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

7.2        Transfer of Shares. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation by the holder thereof or by the holder's duly authorized attorney appointed by a power of attorney duly executed and filed with the Secretary, an Assistant Secretary or a transfer agent of the Corporation, and on surrender of the certificate or certificates representing such shares of stock properly endorsed for transfer and upon payment of all necessary transfer taxes. Every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or an Assistant Secretary or the transfer agent of the Corporation. A person in whose name shares of stock shall stand on the books of the Corporation shall be deemed the owner thereof to receive dividends, to vote as such owner and for all other purposes as respects the Corporation. No transfer of shares of stock shall be valid as against the Corporation, its Stockholders and creditors for any purpose, except to render the transferee liable for the debts of the Corporation to the extent provided by applicable law, until such transfer shall have been entered on the books of the Corporation by an entry showing from and to whom transferred.

7.3        Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agents and registry offices or agents at such place or places as may be determined from time to time by the Board.

7.4        Lost, Destroyed and Stolen Certificates. The holder of any shares of stock of the Corporation shall notify the Corporation of any loss, destruction or theft of the certificate representing such shares, and the Corporation may issue a new certificate to replace the certificate alleged to have been lost, destroyed or stolen. The Board may, in its discretion, as a condition to the issue of any such new certificate, require the owner

of the lost, destroyed or stolen certificate, or his or her legal representatives, to make proof satisfactory to the Board of such loss, destruction or theft and to advertise such fact in such manner as the Board may require, and to give the Corporation a bond in such form, in such sums and with such surety or sureties as the Board may direct, sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate and the issuance of such new certificate.

7.5 Rules and Regulations. The Board may make such rules and regulations as it may deem expedient, not inconsistent with applicable law, these By-laws or with the Certificate of Incorporation, concerning the issue, transfer and registration of certificates representing shares of its stock.

7.6 Restriction on Transfer of Stock. A written restriction or restrictions on the transfer or registration of transfer of stock of the Corporation, or on the amount of the Corporation's stock that may be owned by any person or group of persons, if permitted by Section 202 of the General Corporation Law and noted conspicuously on the certificate or certificates representing such stock, may be enforced against the holder of the restricted stock or any successor or transferee of the holder, including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate or certificates representing such stock, a restriction, even though permitted by Section 202 of the General Corporation Law, shall be ineffective except against a person with actual knowledge of the restriction. A restriction on the transfer or registration of transfer of stock of the Corporation, or on the amount of the Corporation's stock that may be owned

by any person or group of persons, may be imposed either by the Certificate of Incorporation or these By-laws or by an agreement among any number of Stockholders or among such Stockholders and the Corporation. No restrictions so imposed shall be binding with respect to stock issued prior to the adoption of the restriction unless the holders of such stock are parties to an agreement or voted in favor of the restriction.

7.7 Dividends, Surplus, Etc. Subject to the provisions of the Certificate of Incorporation and of applicable law, the Board:

7.7.1 may declare and pay dividends or make other distributions on the outstanding shares of stock in such amounts and at such time or times as it, in its discretion, shall deem advisable;

7.7.2 may use and apply, in its discretion, any of the surplus of the Corporation in purchasing or acquiring any shares of stock of the Corporation, or purchase warrants therefor, in accordance with law, or any of its bonds, debentures, notes, scrip or other securities or evidences of indebtedness; and

7.7.3 may set aside from time to time out of such surplus or net profits such sum or sums as, in its discretion, it may think proper, as a reserve fund to meet contingencies, or for equalizing dividends or for the purpose of maintaining or increasing the property or business of the Corporation, or for any purpose it may think conducive to the best interests of the Corporation.

## ARTICLE 8

### INDEMNIFICATION

8.1 Indemnity Undertaking. To the extent not prohibited by applicable law, the Corporation shall indemnify any person (a "Covered Person") who is or was

made, or threatened to be made, a party to any threatened, pending or completed action, suit or proceeding (a "Proceeding"), whether civil, criminal, administrative or investigative, including, without limitation, an action by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that such person, or a person of whom such person is the legal representative, is or was a Director or officer of the Corporation, or, while a Director or officer of the Corporation, is or was serving at the request of the Corporation as a director or officer of any other corporation or in a capacity with comparable authority or responsibilities for any partnership, joint venture, trust, employee benefit plan or other enterprise (an "Other Entity"), against expenses (including attorneys' fees) in the event of an action by or in the right of the Corporation and against judgments, fines, and amounts paid in settlement and expenses (including attorneys' fees), in the event of any other proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interest of the Corporation, and, with respect to any criminal proceeding, had no reason to believe the person's conduct was unlawful; and except that no indemnification shall be made, in the event of an action by or in the right of the Corporation, if prohibited by the General Corporation Law. Persons who are not Directors or officers of the Corporation (or otherwise entitled to indemnification pursuant to the preceding sentence) may be similarly indemnified in respect of service to the Corporation or to an Other Entity at the request of the Corporation to the extent the Board at any time specifies that such persons are entitled to the benefits of this Article 8.

8.2 Advancement of Expenses. The Corporation shall, from time to time, reimburse or advance to any Covered Person the funds necessary for payment of

expenses, including attorneys' fees and disbursements, incurred in connection with any Proceeding, in advance of the final disposition of such Proceeding; provided, however, that, if required by the General Corporation Law, such payment of expenses in advance of the final disposition of a Proceeding shall be made only upon receipt by the Corporation of an undertaking, by the Covered Person, to repay any such amount so advanced if it shall ultimately be determined that such Covered Person is not entitled to be indemnified for such expenses.

8.3 Rights Not Exclusive. The rights to indemnification or advancement of expenses provided by, or granted pursuant to, this Article 8 shall not be deemed exclusive of any other rights to which a person seeking indemnification or reimbursement or advancement of expenses may have or hereafter be entitled under applicable law, the Certificate of Incorporation, these By-laws, any agreement, any vote of Stockholders or disinterested Directors or otherwise.

8.4 Continuation of Benefits. The rights to indemnification or advancement of expenses provided by, or granted pursuant to, this Article 8 shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the executors, administrators, legatees and distributees of such person.

8.5 Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of an Other Entity, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to



indemnify such person against such liability under the provisions of this Article 8, the Certificate of Incorporation or under Section 145 of the General Corporation Law or any other provision of law.

8.6 Binding Effect. Any repeal or modification of the provisions of this Article 8 shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

8.7 Procedural Rights. The rights to indemnification or advancement of expenses provided by, or granted pursuant to, this Article 8 shall be enforceable by any Covered Person in the Court of Chancery of the State of Delaware. The burden of proving that such indemnification or advancement of expenses is not appropriate shall be on the Corporation. Neither the failure of the Corporation (including its Board, its independent legal counsel and its Stockholders) to have made a determination prior to the commencement of such action that such indemnification or reimbursement or advancement of expenses is proper in the circumstances nor an actual determination by the Corporation (including its Board, its independent legal counsel and its Stockholders) that such person is not entitled to such indemnification or reimbursement or advancement of expenses shall constitute a defense to the action or create a presumption that such person is not so entitled. Such a person shall also be indemnified for any expenses incurred in connection with successfully establishing his or her right to such indemnification or advancement of expenses, in whole or in part, in any such proceeding.

8.8 Contribution. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at the Corporation's

request as a director, officer, employee or agent of any Other Entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such Other Entity.

8.9 Indemnification of Others. This Article 8 shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

## ARTICLE 9

### BOOKS AND RECORDS

9.1 Books and Records. There shall be kept at the principal Office of the Corporation correct and complete records and books of account recording the financial transactions of the Corporation and minutes of the proceedings of the Stockholders, the Board and any committee of the Board. The Corporation shall keep at its principal office, or at the office of the transfer agent or registrar of the Corporation, a record containing the names and addresses of all Stockholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof.

9.2 Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request

of any person entitled to inspect such records pursuant to any provision of the General Corporation Law.

9.3 Inspection of Books and Records. Except as otherwise provided by applicable law, the Board shall determine whether, and, if allowed, when and under what conditions and regulations, the accounts, books, minutes and other records of the Corporation, or any of them, shall be open to the Stockholders for inspection.

#### ARTICLE 10

##### SEAL

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

#### ARTICLE 11

##### FISCAL YEAR

The fiscal year of the Corporation shall be determined by resolution of the Board.

#### ARTICLE 12

##### PROXIES AND CONSENTS

Unless otherwise provided by resolution of the Board, the Chairman, the President, any Vice President, the Secretary or the Treasurer, or any one of them, may execute and deliver on behalf of the Corporation proxies respecting any and all shares or other ownership interests of any Other Entity owned by the Corporation appointing such person or persons as the officer executing the same shall deem proper to represent and

vote the shares or other ownership interests so owned at any and all meetings of holders of shares or other ownership interests, whether general or special, and/or to execute and deliver written consents respecting such shares or other ownership interests; or any of the aforesaid officers may attend any meeting of the holders of shares or other ownership interests of such Other Entity and thereat vote or exercise any or all other powers of the Corporation as the holder of such shares or other ownership interests.

#### ARTICLE 13

#### AMENDMENTS

These By-laws may be altered, amended or repealed and new By-laws may be adopted by a vote of the Stockholders or by the Board. Any By-laws altered, adopted or amended by the Board may be altered, amended or repealed by the Stockholders.

NUMBER AHS COMMON STOCK	AMN HEALTHCARE SERVICES, INC.	SHARES COMMON STOCK
-------------------------------	----------------------------------	------------------------

SEE REVERSE FOR  
CERTAIN DEFINITIONS

CUSIP  
001744 10 1

Incorporated Under the Laws of the State of Delaware

THIS CERTIFIES THAT  
IS THE RECORD HOLDER OF

FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK,  
\$0.01 PAR VALUE PER SHARE, OF

AMN Healthcare Services, Inc. (hereinafter called the "Corporation"),  
transferable on the books of the Corporation by the registered holder hereof  
in person or by duly authorized attorney upon surrender of this Certificate  
properly endorsed. This Certificate is not valid until countersigned and  
registered by the Transfer Agent and Registrar.

In Witness Whereof, the Corporation has caused the facsimile signatures of  
its duly authorized officers and its facsimile seal to be affixed hereto.

DATED:

[AMN HEALTHCARE SERVICES, INC. CORPORATE SEAL]

/s/Steven C. Francis  
PRESIDENT AND CHIEF EXECUTIVE OFFICER

/s/Susan R. Nowakowski  
SECRETARY AND CHIEF OPERATING OFFICER

Countersigned and Registered:  
AMERICAN STOCK TRANSFER & TRUST COMPANY  
(NEW YORK, NY)

Transfer Agent and Registrar,

By:  
Authorized Signature

REGISTRATION RIGHTS AGREEMENT

among

AMN HEALTHCARE SERVICES, INC.,

HWH CAPITAL PARTNERS, L.P.,

HWH NIGHTINGALE PARTNERS, L.P.,

HWP NIGHTINGALE PARTNERS II, L.P.,

HWP CAPITAL PARTNERS II, L.P.,

STEVEN FRANCIS,

THE FRANCIS FAMILY TRUST DATED MAY 24, 1996

and

BANCAMERICA CAPITAL INVESTORS SBIC I, L.P.

-----  
Dated: November 16, 2001  
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## REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (the "Agreement"), dated November 16, 2001, among AMN Healthcare Services, Inc., a Delaware corporation (formerly known as AMN Holdings, Inc.) (the "Company"), HWH Capital Partners, L.P., a Delaware limited partnership ("HWH Capital Partners"), HWH Nightingale Partners, L.P., a Delaware limited partnership ("HWH Nightingale"), HWP Capital Partners II, L.P., a Delaware limited partnership ("HWP Capital Partners II"), HWP Nightingale Partners II, L.P., a Delaware limited partnership ("HWP Nightingale II" and together with HWH Capital Partners, HWH Nightingale and HWP Capital Partners II, the "HWP Stockholders"), Steven Francis and Gayle Francis, as Trustees of the Francis Family Trust dated May 24, 1996 (the "Trust"), Steven Francis ("Francis" and together with the Trust, the "Francis Stockholders") and BancAmerica Capital Investors SBIC I, L.P. ("BancAmerica").

WHEREAS, the Company intends to consummate an Initial Public Offering (as hereinafter defined);

WHEREAS, the parties hereto desire to provide for, among other things, the grant of registration rights with respect to the Registrable Securities (as hereinafter defined) in contemplation of such Initial Public Offering (as hereinafter defined).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, and unless the context requires a different meaning, the following terms have the meanings indicated:

"Affiliate" shall mean any Person who is an "affiliate" as defined in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

"Agreement" means this Agreement as the same may be amended, supplemented or modified in accordance with the terms hereof.

"Approved Underwriter" has the meaning set forth in Section 3(f) of this Agreement.

"BancAmerica" has the meaning set forth in the preamble to this Agreement.

"Board of Directors" means the Board of Directors of the Company.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in the State of New York are authorized or required by law or executive order to close.

"Closing Price" means, with respect to the Registrable Securities, as of the date of determination, (a) if the Registrable Securities are listed on a national securities exchange, the closing price per share of a Registrable Security on such date published in The Wall Street Journal (National Edition) or, if no such closing price on such date is published in The Wall Street Journal (National Edition), the average of the closing bid and asked prices on such date, as officially reported on the principal national securities exchange on which the Registrable Securities are then listed or admitted to trading; or (b) if the Registrable Securities are not then listed or admitted to trading on any national securities exchange but are designated as national market system securities by the NASD, the last trading price per share of a Registrable Security on such date; or (c) if there shall have been no trading on such date or if the Registrable Securities are not designated as national market system securities by the NASD, the average of the reported closing bid and asked prices of the Registrable Securities on such date as shown by The Nasdaq Stock Market, Inc. (or its successor) and reported by any member firm of The New York Stock Exchange, Inc. selected by the Company; or (d) if none of (a), (b) or (c) is applicable, a market price per share determined in good faith by the Board of Directors or, if such determination is not satisfactory to the Designated Holder for whom such determination is being made, by a nationally recognized investment banking firm selected by the Company and such Designated Holder, the expenses for which shall be borne equally by the Company and such Designated Holder. If trading is conducted on a continuous basis on any exchange, then the closing price shall be at 4:00 P.M. New York City time.

"Commission" means the Securities and Exchange Commission or any similar agency then having jurisdiction to enforce the Securities Act.

"Common Stock" means the Common Stock, par value \$0.01 per share, of the Company or any other capital stock of the Company into which such stock is reclassified or reconstituted and any other common stock of the Company.

"Company" has the meaning set forth in the preamble to this Agreement.

"Company Underwriter" has the meaning set forth in Section 4(a) of this Agreement.

"Demand Registration" has the meaning set forth in Section 3(a) of this Agreement.

"Designated Holder" means each of the HWP Stockholders, the Francis Stockholders and BancAmerica and any transferee of any of them to whom Registrable Securities have been transferred in accordance with Section 10(f) of this Agreement, other than a transferee to whom Registrable Securities have been transferred pursuant to a Registration Statement under the Securities Act or Rule 144 or Regulation S under the Securities Act (or any successor rule thereto).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

"Francis" has the meaning set forth in the preamble to this Agreement.

"Francis Stockholders" has the meaning set forth in the preamble to this Agreement.

"Holders' Counsel" has the meaning set forth in Section 7(a)(i) of this Agreement.

"HWH Capital Partners" has the meaning set forth in the preamble to this Agreement.

"HWP Capital Partners II" has the meaning set forth in the preamble to this Agreement.

"HWH Nightingale" has the meaning set forth in the preamble to this Agreement.

"HWP Nightingale II" has the meaning set forth in the preamble to this Agreement.

"HWP Stockholders" has the meaning set forth in the preamble to this Agreement.

"Incidental Registration" has the meaning set forth in Section 4(a) of this Agreement.

"Indemnified Party" has the meaning set forth in Section 8(c) of this Agreement.

"Indemnifying Party" has the meaning set forth in Section 8(c) of this Agreement.

"Initial Public Offering" means the initial public offering of the shares of Common Stock of the Company pursuant to an effective Registration Statement filed under the Securities Act.

"Initiating Holders" has the meaning set forth in Section 3(a) of this Agreement.

"Inspector" has the meaning set forth in Section 7(a)(vii) of this Agreement.

"IPO Effectiveness Date" means the date upon which the Company consummates the Initial Public Offering.

"Liability" has the meaning set forth in Section 8(a) of this Agreement.

"Market Price" means, on any date of determination, the average of the daily Closing Price of the Registrable Securities for the immediately preceding thirty (30) days on which the national securities exchanges are open for trading; provided, however, that if the Closing Price is determined pursuant to clause (d) of the definition of Closing Price, the "Market Price" means such Closing Price on the date of determination.

"NASD" means the National Association of Securities Dealers, Inc.

"Person" means any individual, firm, corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, limited liability company, government (or an agency or political subdivision thereof) or other entity of any kind, and shall include any successor (by merger or otherwise) of such entity.

"Records" has the meaning set forth in Section 7(a)(vii) of this Agreement.

"Registrable Securities" means each of the following: (a) any and all shares of Common Stock now or hereafter owned by the Designated Holders or issued or issuable upon conversion of any convertible securities or exercise of any warrants or options held by any of the Designated Holders and (b) any shares of Common Stock issued or issuable to any of the Designated Holders with respect to the Registrable Securities by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization or otherwise and any shares of Common Stock or voting common stock issuable upon conversion, exercise or exchange thereof.

"Registration Expenses" has the meaning set forth in Section 7(d) of this Agreement.

"Registration Statement" means a Registration Statement filed pursuant to the Securities Act.

"Rights Agreement" has the meaning set forth in Section 10(1) of this Agreement.

"S-3 Initiating Holders" has the meaning set forth in Section 5(a) of this Agreement.

"S-3 Registration" has the meaning set forth in Section 5(a) of this Agreement.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Stockholders Agreement" has the meaning set forth in Section 10(1) of this Agreement.

"Trust" has the meaning set forth in the preamble to this Agreement.

"Valid Business Reason" has the meaning set forth in Section 3(a) of this Agreement.

2. General; Securities Subject to this Agreement.

(a) Grant of Rights. The Company hereby grants registration rights to the Designated Holders upon the terms and conditions set forth in this Agreement.

(b) Registrable Securities. For the purposes of this Agreement, Registrable Securities held by any Designated Holder will cease to be Registrable Securities, when (i) a Registration Statement covering such Registrable Securities has been declared effective under the Securities Act by the Commission and such Registrable Securities have been disposed of pursuant to such effective Registration Statement, (ii) (x) the entire amount of the Registrable Securities held by any Designated Holder may be sold in a single sale, in the opinion of counsel satisfactory to the Company and such Designated Holder, each in their reasonable judgment, without any limitation as to volume pursuant to Rule 144 (or any successor provision then in effect) under the Securities Act and (y) such Designated Holder owns less than one percent (1%) of the outstanding shares of Common Stock on a fully diluted basis or (iii) the Registrable Securities are proposed to be sold or distributed by a Person not entitled to the registration rights granted by this Agreement.

(c) Holders of Registrable Securities. A Person is deemed to be a holder of Registrable Securities whenever such Person owns of record Registrable Securities, or holds an option to purchase, or a security convertible into or exercisable or exchangeable for, Registrable Securities whether or not such acquisition or conversion has actually been effected. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company may act upon the basis of the instructions, notice or election received from the registered owner of such Registrable Securities. Registrable Securities issuable upon exercise of an option or upon conversion of another security shall be deemed outstanding for the purposes of this Agreement.

3. Demand Registration.

(a) Request for Demand Registration. The HWP Stockholders as a group, acting through HWH Capital Partners or its written designee, or BancAmerica may make a written request to the Company to register (the party making such request, the "Initiating Holders"), and the Company shall register, under the Securities Act (other than pursuant to a Registration Statement on Form S-4 or S-8 or any successor thereto) (a "Demand Registration"), the number of Registrable Securities stated in such request; provided, however, that the Company shall not be obligated to effect (x) more than five such Demand Registrations requested by the HWP Stockholders and more than one such Demand Registration requested by BancAmerica, (y) a Demand Registration if the

Initiating Holders, together with the Designated Holders (other than the Initiating Holders) which have requested to register securities in such registration pursuant to Section 3(b), propose to sell their Registrable Securities at an aggregate price (calculated based upon the Market Price of the Registrable Securities on the date of filing of the Registration Statement with respect to such Registrable Securities) to the public of less than \$5,000,000 and (z)(i) in the case of a Demand Registration requested by the HWP Stockholders, any such Demand Registration commencing prior to 180 days after the IPO Effectiveness Date or (ii) in the case of a Demand Registration requested by BancAmerica, any such Demand Registration commencing prior to one year after the IPO Effectiveness Date. For purposes of the preceding sentence, two or more Registration Statements filed in response to one demand shall be counted as one Demand Registration. If the Board of Directors, in its good faith judgment, determines that any registration of Registrable Securities should not be made or continued because it would materially interfere with any material financing, acquisition, corporate reorganization or merger or other material transaction involving the Company (a "Valid Business Reason"), the Company may (x) postpone filing a Registration Statement relating to a Demand Registration until such Valid Business Reason no longer exists, but in no event for more than (i) forty-five (45) days in the case of a Demand Registration requested by the HWP Stockholders and (ii) nine (9) months in the case of a Demand Registration requested by BancAmerica, and (y) in case a Registration Statement has been filed relating to a Demand Registration, the Company, upon the approval of a majority of the Board of Directors, may cause such Registration Statement to be withdrawn and its effectiveness terminated or may postpone amending or supplementing such Registration Statement (in which case, if the Valid Business Reason no longer exists or if more forty-five (45) days (in the case of a Demand Registration requested by the HWP Stockholders) or nine (9) months (in the case of a Demand Registration requested by BancAmerica) have passed since such withdrawal or postponement, the Initiating Holders may request a new Demand Registration). The Company shall give written notice of its determination to postpone or withdraw a Registration Statement and of the fact that the Valid Business Reason for such postponement or withdrawal no longer exists, in each case, promptly after the occurrence thereof. Notwithstanding anything to the contrary contained herein, the Company may not postpone or withdraw a filing under this Section 3(a) more than once in any eighteen (18) month period. Each request for a Demand Registration by the Initiating Holders shall state the amount of the Registrable Securities proposed to be sold and the intended method of disposition thereof.

(b) Incidental or "Piggy-Back" Rights with Respect to a Demand Registration. Each of the Designated Holders (other than Initiating Holders which have requested a registration under Section 3(a)) may offer its or his Registrable Securities under any Demand Registration pursuant to this Section 3. Within five (5) days after the receipt of a request for a Demand Registration from an Initiating Holder, the Company shall (i) give written notice thereof to all of the Designated Holders (other than Initiating Holders which have requested a registration under Section 3(a)) and (ii) subject to Section 3(e), include in such registration all of the Registrable Securities held by such Designated Holders from whom the Company has received a written request for inclusion therein within ten (10) days of the receipt by such Designated Holders of such written notice referred to in clause (i) above. Each such request by such Designated

Holder shall specify the number of Registrable Securities proposed to be registered. The failure of any Designated Holder to respond within such 10-day period referred to in clause (ii) above shall be deemed to be a waiver of such Designated Holder's rights under this Section 3(b) with respect to such Demand Registration. Any Designated Holder may waive its rights under this Section 3(b) prior to the expiration of such 10-day period by giving written notice to the Company, with a copy to the Initiating Holders. If a Designated Holder sends the Company a written request for inclusion of part or all of such Designated Holder's Registrable Securities in a registration, such Designated Holder shall not be entitled to withdraw or revoke such request without the prior written consent of the Company in its sole discretion unless, (i) as a result of facts or circumstances arising after the date on which such request was made relating to the Company or to market conditions, such Designated Holder reasonably determines that participation in such registration would have a material adverse effect on such Designated Holder or (ii) if the Closing Price declines by more than forty percent (40%) from the date the Initiating Holders requested such Demand Registration.

(c) Effective Demand Registration. The Company shall use its commercially reasonable efforts to cause any such Demand Registration to become and remain effective not later than sixty (60) days after it receives a request under Section 3(a) hereof. A registration shall not constitute a Demand Registration until it has become effective and remains continuously effective for the lesser of (i) the period during which all Registrable Securities registered in the Demand Registration are sold or (ii) 120 days; provided, however, that a registration shall not constitute a Demand Registration if (x) after such Demand Registration has become effective, such registration or the related offer, sale or distribution of Registrable Securities thereunder is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court for any reason not attributable to the Initiating Holders and such interference is not thereafter eliminated or (y) the conditions specified in the underwriting agreement, if any, entered into in connection with such Demand Registration are not satisfied or waived, other than by reason of a failure by the Initiating Holder.

(d) Expenses. The Company shall pay all Registration Expenses in connection with a Demand Registration, whether or not such Demand Registration becomes effective.

(e) Underwriting Procedures. If the Company or the Initiating Holders so elect, the Company shall use its commercially reasonable efforts to cause such Demand Registration to be in the form of a firm commitment underwritten offering and the managing underwriter or underwriters selected for such offering shall be the Approved Underwriter selected in accordance with Section 3(f). In connection with any Demand Registration under this Section 3 involving an underwritten offering, none of the Registrable Securities held by any Designated Holder making a request for inclusion of such Registrable Securities pursuant to Section 3(b) hereof shall be included in such underwritten offering unless such Designated Holder accepts the terms of the offering as agreed upon by the Company, the Initiating Holders and the Approved Underwriter, and then only in such quantity as set forth below. If the Approved Underwriter advises the

Company that the aggregate amount of such Registrable Securities requested to be included in such offering is sufficiently large to have a material adverse effect on the success of such offering, then the Company shall include in such registration, to the extent of the amount that the Approved Underwriter believes may be sold without causing such material adverse effect, first, such number of Registrable Securities of the Initiating Holders and any Designated Holder participating in the offering pursuant to the terms of Section 3(b), which Registrable Securities shall be allocated pro rata among such Initiating Holders and Designated Holders, based on the number of Registrable Securities held by each such Initiating Holder or Designated Holder, as the case may be, second, any other securities of the Company requested by holders thereof to be included in such registration, which such securities shall be allocated pro rata among such stockholders, based on the number of the Company's securities held by each such stockholder, and third, securities offered by the Company for its own account.

(f) Selection of Underwriters. If any Demand Registration or S-3 Registration, as the case may be, of Registrable Securities is in the form of an underwritten offering, the Company shall select and obtain an investment banking firm of national reputation to act as the managing underwriter of the offering (the "Approved Underwriter"); provided, however, that the Approved Underwriter shall, in any case, also be approved by the Initiating Holders or S-3 Initiating Holders, as the case may be, such approval not to be unreasonably withheld.

#### 4. Incidental or "Piggy-Back" Registration.

(a) Request for Incidental Registration. At any time after the IPO Effectiveness Date, if the Company proposes to file a Registration Statement under the Securities Act with respect to an offering by the Company for its own account (other than a Registration Statement on Form S-4 or S-8 or any successor thereto) or for the account of any stockholder of the Company other than the Designated Holders, then the Company shall give written notice of such proposed filing to each of the Designated Holders at least twenty (20) days before the anticipated filing date, and such notice shall describe the proposed registration and distribution and offer such Designated Holders the opportunity to register the number of Registrable Securities as each such Designated Holder may request (an "Incidental Registration"). The Company shall use its commercially reasonable efforts (within twenty (20) days of the notice provided for in the preceding sentence) to cause the managing underwriter or underwriters in the case of a proposed underwritten offering (the "Company Underwriter") to permit each of the Designated Holders who have requested in writing to participate in the Incidental Registration to include its or his Registrable Securities in such offering on the same terms and conditions as the securities of the Company or the account of such other stockholder, as the case may be, included therein. In connection with any Incidental Registration under this Section 4(a) involving an underwritten offering, the Company shall not be required to include any Registrable Securities in such underwritten offering unless the Designated Holders thereof accept the terms of the underwritten offering as agreed upon between the Company, such other stockholders, if any, and the Company Underwriter, and then only in such quantity as set forth below. If the Company Underwriter determines that the registration of all or part of the securities that have been requested to



be included would materially adversely affect the success of such offering, then the Company shall be required to include in such Incidental Registration, to the extent of the amount that the Company Underwriter believes may be sold without causing such material adverse effect, first, all of the securities to be offered for the account of the Company and second, any other securities of the Company requested by stockholders to be included in such offering (including the Designated Holders), which such securities shall be allocated pro rata among the stockholders participating in the offering based on the number of the Company's securities held by each such stockholder.

(b) Expenses. The Company shall bear all Registration Expenses in connection with any Incidental Registration pursuant to this Section 4, whether or not such Incidental Registration becomes effective.

#### 5. Form S-3 Registration.

(a) Request for a Form S-3 Registration. The Company will use its commercially reasonable efforts to file all required reports under the Exchange Act in order to qualify for the use of Form S-3 under the Securities Act; provided, that this covenant shall not require the Company to remain a reporting company under the Exchange Act if the Company shall have determined to enter into a merger, acquisition, going private transaction or similar transaction. Upon the Company becoming eligible for use of Form S-3 (or any successor form thereto) under the Securities Act in connection with a public offering of its securities, in the event that the Company shall receive from one or more of the HWP Stockholders, acting through HWH Capital Partners or its written designee (the "S-3 Initiating Holders"), a written request that the Company register, under the Securities Act on Form S-3 (or any successor form then in effect) (an "S-3 Registration"), all or a portion of the Registrable Securities owned by such S-3 Initiating Holders, the Company shall give written notice of such request to all of the Designated Holders (other than S-3 Initiating Holders which have requested an S-3 Registration under this Section 5(a)) at least ten (10) days before the anticipated filing date of such Form S-3, and such notice shall describe the proposed registration and offer such Designated Holders the opportunity to register the number of Registrable Securities as each such Designated Holder may request in writing to the Company, given within ten (10) days after their receipt from the Company of the written notice of such registration. With respect to each S-3 Registration, the Company shall, subject to Section 5(b), (i) include in such offering the Registrable Securities of the S-3 Initiating Holders and the Designated Holders (who have requested in writing to participate in such registration on the same terms and conditions as the Registrable Securities of the S-3 Initiating Holders included therein) and (ii) use its commercially reasonable efforts to cause such registration pursuant to this Section 5(a) to become and remain effective as soon as practicable.

(b) Form S-3 Underwriting Procedures. If the S-3 Initiating Holders so elect, the Company shall use its commercially reasonable efforts to cause such S-3 Registration pursuant to this Section 5 to be in the form of a firm commitment underwritten offering and the managing underwriter or underwriters selected for such offering shall be the Approved Underwriter selected in accordance with Section 3(f).

In connection with any S-3 Registration under Section 5(a) involving an underwritten offering, the Company shall not be required to include any Registrable Securities in such underwritten offering unless the Designated Holders thereof accept the terms of the underwritten offering as agreed upon between the Company, the Approved Underwriter and the S-3 Initiating Holders, and then only in such quantity as set forth below. If the Approved Underwriter believes that the registration of all or part of the Registrable Securities which the S-3 Initiating Holders and the other Designated Holders have requested to be included would materially adversely affect the success of such public offering, then the Company shall be required to include in the underwritten offering, to the extent of the amount that the Approved Underwriter believes may be sold without causing such material adverse effect, first, such number of Registrable Securities of the S-3 Initiating Holders and any Designated Holder participating in the offering pursuant to the terms of Section 5(a) hereof, which such Registrable Securities shall be allocated pro rata among such S-3 Initiating Holders and Designated Holders, based on the number of Registrable Securities held by each such S-3 Initiating Holder or Designated Holder, as the case may be, second, any other securities of the Company requested by holders thereof to be included in such registration, which such securities shall be allocated pro rata among such stockholders, based on the number of the Company's securities held by each such stockholder, and third, securities offered by the Company for its own account.

(c) Limitations on Form S-3 Registrations. If the Board of Directors has a Valid Business Reason, the Company may (x) postpone filing a Registration Statement relating to a S-3 Registration until such Valid Business Reason no longer exists, but in no event for more than forty-five (45) days following the request and (y) in case a Registration Statement has been filed relating to a S-3 Registration, the Company, upon the approval of a majority of the Board of Directors, may cause such Registration Statement to be withdrawn and its effectiveness terminated or may postpone amending or supplementing such Registration Statement (in which case, if the Valid Business Reason no longer exists or if more than forty-five (45) days have passed since such withdrawal or postponement, the S-3 Initiating Holder may request the prompt amendment or supplement of such Registration Statement or a new S-3 Registration). The Company shall give written notice of its determination to postpone or withdraw a Registration Statement and of the fact that the Valid Business Reason for such postponement or withdrawal no longer exists, in each case, promptly after the occurrence thereof. Notwithstanding anything to the contrary contained herein, the Company may not postpone or withdraw a filing, under either this Section or Section 3(a), due to a Valid Business Reason more than once in any twelve (12) month period. In addition, the Company shall not be required to effect any registration pursuant to Section 5(a), (i) within ninety (90) days after the effective date of any other Registration Statement of the Company (other than a Registration Statement on Form S-4 or S-8 or any successor thereto), (ii) if Form S-3 is not available for such offering by the S-3 Initiating Holders or (iii) if the S-3 Initiating Holders, together with the Designated Holders (other than S-3 Initiating Holders which have requested an S-3 Registration under Section 5(a)) registering Registrable Securities in such registration, propose to sell their Registrable Securities at an aggregate price (calculated based upon the Market Price of the Registrable Securities on the date of filing of the Form S-3 with respect to such Registrable Securities) to the public of less than \$5,000,000.

(d) Expenses. The Company shall bear all Registration Expenses in connection with any S-3 Registration pursuant to this Section 5, whether or not such S-3 Registration become effective.

(e) No Demand Registration. No registration requested by any Designated Holder pursuant to this Section 5 shall be deemed a Demand Registration pursuant to Section 3.

6. Holdback Agreements.

(a) Restrictions on Public Sale by Designated Holders.

Any Designated Holder selling Registrable Securities pursuant to a Registration Statement under Sections 3, 4 or 5 of this Agreement, to the extent (i) requested (A) by the Company, the Initiating Holders or the S-3 Initiating Holders, as the case may be, in the case of a non-underwritten public offering and (B) by the Approved Underwriter or the Company Underwriter, as the case may be, in the case of an underwritten public offering and (ii) all of the Company's executive officers, directors and holders in excess of one percent (1%) of its outstanding capital stock execute agreements identical to those referred to in this Section 6(a), agrees (x) not to effect any public sale or distribution of any Registrable Securities or of any securities convertible into or exchangeable or exercisable for such Registrable Securities, including a sale pursuant to Rule 144 under the Securities Act, or offer to sell, contract to sell (including without limitation any short sale), grant any option to purchase or enter into any hedging or similar transaction with the same economic effect as a sale any Registrable Securities and (y) not to make any request for a Demand Registration or S-3 Registration under this Agreement, during the period beginning on the fifteenth (15th) day prior to the expected effective date (as determined by the Company, which shall notify the Designated Holders of such date in writing) of such Registration Statement and ending on the ninetieth (90th) day following the actual effective date of such Registration Statement, or such shorter period, if any, mutually agreed upon by such Designated Holder and the requesting party (except as part of such registration). No Designated Holder of Registrable Securities subject to the foregoing restrictions shall be released from any obligation under any agreement, arrangement or understanding entered into pursuant to this Section 6(a) unless all other Designated Holders of Registrable Securities subject to the same obligation are also released. Further, to the extent that any Designated Holder is subject to any trading restriction policy, or other similar policy, adopted by the Board of Directors, such Designated Holder shall comply with the applicable restrictions of such policy.

(b) Restrictions on Public Sale by the Company. The

Company agrees not to effect any public sale or distribution of any of its securities, or any securities convertible into or exchangeable or exercisable for such securities (except pursuant to registrations on Form S-4 or S-8 or any successor thereto), during the period beginning on the fifteenth (15th) day prior to the expected effective date (as determined by the Company) of any Registration Statement in which the Designated Holders of Registrable Securities are participating and ending on the earlier of (i) the date on which all Registrable Securities registered on such Registration Statement are sold and

(ii) 90 days after the actual effective date of such Registration Statement (except as part of such registration).

7. Registration Procedures.

(a) Obligations of the Company. Whenever registration of Registrable Securities has been requested pursuant to Section 3, Section 4 or Section 5 of this Agreement, the Company shall use its commercially reasonable efforts to effect the registration and sale of such Registrable Securities in accordance with the intended method of distribution thereof as quickly as practicable, and in connection with any such request, the Company shall, as expeditiously as possible:

(i) prepare and file with the Commission (as promptly as practicable, but in any event not later than sixty (60) days after receipt of a request to file a Registration Statement with respect to Registrable Securities) a Registration Statement on any form for which the Company then qualifies or which counsel for the Company shall deem appropriate and which form shall be available for the sale of such Registrable Securities in accordance with the intended method of distribution thereof, and cause such Registration Statement to become effective; provided, however, that (x) before filing a Registration Statement or prospectus or any amendments or supplements thereto, the Company shall provide counsel selected by the Designated Holders holding a majority of the Registrable Securities being registered in such registration ("Holders' Counsel") and any other Inspector (as hereinafter defined) with an opportunity to review and comment on such Registration Statement and each prospectus included therein (and each amendment or supplement thereto) to be filed with the Commission, subject to such documents being under the Company's control, and (y) the Company shall notify the Holders' Counsel and each seller of Registrable Securities of any stop order issued or threatened by the Commission and take all reasonable actions required to prevent the entry of such stop order or to remove it if entered;

(ii) prepare and file with the Commission such amendments and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for the lesser of (x) 120 days (except in the case of a registration filed pursuant to Rule 415 of the Securities Act or any successor rule or regulation) and (y) such shorter period which will terminate when all Registrable Securities covered by such Registration Statement have been sold, and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement;

(iii) furnish to each seller of Registrable Securities such number of copies of such Registration Statement, each amendment and supplement thereto (in each case including all exhibits thereto), and the prospectus included in such Registration Statement (including each preliminary prospectus) and any prospectus filed under Rule 424 under the Securities Act as each such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller;

(iv) register or qualify such Registrable Securities under such other securities or "blue sky" laws of such jurisdictions as any seller of Registrable Securities may reasonably request, and to continue such qualification in effect in such jurisdiction for as long as permissible pursuant to the laws of such jurisdiction, or for as long as any such seller requests or until all of such Registrable Securities are sold, whichever is shortest, and do any and all other acts and things which may be reasonably necessary or advisable to enable any such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller; provided, however, that the Company shall not be required to (x) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 7(a)(iv), (y) subject itself to taxation in any such jurisdiction or (z) consent to general service of process in any such jurisdiction;

(v) notify each seller of Registrable Securities at any time when a prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the prospectus included in such Registration Statement contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and the Company shall promptly prepare a supplement or amendment to such prospectus and furnish to each seller of Registrable Securities a reasonable number of copies of such supplement to or an amendment of such prospectus as may be necessary so that, after delivery to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(vi) enter into and perform customary agreements (including an underwriting agreement in customary form with the Approved Underwriter or Company Underwriter, if any, selected as provided in Section 3, Section 4 or Section 5, as the case may be) and take such other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities, including causing its officers to participate in "road shows" and other information meetings organized by the Approved Underwriter or Company Underwriter;

(vii) make available at reasonable times for inspection by any seller of Registrable Securities, any managing underwriter participating in any disposition of such Registrable Securities pursuant to a Registration Statement, Holders' Counsel and any attorney or accountant retained by any such seller or any managing underwriter (each, an "Inspector" and collectively, the "Inspectors"), all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries (collectively, the "Records") as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's and its subsidiaries' officers, directors and employees, and the independent public accountants of the Company, to supply all information reasonably requested by any such Inspector in connection with such Registration Statement. Records that the Company determines, in good faith, to be confidential and which it notifies the Inspectors are confidential shall

not be disclosed by the Inspectors (and the Inspectors shall confirm their agreement in writing in advance to the Company if the Company shall so request) unless (x) the disclosure of such Records is necessary, in the Company's judgment, to avoid or correct a misstatement or omission in the Registration Statement, (y) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction after exhaustion of all appeals therefrom or (z) the information in such Records was known to the Inspectors on a non-confidential basis prior to its disclosure by the Company or has been made generally available to the public. Each seller of Registrable Securities agrees that it shall, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, give notice to the Company and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential;

(viii) if such sale is pursuant to an underwritten offering, obtain a "cold comfort" letters dated the effective date of the Registration Statement and the date of the closing under the underwriting agreement from the Company's independent public accountants in customary form and covering such matters of the type customarily covered by "cold comfort" letters as the managing underwriter reasonably requests;

(ix) furnish, at the request of any seller of Registrable Securities on the date such securities are delivered to the underwriters for sale pursuant to such registration or, if such securities are not being sold through underwriters, on the date the Registration Statement with respect to such securities becomes effective, an opinion, dated such date, of counsel representing the Company for the purposes of such registration, addressed to the underwriters, if any, and to the seller making such request, covering such legal matters with respect to the registration in respect of which such opinion is being given as the underwriters, if any, and such seller may reasonably request and are customarily included in such opinions;

(x) comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable but no later than fifteen (15) months after the effective date of the Registration Statement, an earnings statement covering a period of twelve (12) months beginning after the effective date of the Registration Statement, in a manner which satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(xi) cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed, provided that the applicable listing requirements are satisfied;

(xii) cooperate with each seller of Registrable Securities and each underwriter participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the NASD;

(xiii) use its commercially reasonable efforts to cause the Registrable Securities covered by such Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be reasonably necessary by virtue of the business and operations of the Company to enable the seller or sellers of Registrable Securities to consummate the disposition of such Registrable Securities;

(xiv) keep each seller of Registrable Securities advised as to all material developments of any registration under Sections 3, 4 or 5 hereunder;

(xv) provide officers' certificates and other customary closing documents; and

(xvi) take all other steps reasonably necessary to effect the registration of the Registrable Securities contemplated hereby and reasonably cooperate with the holders of such Registrable Securities to facilitate the disposition of such Registrable Securities pursuant thereto.

(b) Seller Information. The Company may require each seller of Registrable Securities as to which any registration is being effected to furnish, and such seller shall furnish, to the Company such information required to be included in such Registration Statement by applicable securities laws or otherwise necessary or desirable in connection with the disposition of such Registrable Securities as the Company may from time to time reasonably request in writing. If any seller of Registrable Securities fails to provide such information required to be included in such Registration Statement by applicable securities laws or otherwise necessary or desirable in connection with the disposition of such Registrable Securities in a timely manner after written request therefor, the Company may exclude such seller's Registrable Securities from a registration under Sections 3, 4 or 5 hereof.

(c) Notice to Discontinue. Each Designated Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 7(a)(v), such Designated Holder shall forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Designated Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 7(a)(v) and, if so directed by the Company, such Designated Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Designated Holder's possession, of the prospectus covering such Registrable Securities which is current at the time of receipt of such notice. If the Company shall give any such notice, the Company shall extend the period during which such Registration Statement shall be maintained effective pursuant to this Agreement (including, without limitation, the period referred to in Section 7(a)(ii)) by the number of days during the period from and including the date of the giving of such notice pursuant to Section 7(a)(v) to and including the date when sellers of such Registrable Securities under such Registration Statement shall have received the copies of the supplemented or amended prospectus contemplated by and meeting the requirements of Section 7(a)(v).

(d) Registration Expenses. The Company shall pay all expenses arising from or incident to its performance of, or compliance with, this Agreement, including, without limitation, (i) Commission, stock exchange and NASD registration and filing fees, (ii) all fees and expenses incurred in complying with securities or "blue sky" laws (including reasonable fees, charges and disbursements of counsel to any underwriter incurred in connection with "blue sky" qualifications of the Registrable Securities as may be set forth in any underwriting agreement), (iii) all printing, messenger and delivery expenses and (iv) the fees, charges and expenses of counsel to the Company and of its independent public accountants and any other accounting fees, charges and expenses incurred by the Company (including, without limitation, any expenses arising from any "cold comfort" letters or any special audits incident to or required by any registration or qualification), regardless of whether such Registration Statement is declared effective. All of the expenses described in the preceding sentence of this Section 7(d) are referred to herein as "Registration Expenses." The Designated Holders of Registrable Securities sold pursuant to a Registration Statement shall bear the expense of any broker's commission or underwriter's discount or commission relating to registration and sale of such Designated Holders' Registrable Securities and shall bear the fees and expenses of their own counsel.

8. Indemnification; Contribution.

(a) Indemnification by the Company. The Company agrees to indemnify and hold harmless each Designated Holder, its partners, directors, officers, affiliates, members, employees and each Person who controls (within the meaning of Section 15 of the Securities Act) such Designated Holder from and against any and all losses, claims, damages, liabilities and expenses (including, but not limited to, reasonable costs and expenses of legal counsel or otherwise arising from any investigation, action or proceeding, whether commenced or threatened, in respect to any of the foregoing) (each, a "Liability" and collectively, "Liabilities"), arising out of or based upon any untrue, or allegedly untrue, statement of a material fact contained in any Registration Statement, prospectus or preliminary prospectus or notification or offering circular (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading under the circumstances such statements were made, except insofar as such Liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission contained in such Registration Statement, preliminary prospectus or final prospectus in reliance and in conformity with information concerning such Designated Holder furnished in writing to the Company by such Designated Holder expressly for use therein, including, without limitation, the information furnished to the Company pursuant to Section 8(b). The Company shall also provide customary indemnities to any underwriters of the Registrable Securities, their officers, directors and employees and each Person who controls such underwriters (within the meaning of Section 15 of the Securities Act) to the same extent as provided above with respect to the indemnification of the Designated Holders of Registrable Securities.



(b) Indemnification by Designated Holders. In connection with any Registration Statement in which a Designated Holder is participating pursuant to Section 3, Section 4 or Section 5 hereof, each such Designated Holder shall promptly furnish to the Company in writing such information with respect to such Designated Holder as the Company may reasonably request or as may be required by law for use in connection with any such Registration Statement or prospectus and all information required to be disclosed in order to make the information previously furnished to the Company by such Designated Holder not materially misleading or necessary to cause such Registration Statement not to omit a material fact with respect to such Designated Holder necessary in order to make the statements therein not misleading. Each Designated Holder agrees severally to indemnify and hold harmless the Company, the other Designated Holders who participate in the Registration Statement, any underwriter retained by the Company and each Person who controls the Company, the other Designated Holders who participate in the Registration Statement or such underwriter (within the meaning of Section 15 of the Securities Act) to the same extent as the foregoing indemnity from the Company to the Designated Holders (including indemnification of their respective partners, directors, officers, members and employees), but only to the extent that Liabilities arise out of or are based upon a statement or alleged statement or an omission or alleged omission that was made in reliance upon and in conformity with information with respect to such Designated Holder furnished in writing to the Company by such Designated Holder expressly for use in such Registration Statement or prospectus, including, without limitation, the information furnished to the Company pursuant to this Section 8(b); provided, however, that the total amount to be indemnified by such Designated Holder pursuant to this Section 8(b) shall be limited to the net proceeds received by such Designated Holder in the offering to which the Registration Statement or prospectus relates.

(c) Conduct of Indemnification Proceedings. Any Person entitled to indemnification or contribution hereunder (the "Indemnified Party") agrees to give prompt written notice to the indemnifying party (the "Indemnifying Party") after the receipt by the Indemnified Party of any written notice of the commencement of any action, suit, proceeding or investigation or threat thereof made in writing for which the Indemnified Party intends to claim indemnification or contribution pursuant to this Agreement; provided, however, that the failure so to notify the Indemnifying Party shall not relieve the Indemnifying Party of any Liability that it may have to the Indemnified Party hereunder (except to the extent that the Indemnifying Party is materially prejudiced or otherwise forfeits substantive rights or defenses by reason of such failure). If notice of commencement of any such action is given to the Indemnifying Party as above provided, the Indemnifying Party shall be entitled to participate in and, to the extent it may wish, jointly with any other Indemnifying Party similarly notified, to assume the defense of such action at its own expense, with counsel chosen by it and reasonably satisfactory to such Indemnified Party. Each Indemnified Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be paid by the Indemnified Party unless (i) the Indemnifying Party agrees to pay the same, (ii) the Indemnifying Party fails to assume the defense of such action with counsel reasonably satisfactory to the Indemnified Party or (iii) the named parties to any such action (including any impleaded parties) include

both the Indemnifying Party and the Indemnified Party and such parties have been advised by such counsel that either (x) representation of such Indemnified Party and the Indemnifying Party by the same counsel would be inappropriate under applicable standards of professional conduct or (y) there may be one or more legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party. In any of such cases, the Indemnifying Party shall not have the right to assume the defense of such action on behalf of such Indemnified Party, it being understood, however, that the Indemnifying Party shall not be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all Indemnified Parties and all such expenses shall be reimbursed as incurred. No Indemnifying Party shall be liable for any settlement entered into without its written consent, which consent shall not be unreasonably withheld. No Indemnifying Party shall, without the consent of such Indemnified Party, effect any settlement of any pending or threatened proceeding in respect of which such Indemnified Party is a party and indemnity has been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability for claims that are the subject matter of such proceeding. Notwithstanding the foregoing, if at any time an Indemnified Party shall have requested the Indemnifying Party to reimburse the Indemnified Party for fees and expenses of counsel as contemplated by this Section 8, the Indemnifying Party agrees that it shall be liable for any settlement of any proceeding effected without the Indemnifying Party's written consent if (i) such settlement is entered into more than thirty (30) business days after receipt by the Indemnifying Party of the aforesaid request and (ii) the Indemnifying Party shall not have reimbursed the Indemnified Party in accordance with such request or contested the reasonableness of such fees and expenses prior to the date of such settlement.

(d) Contribution. If the indemnification provided for in this Section 8 from the Indemnifying Party is unavailable to an Indemnified Party hereunder or insufficient to hold harmless an Indemnified Party in respect of any Liabilities referred to herein, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Liabilities in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions which resulted in such Liabilities, as well as any other relevant equitable considerations. The relative faults of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party as a result of the Liabilities referred to above shall be deemed to include, subject to the limitations set forth in Sections 8(a), 8(b) and 8(c), any legal or other fees, charges or expenses reasonably incurred by such party in connection with any investigation or proceeding; provided that the total amount to be contributed by any Designated Holder shall be limited to the net proceeds received by such Designated Holder in the offering.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

9. Rule 144. The Company covenants that from and after the IPO Effectiveness Date it shall (a) file any reports required to be filed by it under the Exchange Act and (b) take such further action as each Designated Holder may reasonably request (including providing any information necessary to comply with Rule 144 under the Securities Act), all to the extent required from time to time to enable such Designated Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such rule may be amended from time to time, or Regulation S under the Securities Act or (ii) any similar rules or regulations hereafter adopted by the Commission. The Company shall, upon the request of any Designated Holder, deliver to such Designated Holder a written statement as to whether it has complied with such requirements.

10. Miscellaneous.

(a) Recapitalizations, Exchanges, etc. The provisions of this Agreement shall apply to the full extent set forth herein with respect to (i) the shares of Common Stock, (ii) any and all shares of voting common stock of the Company into which the shares of Common Stock are converted, exchanged or substituted in any recapitalization or other capital reorganization by the Company and (iii) any and all equity securities of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in conversion of, in exchange for or in substitution of, the shares of Common Stock and shall be appropriately adjusted for any stock dividends, splits, reverse splits, combinations, recapitalizations and the like occurring after the date hereof. The Company shall cause any successor or assign (whether by merger, consolidation, sale of assets or otherwise) to enter into a new registration rights agreement with the Designated Holders on terms substantially the same as this Agreement as a condition of any such transaction.

(b) No Inconsistent Agreements. The Company hereby represents and warrants that it has not previously entered into any agreement granting registration rights to any Person with respect to any securities of the Company except as set forth in the Rights Agreement and the Stockholders Agreement. The Company shall not enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Designated Holders in this Agreement or grant any additional registration rights to any Person or with respect to any securities that are not Registrable Securities that provides for the priority in registration of such securities over the Registrable Securities held by the Designated Holders or which rights are otherwise inconsistent with the rights granted in this Agreement.

(c) Remedies. The Designated Holders, in addition to being entitled to exercise all rights granted by law, including recovery of damages, shall be entitled to specific performance of their rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agrees to waive in any action for specific performance the defense that a remedy at law would be adequate.

(d) Amendments and Waivers. Except as otherwise provided herein, the provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given unless consented to in writing by the Company and Designated Holders holding more than 50% of the Registrable Securities; provided, however, that (i) no amendment, modification, supplement, waiver or consent to depart from the provisions hereof shall be effective if such amendment, modification, supplement, waiver or consent to depart from the provisions hereof materially and adversely affects the substantive rights or obligations of one Designated Holder, or group of Designated Holders, without a similar and proportionate effect on the substantive rights or obligations of all Designated Holders, unless each such disproportionately affected Designated Holder consents in writing thereto; (ii) any amendment with respect to Sections 6(a), 10(d) or 10(f) hereof shall require the written consent of each Designated Holder; (iii) to the extent that it in any way affects the Demand Registration rights of BancAmerica, any amendment to Section 3(a) shall require the written consent of BancAmerica; and (iv) to the extent that it in any way affects the Incidental Registration rights of the Francis Stockholders, any amendment to Section 3(b) (but not including an amendment, waiver or consent to any other provision of Section 3 that may affect the rights provided in Section 3(b)) and the first and second sentences of Section 4(a) shall require the written consent of the Francis Stockholders.

(e) Notices. All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be made by registered or certified first-class mail, return receipt requested, telecopier, courier service or personal delivery:

(i) if to the Company:

AMN Healthcare Services, Inc.  
12235 El Camino Real, Suite 200  
San Diego, CA 92130  
Telecopy: (877) 282-0384  
Attention: Susan R. Nowakowski

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison  
 1285 Avenue of the Americas  
 New York, NY 10019-6064  
 Telecopy: (212) 757-3990  
 Attention: John C. Kennedy, Esq.

(ii) if to the HWP Stockholders:

c/o Haas Wheat & Partners, L.P.  
 300 Crescent Court  
 Suite 1700  
 Dallas, TX 75201  
 Telecopy: (214) 871-8317  
 Attention: Douglas D. Wheat

(iii) if to BancAmerica:

BancAmerica Capital Investors SBIC I, L.P.  
 Bank of America Corporate Center  
 100 North Tryon Street, 25th Floor  
 Charlotte, NC 28255  
 Telecopy: (704) 386-6432  
 Attention: Walker L. Poole

with a copy to:

Kennedy Covington Lobdell & Hickman, L.L.P.  
 100 North Tryon Street  
 Suite 4200  
 Charlotte, NC 28202  
 Telecopy: (704) 331-7598  
 Attention: Henry W. Flint, Esq.

(iv) if to the Francis Stockholders:

c/o AMN Healthcare Services, Inc.  
 12235 El Camino Real, Suite 200  
 San Diego, California 92130  
 Telecopy: (858) 792-0299  
 Attention: Steven C. Francis

All such notices, demands and other communications shall be deemed to have been duly given when delivered by hand, if personally delivered; one (1) Business Day after delivered by courier, if delivered by commercial courier service; five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; and one

(1) Business Day after receipt is mechanically acknowledged, if telecopied. Any party may by notice given in accordance with this Section 10(e) designate another address or Person for receipt of notices hereunder.

(f) Successors and Assigns; Third Party Beneficiaries.

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto as hereinafter provided. The Demand Registration rights, incidental registration rights and the S-3 Registration rights and the other rights of the HWP Stockholders hereunder may be (i) with respect to any Registrable Security that is transferred to an Affiliate of the HWP Stockholders (or if any of the HWP Stockholders is a partnership, limited liability company or corporation, to any such partner, member or stockholder thereof), transferred to such Affiliate (or such partner, member or stockholder) and (ii) with respect to any Registrable Security that is transferred in all cases to a non-Affiliate of the HWP Stockholders, transferred only if the transferee receives in one transaction or series of related transactions Registrable Securities representing at least five percent (5%) of the Common Stock outstanding on the date of such transaction (or the first transaction in a series of transactions). The Demand Registration rights and incidental registration rights and the other rights of BancAmerica hereunder may be (i) with respect to any Registrable Security that is transferred to an Affiliate of BancAmerica (or if BancAmerica is a partnership, limited liability company or corporation, to any such partner, member or stockholder thereof), transferred to such Affiliate (or such partner, member or stockholder) and (ii) with respect to any Registrable Security that is transferred in all cases to a non-Affiliate of BancAmerica, transferred only if the transferee receives in one transaction or series of related transactions Registrable Securities representing at least five percent (5%) of the Common Stock outstanding on the date of such transaction (or the first transaction in a series of transactions). The incidental or "piggy-back" registration rights of the Francis Stockholders contained in Sections 3, 4 and 5 hereof and the other rights of the Francis Stockholders hereunder may be (i) with respect to any Registrable Security that is transferred to the estate of Francis or an Affiliate of the Francis Stockholders (or if any of the Francis Stockholders is a partnership, limited liability company or corporation, to any such partner, member or stockholder thereof), transferred to such estate or Affiliate (or such partner, member or stockholder) and (ii) with respect to any Registrable Security that is transferred in all cases to a non-Affiliate of the Francis Stockholder, transferred only if the transferee receives in one transaction or series of related transactions Registrable Securities representing at least five percent (5%) of the Common Stock outstanding on the date of such transaction (or the first transaction in a series of transactions). All of the obligations of the Company hereunder shall survive any such transfer. Except as provided in Section 8, no Person other than the parties hereto and their successors and permitted assigns is intended to be a beneficiary of this Agreement.

(g) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF.

(j) Severability. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired.

(k) Rules of Construction. Unless the context otherwise requires, references to sections or subsections refer to sections or subsections of this Agreement.

(l) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties or undertakings, other than those set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the parties with respect to such subject matter. This Agreement supersedes and replaces the Rights Agreement, dated as of November 19, 1999, among the Company, the HWP Stockholders and BancAmerica (the "Rights Agreement") and Section 4 of the Stockholders Agreement, dated as of November 19, 1999, among the Company, the HWP Stockholders and the Francis Stockholders (the "Stockholders Agreement"). The Rights Agreement and Section 4 of the Stockholders Agreement are hereby terminated and have no further force and effect.

(m) Further Assurances. Each of the parties shall execute such documents and perform such further acts as may be reasonably required or desirable to carry out or to perform the provisions of this Agreement.

(n) Other Agreements. Nothing contained in this Agreement shall be deemed to be a waiver of, or release from, any obligations any party hereto may have under, or any restrictions on the transfer of Registrable Securities or other securities of the Company imposed by, any other agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed, or have caused to be executed, this Registration Rights Agreement on the date first written above.

AMN HEALTHCARE SERVICES, INC.

By: /s/ Steven Francis

-----  
Name: Steven Francis  
Title: President and Chief Executive Officer

HWH CAPITAL PARTNERS, L.P.

By: HWH, L.P., its General Partner

By: HWH Incorporated, its General Partner

By: /s/ Douglas D. Wheat

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Name: Douglas D. Wheat  
Title: President

HWH NIGHTINGALE PARTNERS, L.P.

By: HWH NIGHTINGALE, L.P., its General Partner

By: HWH NIGHTINGALE, L.L.C., its General Partner

By: /s/ Douglas D. Wheat

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Name: Douglas D. Wheat  
Title: Managing Member

HWP CAPITAL PARTNERS II, L.P.

By: HWP II, L.P., its General Partner

By: HWP II, LLC, its General Partner

By: /s/ Douglas D. Wheat

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Name: Douglas D. Wheat  
Title: Managing Member



HWP NIGHTINGALE PARTNERS II, L.P.

By: HWP Nightingale II, L.P., its General Partner

By: HWP Nightingale II, LLC, its General Partner

By: /s/ Douglas D. Wheat

-----  
Name: Douglas D. Wheat

Title: Managing Member

BANCAMERICA CAPITAL INVESTORS SBIC I, L.P.

By: BANCAMERICA CAPITAL  
MANAGEMENT SBIC I, LLC, its General Partner

By: BancAmerica Capital Management I L.P., its  
sole member

By: BACM I GP, LLC, its General Partner

By: /s/ Walker L. Poole

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Name: Walker L. Poole

Title: Managing Director

/s/ Steven Francis

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Steven Francis, as Trustee of the Francis  
Family Trust dated May 24, 1996

/s/ Gayle Francis

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Gayle Francis, as Trustee of the Francis  
Family Trust dated May 24, 1996

/s/ Steven Francis

-----  
Steven Francis

AMENDED AND RESTATED  
FINANCIAL ADVISORY AGREEMENT

THIS AMENDED AND RESTATED FINANCIAL ADVISORY AGREEMENT (this "Agreement") is made and entered into as of November 16, 2001, by and among AMN Healthcare Services, Inc., a Delaware corporation (formerly known as AMN Holdings, Inc.) (the "Company"), and Haas Wheat & Partners, L.P., a Delaware limited partnership ("HWP").

WHEREAS, the parties hereto entered into a Financial Advisory Agreement, dated as of November 19, 1999 (the "Original Agreement");

WHEREAS, the Company is considering an underwritten offering of its equity securities, registered under the Securities Act of 1933 (an "IPO");

WHEREAS, the Company and HWP have determined to amend and restate in its entirety the Original Agreement in contemplation of such IPO;

NOW, THEREFORE, the Company and HWP hereby agree as follows:

1. Scope of Services. As agreed to by the parties, HWP will render to the Company financial advisory services and other consulting services on an ongoing basis (the "Company Advisory Services").

2. Compensation for Services Rendered. As compensation for the rendering of Company Advisory Services by HWP to the Company as herein provided, the Company agrees that it will pay to HWP an annual management fee of One Hundred Fifty Thousand Dollars (\$150,000). The annual fee shall be payable in advance in four quarterly installments of Thirty Seven Thousand Five Hundred Dollars (\$37,500) each, with the first such installment being payable on January 1, 2000 and subsequent installments being payable on each April 1, July 1, October 1 and January 1 thereafter. Upon the consummation of an IPO by the Company, the Company shall pay HWP a fee equal to One Million Nine Hundred Fifty-Five Thousand Dollars (\$1,955,000). No other fees under this Section 2 shall be payable by the Company after such date.

3. Reimbursement of Expenses. In addition to the compensation to be paid pursuant to Section 2 hereof, HWP shall be reimbursed, promptly following demand therefor, together with invoices or reasonably detailed descriptions thereof, for all reasonable disbursements and out-of-pocket expenses incurred by HWP (whether prior to or from and after the date hereof) in connection with the rendering of Company Advisory Services.

4. Indemnity. The Company (the "Indemnifying Person"), will indemnify and hold harmless HWP, its affiliates and each person, if any, who controls HWP or any of its affiliates within the meaning of either the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (a "Controlling Person"), and their respective affiliates, and the respective directors, officers, agents and employees of HWP, any Controlling Persons and their respective affiliates (each such entity or person, an "Indemnified Person") from and against any losses, claims, damages, judgments, assessments, costs and other liabilities (collectively, "Liabilities"), and will reimburse each Indemnified Person for all fees and expenses (including the reasonable fees and expenses of counsel) (collectively, "Expenses") as they are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation, whether or not in connection with pending or threatened litigation and whether or not any Indemnified Person is a party (collectively, "Actions"), arising out of or in connection with advice or services rendered or to be rendered pursuant to this Agreement or the Original Agreement or any Indemnified Person's actions or inactions in connection with any such advice or services or otherwise in connection with the Acquisition (as defined in the Original Agreement); provided that, no Indemnifying Person will be responsible for any Liabilities or Expenses of an Indemnified Person that are determined by a judgment of a court of competent jurisdiction that is no longer subject to appeal or further review to have resulted primarily from such Indemnified Person's gross negligence or willful misconduct in connection with any of the advice, actions, inactions or services referred to above. The Indemnifying Persons also agree to reimburse each Indemnified Person for all Expenses that are incurred in connection with enforcing such Indemnified Person's rights under this Section 4.

Upon receipt by an Indemnified Person of actual notice of an Action against such Indemnified Person with respect to which indemnity may be sought under this Agreement, such Indemnified Person shall promptly notify the Indemnifying Persons in writing; provided that, failure so to notify the Indemnifying Persons shall not relieve the Indemnifying Persons from any liability that the Indemnifying Persons may have on account of this indemnity or otherwise, except to the extent such Indemnifying Person shall have been materially prejudiced by such failure. The Indemnifying Persons shall, if requested by such Indemnified Person, assume the defense of any such Action, including the employment of counsel reasonably satisfactory to such Indemnified Person. Any Indemnified Person shall have the right to employ separate counsel in any such Action and participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such Indemnified Person, unless: (i) the Indemnifying Party has failed to assume the defense and employ counsel reasonably satisfactory to such Indemnified Person or (ii) the named parties to any such Action (including any impleaded parties) include such Indemnified Person and one or more of the Indemnifying Persons, and such Indemnified Person shall have been advised by its counsel that there may be one or more legal defenses available to it that are different from or in addition to those available to any Indemnifying Person, provided that, the Indemnifying Persons shall not in such event be responsible hereunder for the fees and expenses of more than one firm of separate counsel in connection with any Action in the same jurisdiction, in addition to any local counsel. An Indemnifying Person shall not be liable for any settlement of any

Action effected without its written consent (which shall not be unreasonably withheld). In addition, the Indemnifying Persons will not, without the prior written consent of HWP, settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened Action in respect of which indemnification or contribution has been sought hereunder (whether or not any Indemnified Person is a party thereto) unless such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Person from all Liabilities arising out of such Action for which such Indemnified Person is entitled to indemnification hereunder.

In the event that the foregoing indemnity is judicially determined to be unavailable to an Indemnified Person, the Indemnifying Persons shall contribute to the Liabilities and Expenses paid or payable by such Indemnified Person in such proportion as is appropriate to reflect (i) the relative benefits to the Indemnifying Persons, on the one hand, and to HWP, on the other hand, of the matters contemplated by this Agreement and the Original Agreement or (ii) if the allocation provided by the immediately preceding clause is not permitted by the applicable law, not only such relative benefits but also the relative fault of the Indemnifying Persons, on the one hand, and HWP, on the other hand, in connection with the matters as to which such Liabilities or Expenses relate, as well as any other relevant equitable considerations; provided that, in no event shall the Indemnifying Persons contribute less than the amount necessary to ensure that all Indemnified Persons, in the aggregate, are not liable for any Liabilities and Expenses arising out of the transactions pursuant to this Agreement in excess of the amount of fees actually received by HWP pursuant to this Agreement or for any other services rendered by HWP in connection with this Agreement.

The Indemnifying Persons also agree that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Indemnifying Persons for or in connection with advice or services rendered or to be rendered pursuant to this Agreement and the Original Agreement or any Indemnified Person's actions or inactions in connection with any advice or services rendered or to be rendered pursuant to this Agreement and the Original Agreement except for Liabilities (and related Expenses) of the Indemnifying Persons that are determined by a judgment of a court of competent jurisdiction which is no longer subject to appeal or further review to have resulted primarily from such Indemnified Person's gross negligence or willful misconduct in connection with any such advice, actions, inactions or services.

If any term, provision, covenant or restriction contained in this Section 4 is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

The reimbursement, indemnity and contribution obligations of the Indemnifying Persons set forth herein shall apply to any modification of this Agreement and shall remain in full force and effect regardless of any termination of, or the completion of any services under or in connection with, this Agreement.

5. Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of New York.

6. Assignment. This Agreement and all provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned (other than to either or both of Robert B. Haas and Douglas D. Wheat or to any entity controlled by either or both of Robert B. Haas and Douglas D. Wheat) by any of the parties without the prior written consent of the other party.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

8. Other Understandings. All discussions, understandings, and agreements heretofore made between any of the parties hereto with respect to the subject matter hereof are merged in this Agreement, which alone fully and completely expresses the agreement of the parties hereto.

9. Termination. Upon the consummation of an IPO of the Company and the payment of the fee provided by Section 2 hereof, this Agreement shall terminate, except for the obligations of the parties under Sections 3 and 4 hereof.

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

AMN HEALTHCARE SERVICES, INC.

By:/s/ Steven Francis

-----

Name: Steven Francis

Title: President and Chief Executive Officer

HAAS WHEAT & PARTNERS, L.P.

By: HWH, L.P., its general partner

By: HWH Incorporated, its general partner

By:/s/ Robert B. Haas

-----

Name: Robert B. Haas

Title: Chairman

AMENDED AND RESTATED  
CREDIT AGREEMENT

Dated as of November 16, 2001

among

AMN HEALTHCARE, INC.,  
as Borrower,

AMN HEALTHCARE SERVICES, INC.,  
and  
CERTAIN SUBSIDIARIES OF THE BORROWER  
FROM TIME TO TIME PARTY HERETO,  
as Guarantors,

THE SEVERAL LENDERS  
FROM TIME TO TIME PARTY HERETO,

BANK OF AMERICA, N. A.,  
as Agent,

BANC OF AMERICA SECURITIES LLC,  
as Lead Arranger and Book Manager,

and

GENERAL ELECTRIC CAPITAL CORPORATION,  
as Syndication Agent

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Exhibit 3.11(d)	Form of Tax Exemption Certificate
Exhibit 7.1(c)	Form of Officer's Compliance Certificate
Exhibit 7.12	Form of Joinder Agreement
Exhibit 11.3(b)	Form of Assignment and Acceptance

## AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT, dated as of November 16, 2001 (as amended, modified, restated or supplemented from time to time, the "Credit Agreement"), is by and among AMN HEALTHCARE, INC., a Nevada corporation (the "Borrower"), AMN HEALTHCARE SERVICES, INC. (formerly known as AMN Holdings, Inc.), a Delaware corporation (the "Parent"), the Subsidiary Guarantors (as defined herein), the Lenders (as defined herein) and BANK OF AMERICA, N. A., as Agent for the Lenders (in such capacity, the "Agent").

### W I T N E S S E T H

WHEREAS, the Borrower is party to that certain Credit Agreement, dated as of November 19, 1999, (as amended from time to time through the date hereof, the "Existing Credit Agreement"), among the Parent, the Borrower, the Subsidiary Guarantors, the lenders party thereto, Bank of America, N.A. , as Agent, Wells Fargo Bank, N.A. as Syndication Agent and Fleet National Bank, as Documentation Agent;

WHEREAS, the parties to the Existing Credit Agreement have agreed to amend the Existing Credit Agreement and for ease of reference have agreed to amend and restate the Existing Credit Agreement in this Credit Agreement; and

WHEREAS, the Borrower, the Parent and the Subsidiary Guarantors have requested, and the Lenders have agreed, to provide a revolving credit facility to the Borrower in an aggregate amount of \$50,000,000 (the "Credit Facility") on the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### SECTION 1

#### DEFINITIONS

##### 1.1 DEFINITIONS.

As used in this Credit Agreement, the following terms shall have the meanings specified below unless the context otherwise requires:

"Acquisition", by any Person, means the acquisition by such Person of all of the Capital Stock or all or substantially all of the Property of another Person, whether or not involving a merger or consolidation with such other Person.

"Adjusted Base Rate" means the Base Rate plus the Applicable Percentage.

"Adjusted Eurodollar Rate" means the Eurodollar Rate plus the Applicable Percentage.

"Affiliate" means, with respect to any Person, any other Person (i) directly or indirectly controlling or controlled by or under direct or indirect common control with such Person or (ii) directly or indirectly owning or holding ten percent (10%) or more of the Capital Stock in such Person. For purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" shall have the meaning assigned to such term in the heading hereof, together with any successors or assigns.

"Agent's Fee Letter" means that certain letter agreement, dated as of November 16, 2001, between the Agent and the Borrower, as amended, modified, restated or supplemented from time to time.

"Applicable Lending Office" means, for each Lender, the office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Agent and the Borrower by written notice as the office by which its Eurodollar Loans are made and maintained (and, for purposes of Section 3.11, shall include any office at which its Base Rate Loans are made and maintained).

"Applicable Percentage" for purposes of calculating the applicable interest rate for any day for (i) Eurodollar Loans shall mean (a) 1.50% if the Used Revolving Committed Amount is less than \$25,000,000 and (b) 1.75% if the Used Revolving Committed Amount is equal to or greater than \$25,000,000, (ii) Base Rate Loans shall mean (a) .50% if the Used Revolving Committed Amount is less than \$25,000,000 and (b) .75% if the Used Revolving Committed Amount is equal to or greater than \$25,000,000, (iii) standby Letters of Credit shall mean (a) 1.50% if the Used Revolving Committed Amount is less than \$25,000,000 and (b) 1.75% if the Used Revolving Committed Amount is equal to or greater than \$25,000,000 and (iv) trade Letters of Credit shall mean (a) .75% if the Used Revolving Committed Amount is less than \$25,000,000 and (b) .875% if the Used Revolving Committed Amount is equal to or greater than \$25,000,000.

"Application Period", in respect of any Asset Disposition, shall have the meaning assigned to such term in Section 8.5.

"Asset Disposition" means any disposition (including pursuant to a Sale and Leaseback Transaction) of any or all of the Property (including without limitation the Capital Stock of a Subsidiary) of the Parent or any Consolidated Party whether by sale, lease, transfer or otherwise, but other than pursuant to any casualty or condemnation event.

"Asset Disposition Prepayment Event" means, with respect to any Asset Disposition other than an Excluded Asset Disposition, the failure of the Credit Parties to apply (or cause to be applied) the Net Cash Proceeds of such Asset Disposition to Eligible Reinvestments during the Application Period for such Asset Disposition.

"Bank of America" means Bank of America, N. A. and its successors.

"Bankruptcy Code" means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

"Bankruptcy Event" means, with respect to any Person, the occurrence of any of the following with respect to such Person: (i) a court or governmental agency having jurisdiction in the premises shall enter a decree or order for relief in respect of such Person in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or ordering the winding up or liquidation of its affairs; or (ii) there shall be commenced against such Person an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or any case, proceeding or other action for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or for the winding up or liquidation of its affairs, and such involuntary case or other case, proceeding or other action shall remain undismissed, undischarged or unbonded for a period of sixty (60) consecutive days; or (iii) such Person shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, creditor in possession, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or make any general assignment for the benefit of creditors; or (iv) such Person shall be unable to, or shall admit in writing its inability to, pay its debts generally as they become due.

"Base Rate" means, for any day, the rate per annum equal to the higher of (a) the Federal Funds Rate for such day plus one-half of one percent (0.5%) and (b) the Prime Rate for such day. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective on the effective date of such change in the Prime Rate or Federal Funds Rate.

"Base Rate Loan" means (i) any Revolving Loan bearing interest at a rate determined by reference to the Base Rate or (ii) any Swingline Loan.

"Borrower" means the Person identified as such in the heading hereof, together with any permitted successors and assigns.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in Charlotte, North Carolina, San Diego, California or New York, New York are authorized or required by law to close, except that, when used in connection with a

Eurodollar Loan, such day shall also be a day on which dealings between banks are carried on in Dollar deposits in London, England.

"Businesses" shall have the meaning assigned to such term in Section 6.16.

"Capital Lease" means, as applied to any Person, any lease of any Property (whether real, personal or mixed) by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

"Capital Stock" means (i) in the case of a corporation, capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (iii) in the case of a partnership, partnership interests (whether general or limited), (iv) in the case of a limited liability company, membership interests and (v) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Cash Equivalents" means, as at any date, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) Dollar denominated time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank being an "Approved Bank"), in each case with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (e) Investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940, as amended, which are administered by reputable financial institutions having capital of at least \$500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing subdivisions (a) through (d).

"Change in Control" means any of the following events: (i) the Sponsor Entities shall fail to own beneficially, directly or indirectly, (a) at least 20% of the outstanding Voting Stock of the Parent and (b) a greater percentage of the outstanding Voting Stock of the Parent than the percentage of such outstanding Voting Stock which any other

"person" or "group" (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act) other than the Sponsor Entities (x) shall have acquired beneficial ownership, directly or indirectly, of, or (y) shall have acquired by contract or otherwise (or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of) control over, (ii) the Parent shall fail to own directly 100% of the outstanding Capital Stock of the Borrower, or (iii) Continuing Directors shall cease for any reason to constitute a majority of the members of the board of directors of the Parent then in office. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities and Exchange Act of 1934.

"Closing Date" means the date hereof.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, as interpreted by the rules and regulations issued thereunder, in each case as in effect from time to time. References to sections of the Code shall be construed also to refer to any successor sections.

"Collateral" means a collective reference to all Property with respect to which Liens in favor of the Agent are purported to be granted pursuant to and in accordance with the terms of the Collateral Documents.

"Collateral Documents" means a collective reference to the Security Agreement, the Pledge Agreement and such other documents executed and delivered in connection with the attachment and perfection of the Agent's security interests and liens arising thereunder, including without limitation, UCC financing statements and patent and trademark filings.

"Commitment" means (i) with respect to each Lender, the Revolving Commitment of such Lender, (ii) with respect to the Issuing Lender(s), the LOC Commitment and (iii) with respect to the Swingline Lender, the Swingline Commitment.

"Commitment Percentage" means, for any Lender in respect of the Revolving Commitment of such Lender, the percentage identified as such Lender's Commitment Percentage for such Revolving Commitment on Schedule 2.1(a), as any such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 11.3.

"Consolidated Capital Expenditures" means, as of any date for the four fiscal quarter period ending on such date with respect to the Consolidated Parties on a consolidated basis, all capital expenditures, as determined in accordance with GAAP; provided, however, that Consolidated Capital Expenditures shall not include Eligible Reinvestments made with proceeds of any Involuntary Disposition.

"Consolidated Cash Interest Expense" means, as of any date for the four fiscal quarter period ending on such date with respect to the Consolidated Parties on a



consolidated basis, interest expense (including the interest component under Capital Leases and the implied interest component under Synthetic Leases), as determined in accordance with GAAP, but excluding non-cash components of interest expense (e.g. amortization of deferred financing fees).

"Consolidated Cash Taxes" means, as of any date for the four fiscal quarter period ending on such date with respect to the Consolidated Parties on a consolidated basis, the aggregate of all Federal, state and foreign income taxes, as determined in accordance with GAAP, to the extent the same are paid in cash.

"Consolidated EBITDA" means, as of any date for the four fiscal quarter period ending on such date with respect to the Consolidated Parties on a consolidated basis, the sum of (i) Consolidated Net Income, plus (ii) an amount which, in the determination of Consolidated Net Income, has been deducted for, without duplication, (A) interest expense, (B) total Federal, state, local and foreign income, value added and similar taxes, (C) depreciation and amortization expense and (D) Consolidated Non-Cash Charges, all as determined in accordance with GAAP, plus (iii) the Consolidated EBITDA Adjustment for the four fiscal quarter period ending on such date.

"Consolidated EBITDA Adjustment" means the amount indicated on Schedule 1.1A.

"Consolidated Net Income" means, as of any date for the four fiscal quarter period ending on such date with respect to the Consolidated Parties on a consolidated basis, net income (excluding extraordinary items) after interest expense, income taxes and depreciation and amortization, all as determined in accordance with GAAP.

"Consolidated Net Working Capital" means, as of any date with respect to the Consolidated Parties on a consolidated basis, an amount equal to (i) current assets, excluding cash and Cash Equivalents, minus (ii) current liabilities other than current maturities of long term debt, all as determined in accordance with GAAP. Consolidated Net Working Capital as of any date may be a positive or negative number. Consolidated Net Working Capital increases when it becomes more positive or less negative and decreases when it becomes less positive or more negative.

"Consolidated Non-Cash Charges" means the non-cash component of any item of expense other than (i) to the extent requiring an accrual or reserve for future cash expenses, and (ii) write-offs of accounts receivable.

"Consolidated Parties" means a collective reference to the Borrower and its Subsidiaries, and "Consolidated Party" means any one of them.

"Consolidated Scheduled Funded Debt Payments" means, as of any date for the four fiscal quarter period ending on such date with respect to the Consolidated Parties on a consolidated basis, the sum of all scheduled payments of principal on Funded Indebtedness, as determined in accordance with GAAP. For purposes of this definition, "scheduled

payments of principal" (i) shall be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments made during the applicable period, (ii) shall be deemed to include the implied principal component of payments due on Capital Leases and Synthetic Leases and (iii) shall not include any voluntary prepayments or mandatory prepayments required pursuant to Section 3.3.

"Consolidated Total Assets" means, as of any date with respect to the Consolidated Parties on a consolidated basis, total assets, as determined in accordance with GAAP.

"Continue", "Continuation", "Continuing", and "Continued" shall refer to the continuation pursuant to Section 3.2 hereof of a Eurodollar Loan from one Interest Period to the next Interest Period.

"Continuing Directors" means during any period of up to 24 consecutive months commencing after the Closing Date, individuals who at the beginning of such 24 month period were directors of the Parent (together with any new director whose election by the Parent's board of directors or whose nomination for election by the Parent's shareholders was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved).

"Convert", "Conversion", "Converting" and "Converted" shall refer to a conversion pursuant to Section 3.2 or Sections 3.7 through 3.12, inclusive, of a Base Rate Loan into a Eurodollar Loan.

"Credit Documents" means a collective reference to this Credit Agreement, the Notes, the LOC Documents, each Joinder Agreement, the Agent's Fee Letter, the Collateral Documents and all other related agreements and documents issued or delivered hereunder or thereunder or pursuant hereto or thereto (in each case as the same may be amended, modified, restated, supplemented, extended, renewed or replaced from time to time), and "Credit Document" means any one of them.

"Credit Facility" shall have the meaning assigned to such term in the recitals hereto.

"Credit Parties" means a collective reference to the Borrower and the Guarantors, and "Credit Party" means any one of them.

"Credit Party Obligations" means, without duplication, (i) all of the obligations of the Credit Parties to the Lenders (including the Issuing Lender(s) and the Swingline Lender) and the Agent, whenever arising, under this Credit Agreement, the Notes, the Collateral Documents or any of the other Credit Documents (including, but not limited to, any interest accruing after the occurrence of a Bankruptcy Event with respect to any Credit Party, regardless of whether such interest is an allowed claim under the Bankruptcy Code) and (ii) all liabilities and obligations, whenever arising, owing from the Borrower to any Lender, or any Affiliate of a Lender, arising under any Hedging Agreement.

"Default" means any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

"Defaulting Lender" means, at any time, any Lender that, as determined by the Agent, (a) has failed to make a Loan or purchase a Participation Interest required pursuant to the term of this Credit Agreement within one Business Day of when due, (b) other than as set forth in (a) above, has failed to pay to the Agent or any Lender an amount owed by such Lender pursuant to the terms of this Credit Agreement within one Business Day of when due, unless such amount is subject to a good faith dispute or (c) has been deemed insolvent or has become subject to a bankruptcy or insolvency proceeding or with respect to which (or with respect to any of the assets of which) a receiver, trustee or similar official has been appointed.

"Dollar", "Dollars" and "\$" means dollars in lawful currency of the United States.

"Domestic Subsidiary" means any direct or indirect Subsidiary of the Parent which is incorporated or organized under the laws of any State of the United States or the District of Columbia.

"Eligible Assets" means any assets or any business (or any substantial part thereof) used or useful in the same or a substantially similar line of business as the Borrower and its Subsidiaries were engaged in on the Closing Date (or any reasonable extensions or expansions thereof).

"Eligible Assignee" means (i) a Lender; (ii) an Affiliate of a Lender or any fund that invests in bank loans and is managed by an investment advisor to a Lender; and (iii) any other Person approved by the Agent and, unless an Event of Default has occurred and is continuing at the time any assignment is effected in accordance with Section 11.3, the Borrower (such approval by the Agent or the Borrower not to be unreasonably withheld or delayed (it being understood that disapproval of a proposed assignee by the Borrower because an assignment to such assignee may require the Credit Parties to incur increased costs or pay additional amounts (including Taxes and Other Taxes) under this Credit Agreement or any other Credit Documents shall be deemed to be a reasonable exercise of the Borrower's rights hereunder) and such approval to be deemed given by the Borrower if no objection is received by the assigning Lender and the Agent from the Borrower within two (2) Business Days after confirmation (such confirmation not to be unreasonably withheld or delayed) by an Executive Officer of the Borrower of receipt of notice of such proposed assignment by the assigning Lender); provided, however, that neither the Borrower nor an Affiliate of the Borrower shall qualify as an Eligible Assignee.

"Eligible Reinvestment" means (i) any acquisition (whether or not constituting a capital expenditure, but not constituting an Acquisition) of Eligible Assets and (ii) any Permitted Acquisition.

"Environmental Laws" means any and all lawful and applicable Federal, state, local and foreign statutes, laws (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act, the Water Pollution Control Act, the Clean Air Act and the Hazardous Materials Transportation Act), regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes.

"Equity Issuance" means any issuance by the Parent or any Consolidated Party to any Person of (a) shares of its Capital Stock, (b) any shares of its Capital Stock pursuant to the exercise of options or warrants, (c) any shares of its Capital Stock pursuant to the conversion of any debt securities to equity or (d) any options or warrants relating to its Capital Stock. The term "Equity Issuance" shall not include any Asset Disposition.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto, as interpreted by the rules and regulations thereunder, all as the same may be in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means an entity which is under common control with the Parent or any Consolidated Party within the meaning of Section 4001(a)(14) of ERISA, or is a member of a group which includes the Parent or any Consolidated Party and which is treated as a single employer under Sections 414(b) or (c) of the Code.

"ERISA Event" means (i) with respect to any Plan, the occurrence of a Reportable Event not otherwise subject to a waiver or the substantial cessation of operations (within the meaning of Section 4062(e) of ERISA); (ii) the withdrawal by the Parent or any Consolidated Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was a substantial employer (as such term is defined in Section 4001(a)(2) of ERISA), or the termination of a Multiple Employer Plan; (iii) the distribution of a notice of intent to terminate or the actual termination of a Plan pursuant to Section 4041(a)(2) or 4041A of ERISA; (iv) the institution of proceedings to terminate or the actual termination of a Plan by the PBGC under Section 4042 of ERISA; (v) any event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (vi) the complete or partial withdrawal of the Parent or any Consolidated Party or any ERISA Affiliate from a Multiemployer Plan; (vii) the conditions for imposition of a lien under Section 302(f) of ERISA exist with respect to any Plan; or (viii) the adoption of an amendment to any Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA.

"Eurodollar Loan" means any Loan that bears interest at a rate based upon the Eurodollar Rate.

"Eurodollar Rate" means, for any Eurodollar Loan for any Interest Period therefor, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined by the Agent to be equal to the quotient obtained by dividing (a) the Interbank Offered Rate for such Eurodollar Loan for such Interest Period by (b) 1 minus the Eurodollar Reserve Requirement for such Eurodollar Loan for such Interest Period.

"Eurodollar Reserve Requirement" means, at any time, the maximum rate at which reserves (including, without limitation, any marginal, special, supplemental, or emergency reserves) are required to be maintained under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) by member banks of the Federal Reserve System against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Eurodollar Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the Adjusted Eurodollar Rate is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Loans. The Adjusted Eurodollar Rate shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Requirement.

"Event of Default" shall have the meaning assigned to such term in Section 9.1.

"Excess Cash Flow" means, with respect to any fiscal year period of the Consolidated Parties on a consolidated basis, an amount equal to (a) Consolidated EBITDA minus (b) Consolidated Capital Expenditures minus (c) Consolidated Cash Interest Expense minus (d) to the extent not taken into account in the calculation of Excess Cash Flow for any prior fiscal year, Federal, state and other income taxes accrued or paid (without duplication) by the Parent and the Consolidated Parties on a consolidated basis minus (e) Consolidated Scheduled Funded Debt Payments minus (f) increases in Consolidated Net Working Capital minus (g) the cash amount of all Restricted Payments made pursuant to clause (f) of Section 8.7 minus (h) the cash amount of all Investments of the types referred to in clauses (ix) and (xiii) of the definition of "Permitted Investments" set forth in this Section 1.1 plus (i) decreases in Consolidated Net Working Capital.

"Existing Credit Agreement" shall have the meaning assigned to such term in the recitals hereto.

"Excess Proceeds" shall have the meaning assigned to such term in Section 7.6(b).

"Excluded Asset Disposition" means, with respect to the Parent or any Consolidated Party, (i) the sale of inventory in the ordinary course of such Person's business, (ii) the sale or disposition of machinery and equipment no longer used or useful in the conduct of such Person's business, (iii) any Equity Issuance by such Person, (iv) any Involuntary Disposition by such Person, (v) any sale, lease, transfer or other disposition of Property by

such Person to a Credit Party other than the Parent, provided that the Credit Parties shall cause to be executed and delivered such documents, instruments and certificates as the Agent may reasonably request so as to cause the Credit Parties to be in compliance with the terms of Section 7.13 after giving effect to such transaction and (vi) subject to the terms of Section 8.6 and the definition of "Permitted Investments" set forth in this Section 1.1, any sale, lease, transfer or other disposition of Property by such Person to a Consolidated Party that is not a Credit Party.

"Excluded Property" means with respect to any Credit Party, including any Person that becomes a Credit Party after the Closing Date as contemplated by Section 7.12, (i) any owned or leased real or personal Property of such Credit Party which is located outside of the United States, (ii) any owned real Property of such Credit Party which has a net book value of less than \$50,000, provided that the aggregate net book value of all real Property of all of the Credit Parties excluded pursuant to this clause (ii) shall not exceed \$250,000, (iii) any leased real Property of such Credit Party which, at the written request of the Borrower, the Agent has agreed in writing in its sole discretion is not material, (iv) any leased personal Property of such Credit Party, (v) any personal Property of such Credit Party (including, without limitation, motor vehicles) in respect of which perfection of a Lien is not either (A) governed by the Uniform Commercial Code or (B) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, (vi) any Property of such Credit Party which, subject to the terms of Section 8.11 and Section 8.15, is subject to a Lien of the type described in clause (vii) of the definition of "Permitted Liens" set forth in Section 1.1 pursuant to documents which prohibit such Credit Party from granting any other Liens in such Property and (vii) the leased real property of the Borrower described on Schedule 1.1B.

"Executive Officer" of any Person means any of the chief executive officer, chief operating officer, president, chief financial officer or treasurer of such Person.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Agent (in its individual capacity) on such day on such transactions as determined by the Agent.

"Fees" means all fees payable pursuant to Section 3.5.

"Fixed Charge Coverage Ratio" means, as of the end of any fiscal quarter of the Consolidated Parties for the four fiscal quarter period ending on such date with respect to the Consolidated Parties on a consolidated basis, the ratio of (a) the sum of (i) Consolidated

EBITDA for such period minus (ii) Consolidated Capital Expenditures for such period minus (iii) Consolidated Cash Taxes for such period minus (iv) the cash amount of all Restricted Payments made pursuant to clauses (f) and (k) of Section 8.7 to (b) the sum of (i) Consolidated Cash Interest Expense for such period plus (ii) Consolidated Scheduled Funded Debt Payments for such period (other than Consolidated Scheduled Funded Debt Payments for any period prior to the Closing Date).

"Foreign Subsidiary" means any direct or indirect Subsidiary of the Parent which is not a Domestic Subsidiary.

"Fully Satisfied" means, with respect to the Credit Party Obligations as of any date, that, as of such date, (a) all principal of and interest accrued to such date which constitute Credit Party Obligations shall have been paid in full in cash, (b) all fees, expenses and other amounts then due and payable which constitute Credit Party Obligations shall have been paid in cash, (c) all outstanding Letters of Credit shall have been (i) terminated, (ii) fully cash collateralized or (iii) secured by one or more letters of credit on terms and conditions, and with one or more financial institutions, reasonably satisfactory to the Issuing Lender and (d) the Commitments shall have been expired or terminated in full.

"Funded Indebtedness" means, with respect to any Person, without duplication, (a) all Indebtedness of such Person other than Indebtedness of the types referred to in clauses (e), (f), (g), (i) and (m) of the definition of "Indebtedness" set forth in this Section 1.1, (b) all Funded Indebtedness of others of the type referred to in clause (a) above secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, Property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed (or, if less, the aggregate net book value of all Property securing such Funded Indebtedness of others), (c) all Guaranty Obligations of such Person with respect to Funded Indebtedness of the type referred to in clause (a) above of another Person and (d) Funded Indebtedness of the type referred to in clause (a) above of any partnership or unincorporated joint venture in which such Person is a general partner or a joint venturer to the extent that such Funded Indebtedness is recourse to such Person.

"GAAP" means generally accepted accounting principles in the United States applied on a consistent basis and subject to the terms of Section 1.3 (except, in respect of Synthetic Leases, as otherwise treated herein).

"Governmental Authority" means any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

"Guarantors" means a collective reference to the Parent and each of the Subsidiary Guarantors, together with their successors and permitted assigns, and "Guarantor " means any one of them.

"Guaranty Obligations" means, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (i) to purchase any such Indebtedness or any Property constituting security therefor, (ii) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including without limitation keep well agreements, maintenance agreements, comfort letters or similar agreements or arrangements) for the benefit of any holder of Indebtedness of such other Person, (iii) to lease or purchase Property, securities or services primarily for the purpose of assuring the holder of such Indebtedness, or (iv) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness actually guaranteed by such Guaranty Obligation.

"Hedging Agreements" means any interest rate protection agreement or foreign currency exchange agreement.

"Indebtedness" means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made, (c) all obligations of such Person under conditional sale or other title retention agreements relating to Property purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (d) all obligations of such Person issued or assumed as the deferred purchase price of Property or services purchased by such Person (other than trade debt incurred in the ordinary course of business) which would appear as liabilities on a balance sheet of such Person, (e) all obligations of such Person under take-or-pay or similar arrangements or under commodities agreements, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, Property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all Guaranty Obligations of such Person with respect to Indebtedness of another Person, (h) the implied principal component of all obligations of such Person under Capital Leases, (i) all obligations of such Person under Hedging Agreements, (j) the maximum amount of all performance and standby letters of credit issued or bankers' acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (k) all preferred Capital Stock issued by such Person and which by the terms thereof could be (at the request of the holders thereof or otherwise) subject to mandatory sinking fund payments, redemption or other acceleration (other than as a result of a Change in Control or an Asset Disposition that does not in fact result in a redemption of such preferred Capital Stock) at any time prior to the Maturity Date, (l) the principal portion of all obligations of such Person under Synthetic Leases, (m) the Indebtedness of any partnership or unincorporated joint venture in which



such Person is a general partner or a joint venturer to the extent that such Indebtedness is recourse to such Person and (n) the aggregate amount of uncollected accounts receivable of such Person subject at such time to a sale of receivables (or similar transaction) regardless of whether such transaction is effected without recourse to such Person or in a manner that would not be reflected on the balance sheet of such Person in accordance with GAAP.

"Indemnified Party" shall have the meaning assigned to such term in Section 11.5(b).

"Initial Public Offering" shall mean the initial public offering of common Capital Stock of the Parent in an aggregate amount of not less than \$125,000,000 in net cash proceeds.

"Interbank Offered Rate" means, for any Eurodollar Loan for any Interest Period therefor, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Page 3750 (or any successor page) of the Dow Jones Market Service as the London interbank offered rate for deposits in Dollars at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period. If for any reason such rate is not available, the term "Interbank Offered Rate" shall mean, for any Eurodollar Loan for any Interest Period therefor, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters Screen LIBO Page as the London interbank offered rate for deposits in Dollars at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, however, if more than one rate is specified on Reuters Screen LIBO Page, the applicable rate shall be the arithmetic mean of all such rates (rounded upwards, if necessary, to the nearest 1/100 of 1%).

"Interest Payment Date" means (a) as to Base Rate Loans (including Swingline Loans which are Base Rate Loans), each March 31, June 30, September 30 and December 31, the date of repayment of principal of such Loan and the Maturity Date, and (b) as to Eurodollar Loans, the last day of each applicable Interest Period, the date of repayment of principal of such Loan and the Maturity Date, and in addition where the applicable Interest Period for a Eurodollar Loan is greater than three months, then also the date three months from the beginning of the Interest Period and each three months thereafter.

"Interest Period" means, as to Eurodollar Loans, a period of one, two, three or six months' duration, as the Borrower may elect, commencing, in each case, on the date of the borrowing (including continuations and conversions thereof); provided, however, (a) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (b) no Interest Period shall extend beyond the Maturity Date and (c) where an Interest Period begins on a day for which there is no numerically corresponding day in

the calendar month in which the Interest Period is to end, such Interest Period shall end on the last Business Day of such calendar month.

"Investment" in any Person means (a) the acquisition (whether for cash, property, services, assumption of Indebtedness, securities or otherwise) of assets (other than equipment, inventory and supplies in the ordinary course of business and other than any acquisition of assets constituting a Consolidated Capital Expenditure), Capital Stock, bonds, notes, debentures, partnership, joint ventures or other ownership interests or other securities of such other Person or (b) any deposit with, or advance, loan or other extension of credit to, such Person (other than deposits made in connection with the purchase of equipment inventory, services, leases or supplies in the ordinary course of business) or (c) any other capital contribution to or investment in such Person, including, without limitation, any Guaranty Obligations (including any support for a letter of credit issued on behalf of such Person) incurred for the benefit of such Person and any Asset Disposition to such Person for consideration less than the fair market value of the Property disposed in such transaction, but excluding any Restricted Payment to such Person. Investments which are capital contributions or purchases of Capital Stock which have a right to participate in the profits of the issuer thereof shall be valued at the amount actually contributed or paid to purchase such Capital Stock as of the date of such contribution or payment. Investments which are loans, advances, extensions of credit or Guaranty Obligations shall be valued at the principal amount of such loan, advance or extension of credit outstanding as of the date of determination or, as applicable, the principal amount of the loan or advance outstanding as of the date of determination actually guaranteed by such Guaranty Obligation.

"Involuntary Disposition" shall have the meaning assigned to such term in Section 7.6(b).

"Issuing Lender" means (i) Bank of America, in its capacity as issuer of any Letter of Credit or (ii) if Bank of America shall be unwilling to issue any Letter of Credit in the form requested by the Borrower in accordance with the terms of Section 2.2, such other Lender reasonably acceptable to the Agent selected by the Borrower from time to time to issue such Letter of Credit.

"Joinder Agreement" means a Joinder Agreement substantially in the form of Exhibit 7.12 hereto, executed and delivered by a new Guarantor in accordance with the provisions of Section 7.12.

"Lender" means any of the Persons identified as a "Lender" on the signature pages hereto, and any Person which may become a Lender by way of assignment in accordance with the terms hereof, together with their successors and permitted assigns.

"Lending Party" shall have the meaning assigned to such term in Section 11.14.

"Letter of Credit" means any letter of credit issued by the applicable Issuing Lender for the account of the Borrower in accordance with the terms of Section 2.2.

"Leverage Ratio" means, as of the end of any fiscal quarter of the Consolidated Parties for the four fiscal quarter period ending on such date with respect to the Consolidated Parties on a consolidated basis, the ratio of (a) Funded Indebtedness of the Consolidated Parties on a consolidated basis on the last day of such period to (b) Consolidated EBITDA for such period.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the Uniform Commercial Code as adopted and in effect in the relevant jurisdiction or other similar recording or notice statute, and any lease in the nature thereof).

"Loan" or "Loans" means the Revolving Loans (or a portion of any Revolving Loan bearing interest at the Adjusted Base Rate or the Adjusted Eurodollar Rate and referred to as a Base Rate Loan or a Eurodollar Loan) and/or the Swingline Loans, individually or collectively, as appropriate.

"LOC Commitment" means the commitment of the Issuing Lender(s) to issue Letters of Credit in an aggregate face amount at any time outstanding (together with the amounts of any unreimbursed drawings thereon) of up to the LOC Committed Amount.

"LOC Committed Amount" shall have the meaning assigned to such term in Section 2.2.

"LOC Documents" means, with respect to any Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any application therefor, and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (i) the rights and obligations of the parties concerned or at risk or (ii) any collateral security for such obligations.

"LOC Obligations" means, at any time, the sum of (i) the maximum amount which is, or at any time thereafter may become, available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referred to in such Letters of Credit plus (ii) the aggregate amount of all drawings under Letters of Credit honored by the Issuing Lender(s) but not theretofore reimbursed by the Borrower.

"Material Adverse Effect" means a material adverse effect on (i) the condition (financial or otherwise), operations, business, assets, liabilities or prospects of the Parent and the Consolidated Parties taken as a whole, (ii) the ability of any Credit Party to perform any material obligation under the Credit Documents to which it is a party or (iii) the material rights and remedies of the Agent and the Lenders under the Credit Documents.

"Materials of Environmental Concern" means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic

substances, materials or wastes, defined or regulated as such in or under any Environmental Laws, including, without limitation, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

"Maturity Date" means November 16, 2004.

"Moody's" means Moody's Investors Service, Inc., or any successor or assignee of the business of such company in the business of rating securities.

"Multiemployer Plan" means a Plan which is a "multiemployer plan" as defined in Sections 3(37) or 4001(a)(3) of ERISA.

"Multiple Employer Plan" means a Plan (other than a Multiemployer Plan) which the Parent or any Consolidated Party or any ERISA Affiliate and at least one employer other than the Parent, any Consolidated Party or any ERISA Affiliate are contributing sponsors.

"Net Cash Proceeds" means the aggregate proceeds paid in cash or Cash Equivalents received by the Parent or any Consolidated Party in respect of any Asset Disposition or Involuntary Disposition, net of (a) direct costs (including, without limitation, legal, accounting, consulting and investment banking fees, and sales commissions), (b) taxes paid or payable as a result thereof and (c) the amount of liabilities, if any, which are required to be repaid concurrently and in connection with the consummation of such Asset Disposition or Involuntary Disposition out of the proceeds thereof; it being understood that "Net Cash Proceeds" shall include, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by the Parent or any Consolidated Party in any Asset Disposition or Involuntary Disposition.

"Note" or "Notes" means the Revolving Notes and/or the Swingline Note, individually or collectively, as appropriate.

"Notice of Borrowing" means a written notice of borrowing in substantially the form of Exhibit 2.1(b)(i), as required by Section 2.1(b)(i).

"Notice of Extension/Conversion" means the written notice of extension or conversion in substantially the form of Exhibit 3.2, as required by Section 3.2.

"Operating Lease" means, as applied to any Person, any lease (including, without limitation, leases which may be terminated by the lessee at any time) of any Property (whether real, personal or mixed) which is not a Capital Lease other than any such lease in which that Person is the lessor.

"Other Taxes" shall have the meaning assigned to such term in Section 3.11(b).

"Parent" means the Person identified as such in the heading hereof, together with any permitted successors and assigns.

"Participation Interest" means a purchase by a Lender of a participation in Letters of Credit or LOC Obligations as provided in Section 2.2, in Swingline Loans as provided in Section 2.3(b)(iii) or in any Loans as provided in Section 3.14.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA and any successor thereof.

"Permitted Acquisition" means an Acquisition by the Borrower or any Subsidiary of the Borrower, provided that (i) the Property acquired (or the Property of the Person acquired) in such Acquisition is used or useful in the same or a similar line of business as the Borrower and its Subsidiaries were engaged in on the Closing Date (or any reasonable extensions or expansions thereof), (ii) the Agent shall have received all items in respect of the Capital Stock or Property acquired in such Acquisition required to be delivered by the terms of Section 7.12 and/or Section 7.13, (iii) in the case of an Acquisition of the Capital Stock of another Person, the board of directors (or other comparable governing body) of such other Person shall have duly approved such Acquisition, (iv) the Borrower shall have delivered to the Agent a Pro Forma Compliance Certificate demonstrating that, upon giving effect to such Acquisition on a Pro Forma Basis, no Default or Event of Default would exist as the result of a violation of Section 7.11(a) or Section 7.11(b), (v) the representations and warranties made by the Credit Parties in any Credit Document shall be true and correct in all material respects at and as if made as of the date of such Acquisition (after giving effect thereto) except to the extent such representations and warranties expressly relate to an earlier date, (vi) if such transaction involves the purchase of an interest in a partnership between the Borrower (or a Subsidiary of the Borrower) as a general partner and entities unaffiliated with the Borrower or such Subsidiary as the other partners, such transaction shall be effected by having such equity interest acquired by a holding company directly or indirectly wholly-owned by the Borrower newly formed for the sole purpose of effecting such transaction and (vii) the total Qualifying Consideration for any such Acquisition shall not exceed an amount equal to (A) \$25,000,000 plus (B) 50% of Excess Cash Flow for each fiscal year ended after the Closing Date minus (C) the aggregate amount of Qualifying Consideration paid with respect to all Acquisitions occurring after the Closing Date.

"Permitted Asset Disposition" means (i) any Asset Disposition permitted by Section 8.5 and (ii) any Excluded Asset Disposition.

"Permitted Investments" means Investments which are (i) cash and Cash Equivalents; (ii) accounts receivable created, acquired or made by the Parent or any Consolidated Party in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; (iii) Investments consisting of Capital Stock, obligations, securities or other property received by the Parent or any Consolidated Party in settlement of accounts receivable (created in the ordinary course of business) from bankrupt obligors or in connection with a work-out or reorganization; (iv) Investments existing as of the Closing Date and set forth in Schedule 1.1C; (v) rental deposits made for the benefit of officers, employees or agents; (vi) advances or loans to directors, officers, employees, agents, customers or suppliers that do not exceed \$500,000 in the aggregate at any one time

outstanding; (vii) loans to employees to finance the purchase of newly issued or treasury Capital Stock in the Parent; (viii) Investments in any Credit Party other than the Parent; (ix) Investments in Foreign Subsidiaries in an aggregate amount not to exceed \$10,000,000; (x) to the extent constituting Investments, transactions permitted under Section 8.7; (xi) Permitted Acquisitions; (xii) Investments not constituting cash or Cash Equivalents received as consideration for any Asset Disposition permitted under Section 8.5; and (xiii) other Investments not to exceed \$25,000,000 (less the aggregate amount of Investments of the type set forth in clause (ix) above) in the aggregate at any time outstanding.

"Permitted Liens" means:

(i) Liens in favor of the Agent to secure the Credit Party Obligations;

(ii) Liens (other than Liens created or imposed under ERISA) for taxes, assessments or governmental charges or levies not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the Property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof);

(iii) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and suppliers and other Liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business, provided that such Liens (a) secure only amounts not yet due and payable or, if due and payable, are either unfiled and no other action has been taken to enforce the same or (b) are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the Property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof);

(iv) Liens (other than Liens created or imposed under ERISA) incurred or deposits made by the Parent or any Consolidated Party in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, bids, leases, contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

(v) Liens in connection with attachments or judgments (including judgment or appeal bonds) provided that the judgments secured shall, within 30 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall have been discharged within 30 days after the expiration of any such stay;

(vi) easements, rights-of-way, licenses, covenants, restrictions (including zoning restrictions), minor defects or irregularities in title and other similar charges or encumbrances, in the aggregate, not, in any material respect, impairing the use of the encumbered Property in the operations of the Consolidated Parties;

(vii) Liens on Property of any Person securing purchase money Indebtedness (including Capital Leases and Synthetic Leases) of such Person permitted under Section 8.1(c), provided that any such Lien attaches to such Property concurrently with or within 90 days after the acquisition thereof;

(viii) Liens securing Indebtedness permitted by Section 8.1(g);

(ix) leases or subleases granted to others not interfering in any material respect with the business of the Parent or any Consolidated Party;

(x) any interest of title of a lessor under, and Liens arising from UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Credit Agreement;

(xi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(xii) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 8.6;

(xiii) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions;

(xiv) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;

(xv) Liens of sellers of goods to the Borrower and any of its Subsidiaries arising under Article 2 of the Uniform Commercial Code or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses; and

(xvi) Liens existing as of the Closing Date and set forth on Schedule 1.1D; provided that (a) no such Lien shall at any time be extended to or cover any Property other than the Property subject thereto on the Closing Date and (b) the principal amount of the Indebtedness secured by such Liens shall not be increased.

"Person" means any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust or other enterprise (whether or not incorporated) or any Governmental Authority.

"Plan" means any employee benefit plan (as defined in Section 3(3) of ERISA) which is covered by ERISA and with respect to which the Parent or any Consolidated Party or any ERISA Affiliate is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" within the meaning of Section 3(5) of ERISA.

"Pledge Agreement" means the amended and restated pledge agreement dated as of the Closing Date in the form of Exhibit 1.1A executed in favor of the Agent by each of the Credit Parties, as amended, modified, restated or supplemented from time to time.

"Prime Rate" means the per annum rate of interest established from time to time by Bank of America as its prime rate, which rate may not be the lowest rate of interest charged by Bank of America to its customers.

"Principal Office" means the principal office of Bank of America, presently located at Charlotte, North Carolina.

"Pro Forma Basis" means, for purposes of calculating (utilizing the principles set forth in the second paragraph of Section 1.3), in respect of a proposed transaction, compliance with each of the financial covenants set forth in Section 7.11(a) and Section 7.11(b), that such transaction shall be deemed to have occurred as of the first day of the four fiscal-quarter period ending as of the most recent fiscal quarter end preceding the date of such transaction with respect to which the Agent has received the Required Financial Information (such period in respect of any transaction being referred to in this definition as the "Pro Forma Period" for such transaction). As used herein, "transaction" shall mean (i) any Asset disposition or (ii) any Acquisition as referred to in the definition of "Permitted Acquisition" set forth in this Section 1.1. In connection with any calculation of the Leverage Ratio and the Fixed Charge Coverage Ratio upon giving effect to a transaction on a Pro Forma Basis:

(a) for purposes of any such calculation in respect of any Asset Disposition, (i) income statement items (whether positive or negative) and capital expenditures attributable to the Property disposed of shall be excluded and (ii) any Indebtedness which is retired in connection with such transaction shall be excluded and deemed to have been retired as of the first day of the applicable period; and

(b) for purposes of any such calculation in respect of any Acquisition as referred to in the definition of "Permitted Acquisition" set forth in this Section 1.1, (i) any Indebtedness incurred by any Consolidated Party in connection with such transaction (A) shall be deemed to have been incurred as of the first day of the applicable period and (B) if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination, (ii) income statement items (whether positive or negative) attributable to the Person or Property acquired shall be included beginning as of the first day of the applicable period, provided, however, that income statement items attributable to such Person or Property shall not be included in any calculation of Consolidated Net Income or Consolidated EBITDA unless the applicable income statement for such Person or Property is a Qualifying Financial Statement which shall have been delivered to the Agent, and (iii) pro forma adjustments may be included to the



extent that such adjustments (A) are made in the good faith judgment of the management of the Consolidated Parties and (B) give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Consolidated Parties, (3) verifiable and supportable and (4) realizable within 180 days following the consummation of the related Acquisition (or later if such additional time is acceptable to the Agent).

"Pro Forma Compliance Certificate" means a certificate of an Executive Officer of the Borrower delivered to the Agent in connection with (i) any Asset Disposition or (ii) any Acquisition as referred to in the definition of "Permitted Acquisition" set forth in this Section 1.1, as applicable, containing reasonably detailed calculations, upon giving effect to the applicable transaction on a Pro Forma Basis, of (a) the Leverage Ratio and the Fixed Charge Coverage Ratio as of the most recent fiscal quarter end preceding the date of the applicable transaction with respect to which the Agent shall have received the Required Financial Information and (b) in the case of any Acquisition, Consolidated EBITDA for the four fiscal-quarter period ending as of the most recent fiscal quarter end preceding the date of such transaction with respect to which the Agent has received the Required Financial Information (such calculations of Consolidated EBITDA to include a break-down in reasonable detail of any pro forma adjustments).

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Qualifying Consideration" shall mean, with respect to any Acquisition, all cash consideration paid by the Parent and the Consolidated Parties, other than consideration consisting of (A) Capital Stock of the Parent issued to the seller of the Capital Stock or Property acquired in such Acquisition, (B) the proceeds of any Equity Issuance by the Parent consummated in connection with and for the purpose of financing such Acquisition, (C) the proceeds of Subordinated Indebtedness issued by the Parent pursuant to Section 8.1(f) and (D) the principal amount of any assumed Indebtedness.

"Qualifying Financial Statements" means, in respect of the Person or Property acquired in any Acquisition, a consolidated balance sheet and income statement of such Person or Property as of, and for the four quarter period ending on, the last day of the most recently ended fiscal year of such Person or Property preceding the date of such Acquisition, which financial statements either (i) shall have been audited by independent certified public accountants of recognized national standing reasonably acceptable to the Agent and whose opinion shall be to the effect that such financial statements have been prepared in accordance with generally accepted accounting principles in the United States and shall not be limited as to the scope of the audit or qualified as to the status of the Person or Property acquired as a going concern or any other material qualifications or exceptions or (ii) shall be reasonably acceptable to the Agent.

"Real Properties" shall have the meaning assigned to such term in Section 6.16.

"Register" shall have the meaning assigned to such term in Section 11.3(c).

"Regulation D, T, U, or X" means Regulation D, T, U or X, respectively, of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"Related Parties" means, with respect to any Sponsor, a collective reference to (i) each Person which is a controlling stockholder or partner of such Sponsor, (ii) each Person at least 80% of whose Voting Stock is owned by such Sponsor, directly or indirectly, (iii) each trust, corporation, partnership or other entity, the controlling beneficiaries, stockholders, partners or owners of which, directly or indirectly, consist of such Sponsor and/or such other Persons referred to in the preceding clauses (i) or (ii) and/or in the succeeding clause (v), (iv) each partner or stockholder of such Sponsor as of the Closing Date who acquires any assets or Voting Stock of the Parent pursuant to a general distribution by such Sponsor to each of its partners or stockholders and (v) each officer or director of such Sponsor.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the notice requirement has been waived by regulation.

"Required Financial Information" means (i) the financial statements of the Consolidated Parties required to be delivered pursuant to Section 7.1(a) or (b) for the most recently completed fiscal period or quarter end, and (ii) the certificate of an Executive Officer of the Borrower required by Section 7.1(c) to be delivered with the financial statements described in clause (i) above.

"Requirement of Law" means, as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or to which any of its material property is subject.

"Requisite Lenders" means, at any time, two or more Lenders (other than Defaulting Lenders holding in the aggregate at least a majority of (i) the Revolving Commitments (and Participation Interests therein) or (ii) if the Revolving Commitments have been terminated, the outstanding Revolving Loans, LOC Obligations and Participation Interests (including the Participation Interests of the applicable Issuing Lender in any Letters of Credit issued by such Issuing Lender and the Participation Interests of the Swingline Lender in any Swingline Loans).

"Restricted Payment" by the Parent or any Consolidated Party means (i) any dividend or other payment or distribution, direct or indirect, on account of any shares of any class of Capital Stock of such Person, now or hereafter outstanding (including without limitation any payment in connection with any dissolution, merger, consolidation or disposition involving such Person), or to the holders, in their capacity as such, of any shares of any class of Capital Stock of such Person, now or hereafter outstanding (other than dividends or distributions payable in Capital Stock of the applicable Person and other than

dividends or distributions payable (directly or indirectly through Subsidiaries) to any Credit Party other than the Parent), (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of such Person, now or hereafter outstanding, (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of such Person, now or hereafter outstanding (excluding the issuance of Capital Stock by such Person), (iv) any payment or prepayment of principal of, premium, if any, or interest on, including any redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Subordinated Indebtedness and (v) in the case of any Consolidated Party, any loan or advance to the Parent.

"Revolving Commitment" means, with respect to each Lender, the commitment of such Lender in an aggregate principal amount at any time outstanding of up to such Lender's Commitment Percentage of the Revolving Committed Amount, (i) to make Revolving Loans in accordance with the provisions of Section 2.1(a), (ii) to purchase Participation Interests in Letters of Credit in accordance with the provisions of Section 2.2(c) and (iii) to purchase Participation Interests in the Swingline Loans in accordance with the provisions of Section 2.3(b)(iii).

"Revolving Committed Amount" shall have the meaning assigned to such term in Section 2.1(a).

"Revolving Loans" shall have the meaning assigned to such term in Section 2.1(a).

"Revolving Note" or "Revolving Notes" means the promissory notes of the Borrower in favor of each Lender provided pursuant to Section 2.1(e) and evidencing the Revolving Loans of such Lender, individually or collectively, as appropriate, as such promissory notes may be amended, modified, restated, supplemented, extended, renewed or replaced from time to time.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw Hill Companies, Inc., or any successor or assignee of the business of such division in the business of rating securities.

"Sale and Leaseback Transaction" means, with respect to the Parent or any Consolidated Party, any arrangement pursuant to which such Person, directly or indirectly, becomes liable as lessee, guarantor or other surety with respect to any lease, whether an Operating Lease or a Capital Lease, of any Property (a) which such Person has sold or transferred (or is to sell or transfer) to a Person which is not a Credit Party or (b) which such Person intends to use for substantially the same purpose as any other Property which has been sold or transferred (or is to be sold or transferred) by such Person to another Person which is not a Credit Party in connection with such lease.

"Securities Act" means the Securities Act of 1933, as amended, and all regulations issued pursuant thereto.

"Securities Exchange Act" means the Securities Exchange Act of 1934, as amended, and all regulations issued pursuant thereto.

"Security Agreement" means the amended and restated security agreement dated as of the Closing Date in the form of Exhibit 1.1B to be executed in favor of the Agent by each of the Credit Parties, as amended, modified, restated or supplemented from time to time.

"Single Employer Plan" means any Plan which is covered by Title IV of ERISA, but which is not a Multiemployer Plan or a Multiple Employer Plan.

"Solvent" or "Solvency" means, with respect to any Person as of a particular date, that on such date (i) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (ii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature in their ordinary course, (iii) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's Property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (iv) the fair value of the Property of such Person on a going concern basis is greater than the fair value of the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (v) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Sponsor Entity" means any Person that is (i) a Sponsor or (ii) a Related Party.

"Sponsors" means a collective reference to HWH Capital Partners, L.P., HWP Capital Partners II, L.P., HWH Nightingale Partners, L.P., HWP - II Nightingale Partners, L.P. and Haas Wheat & Partners, L.P., together with their successors and permitted assigns, and "Sponsor" means any one of them.

"Standby Letter of Credit Fee" shall have the meaning assigned to such term in Section 3.5(c)(i).

"Subordinated Indebtedness" means Indebtedness of the Parent, the Borrower or any Subsidiary of the Borrower which (i) is subordinated to the Credit Party Obligations in a manner reasonably satisfactory to the Agent and (ii) has a maturity date which is at least six months after the Maturity Date.

"Subsidiary" means, as to any Person at any time, (a) any corporation more than 50% of whose Capital Stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at such time, any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at such time owned by such Person directly or indirectly through Subsidiaries, and (b) any partnership, association, joint venture or other entity of which such Person directly or indirectly through Subsidiaries owns at such time more than 50% of the Capital Stock.

"Subsidiary Guarantor" means each of the Persons identified as a "Subsidiary Guarantor" on the signature pages hereto and each Person which may hereafter execute a Joinder Agreement pursuant to Section 7.12, together with their successors and permitted assigns, and "Subsidiary Guarantor" means any one of them.

"Swingline Commitment" means the commitment of the Swingline Lender to make Swingline Loans in an aggregate principal amount at any time outstanding of up to the Swingline Committed Amount.

"Swingline Committed Amount" shall have the meaning assigned to such term in Section 2.3(a).

"Swingline Lender" means Bank of America.

"Swingline Loan" shall have the meaning assigned to such term in Section 2.3(a).

"Swingline Note" means the promissory note of the Borrower in favor of the Swingline Lender evidencing the Swingline Loans provided pursuant to Section 2.3(d), as such promissory notes may be amended, modified, restated, supplemented, extended, renewed or replaced from time to time.

"Synthetic Lease" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease under GAAP.

"Taxes" shall have the meaning assigned to such term in Section 3.11(a).

"Trade Letter of Credit Fee" shall have the meaning assigned to such term in Section 3.5(c)(ii).

"Unused Fee" shall have the meaning assigned to such term in Section 3.5(b).

"Unused Fee Calculation Period" shall have the meaning assigned to such term in Section 3.5(b).

"Unused Revolving Committed Amount" means, for any period, the amount by which (a) the then applicable Revolving Committed Amount exceeds (b) the daily average sum for such period of (i) the outstanding aggregate principal amount of all Revolving Loans (but not including any Swingline Loans) plus (ii) the outstanding aggregate principal amount of all LOC Obligations.

"Used Revolving Committed Amount" means, as of any date, the sum of (i) the outstanding aggregate principal amount of all Revolving Loans plus (ii) the outstanding aggregate principal amount of all LOC Obligations.

"Voting Stock" means, with respect to any Person, Capital Stock issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"Wholly Owned Subsidiary" means any Person 100% of whose Voting Stock is at the time owned by the Borrower directly or indirectly through other Persons 100% of whose Voting Stock is at the time owned, directly or indirectly, by the Borrower.

## 1.2 COMPUTATION OF TIME PERIODS.

For purposes of computation of periods of time hereunder, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

## 1.3 ACCOUNTING TERMS.

Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Agent hereunder shall be prepared, in accordance with GAAP applied on a consistent basis; provided, however, that calculations of the implied principal component of all obligations under any Synthetic Lease or the implied interest component of any rent paid under any Synthetic Lease shall be made by the Borrower in accordance with accepted financial practice and consistent with the terms of such Synthetic Lease. All calculations made for the purposes of determining compliance with this Credit Agreement shall (except as otherwise expressly provided herein) be made by application of GAAP applied on a basis consistent with the most recent annual or quarterly financial statements of the Consolidated Parties delivered pursuant to Section 7.1 (or, prior to the delivery of the first financial statements pursuant to Section 7.1, consistent with the financial statements as at December 31, 2000); provided, however, if (a) the Credit Parties shall object to determining such compliance on such basis at the time of delivery of such financial statements due to any change in GAAP or the rules promulgated with respect thereto or (b) the Agent or the Requisite Lenders shall so object in writing within 60 days after delivery of such financial statements, then such calculations shall be made on a basis consistent with the most recent financial statements delivered by the Credit Parties to the Lenders as to which no such objection shall have been made.

Notwithstanding the above, the parties hereto acknowledge and agree that, for purposes of all calculations made under the financial covenants set forth in Section 7.11 (including without limitation for purposes of the definition of "Pro Forma Basis" set forth in Section 1.1), (a) following consummation of any Asset Disposition (i) income statement items (whether positive or negative) and capital expenditures attributable to the Property disposed of shall be excluded to the extent relating to any period occurring prior to the date of the transaction for which such calculation is determined and (ii) Indebtedness which is retired shall be excluded and deemed to have been retired as of the first day of the applicable period and (b) following consummation of any Acquisition (i) income statement items (whether positive or negative) attributable to the Person or Property acquired shall, to the extent not otherwise included in such income statement items for the Consolidated Parties in accordance with GAAP or in accordance with any defined terms set forth in Section 1.1, be included to the extent relating to any period applicable in such calculations, provided, however, that income statement items attributable to such Person or Property shall not be included in any calculation of Consolidated Net Income or Consolidated EBITDA unless the applicable income statement for such Person or Property is a Qualifying Financial Statement which shall have been delivered to the Agent, (ii) Indebtedness of the Person or Property acquired shall be deemed to have been incurred as of the first day of the applicable period and (iii) pro forma adjustments may be included to the extent that such adjustments (A) are made in the good faith judgment of the management of the Consolidated Parties and (B) give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Consolidated Parties, (3) verifiable and supportable and (4) realizable within 180 days following the consummation of the related Acquisition (or later if such additional time is acceptable to the Agent).

## SECTION 2

### CREDIT FACILITY

#### 2.1 REVOLVING LOANS.

(a) Revolving Commitment. Subject to the terms and conditions hereof and in reliance upon the representations and warranties set forth herein, each Lender severally agrees to make available to the Borrower such Lender's Commitment Percentage of revolving credit loans requested by the Borrower in Dollars ("Revolving Loans") from time to time from the Closing Date until the Maturity Date, or such earlier date as the Revolving Commitments shall have been terminated as provided herein; provided, however, that the sum of the aggregate outstanding principal amount of Revolving Loans shall not exceed FIFTY MILLION DOLLARS (\$50,000,000) (as such aggregate maximum amount may be reduced from time to time as provided in Section 3.4, the "Revolving Committed Amount"); provided, further, (A) with regard to each Lender individually, such Lender's outstanding Revolving Loans shall not exceed such Lender's Commitment Percentage of the Revolving Committed Amount, and (B) the sum of the aggregate outstanding principal amount of Revolving Loans plus LOC Obligations plus Swingline Loans shall not exceed the Revolving Committed Amount. Revolving Loans may consist of Base Rate Loans or Eurodollar Loans, or a combination thereof, as the Borrower may request; provided,

however, that no more than 6 Eurodollar Loans which are Revolving Loans shall be outstanding hereunder at any time (it being understood that, for purposes hereof, Eurodollar Loans with different Interest Periods shall be considered as separate Eurodollar Loans, even if they begin on the same date, although borrowings, extensions and conversions may, in accordance with the provisions hereof, be combined at the end of existing Interest Periods to constitute a new Eurodollar Loan with a single Interest Period). Revolving Loans hereunder may be repaid and reborrowed in accordance with the provisions hereof.

(b) Revolving Loan Borrowings.

(i) Notice of Borrowing.

(A) The Borrower shall submit an appropriate Notice of Borrowing to the Agent with respect to the initial borrowing of Revolving Loans on the Closing Date no later than 12:00 Noon (Charlotte, North Carolina time) on the Closing Date. Such Notice of Borrowing shall be irrevocable and shall specify the aggregate principal amount of the Revolving Loan to be borrowed. The full amount of the Revolving Loan disbursed on the Closing Date shall be a Base Rate Loan.

(B) With respect to each borrowing of Revolving Loans disbursed after the Closing Date, the Borrower shall request such Revolving Loan borrowing by written notice (or telephonic notice promptly confirmed in writing) to the Agent not later than 12:30 P.M. (Charlotte, North Carolina time) on the date of the requested borrowing in the case of Base Rate Loans, and on the third Business Day prior to the date of the requested borrowing in the case of Eurodollar Loans. Each such request for borrowing shall be irrevocable and shall specify (A) that a Revolving Loan is requested, (B) the date of the requested borrowing (which shall be a Business Day), (C) the aggregate principal amount to be borrowed, and (D) whether the borrowing shall be comprised of Base Rate Loans, Eurodollar Loans or a combination thereof, and if Eurodollar Loans are requested, the Interest Period(s) therefor. If the Borrower shall fail to specify in any such Notice of Borrowing (I) an applicable Interest Period in the case of a Eurodollar Loan, then such notice shall be deemed to be a request for an Interest Period of one month, or (II) the type of Revolving Loan requested, then such notice shall be deemed to be a request for a Base Rate Loan hereunder. The Agent shall give notice to each affected Lender promptly upon receipt of each Notice of Borrowing pursuant to this Section 2.1(b)(i), the contents thereof and each such Lender's share of any borrowing to be made pursuant thereto.

(ii) Minimum Amounts. Each Eurodollar Loan or Base Rate Loan that is a Revolving Loan shall be in a minimum aggregate principal amount of \$2,000,000 and integral multiples of \$250,000 in excess thereof (or the remaining amount of the Revolving Committed Amount, if less).



(iii) Advances. Each Lender will make its Commitment Percentage of each Revolving Loan borrowing available to the Agent for the account of the Borrower as specified in Section 3.15(a), or in such other manner as the Agent may specify in writing, by 2:00 P.M. (Charlotte, North Carolina time) on the date specified in the applicable Notice of Borrowing in Dollars and in funds immediately available to the Agent. Such borrowing will then be made available to the Borrower by the Agent by crediting the account of the Borrower on the books of such office with the aggregate of the amounts made available to the Agent by the Lenders and in like funds as received by the Agent; provided, however, that the Agent shall, if requested by the Borrower, make the initial advance of Revolving Loans on the Closing Date available to Borrower as provided above prior to the Agent's receipt of corresponding amounts from the Lenders.

(c) Repayment. The principal amount of all Revolving Loans shall be due and payable in full on the Maturity Date, unless accelerated sooner pursuant to Section 9.2.

(d) Interest. Subject to the provisions of Section 3.1,

(i) Base Rate Loans. During such periods as Revolving Loans shall be comprised in whole or in part of Base Rate Loans, such Base Rate Loans shall bear interest at a per annum rate equal to the Adjusted Base Rate.

(ii) Eurodollar Loans. During such periods as Revolving Loans shall be comprised in whole or in part of Eurodollar Loans, such Eurodollar Loans shall bear interest at a per annum rate equal to the Adjusted Eurodollar Rate.

Interest on Revolving Loans shall be payable in arrears on each applicable Interest Payment Date (or at such other times as may be specified herein).

(e) Revolving Notes. The Revolving Loans made by each Lender shall be evidenced by a duly executed promissory note of the Borrower to such Lender in an original principal amount equal to such Lender's Commitment Percentage of the Revolving Committed Amount and in substantially the form of Exhibit 2.1(e).

## 2.2 LETTER OF CREDIT SUBFACILITY.

(a) Issuance. Subject to the terms and conditions hereof and in reliance upon the representations and warranties set forth herein, the applicable Issuing Lender agrees to issue, and each Lender severally agrees to participate in the issuance by each Issuing Lender of, standby and trade Letters of Credit in Dollars from time to time from the Closing Date until the date thirty (30) days prior to the Maturity Date as the Borrower may request, in a form acceptable to the applicable Issuing Lender; provided, however, that (i) the LOC Obligations outstanding shall not at any time exceed TEN MILLION DOLLARS (\$10,000,000) (the "LOC Committed Amount") and (ii) the sum of the aggregate outstanding principal amount of Revolving Loans plus LOC Obligations plus Swingline Loans shall not at any time exceed the Revolving Committed Amount. No Letter of Credit

shall (x) have an original expiry date more than one year from the date of issuance (provided that any such Letter of Credit may contain customary "evergreen" provisions pursuant to which the expiry date is automatically extended by a specific time period unless the applicable Issuing Lender gives notice to the beneficiary of such Letter of Credit at least a specified time period prior to the expiry date then in effect) or (y) as originally issued or as extended, have an expiry date extending beyond the date thirty (30) days prior to the Maturity Date. Each Letter of Credit shall comply with the related LOC Documents. The issuance and expiry dates of each Letter of Credit shall be a Business Day.

(b) Notice and Reports. The request for the issuance of a Letter of Credit shall be submitted by the Borrower to the applicable Issuing Lender at least three (3) Business Days prior to the requested date of issuance. At least quarterly (and more frequently upon request), each Issuing Lender shall provide to the Agent a detailed report specifying the Letters of Credit issued by such Issuing Lender which are then issued and outstanding and any activity with respect thereto which may have occurred since the date of the prior report, and including therein, among other things, the beneficiary, the face amount and the expiry date, as well as any payment or expirations which may have occurred. The Agent shall disseminate promptly to each of the Lenders the information provided by the Issuing Lender(s) pursuant to this subsection (b).

(c) Participation. Each Lender, upon issuance of a Letter of Credit, shall be deemed to have purchased without recourse a Participation Interest from the applicable Issuing Lender in such Letter of Credit and the obligations arising thereunder and any collateral relating thereto, in each case in an amount equal to its pro rata share of the obligations under such Letter of Credit (based on the respective Commitment Percentages of the Lenders) and shall absolutely, unconditionally and irrevocably assume and be obligated to pay to the applicable Issuing Lender and discharge when due, its pro rata share of the obligations arising under such Letter of Credit. Without limiting the scope and nature of each Lender's Participation Interest in any Letter of Credit, to the extent that the applicable Issuing Lender has not been reimbursed as required hereunder or under any such Letter of Credit, each such Lender shall pay to the Agent for the account of the applicable Issuing Lender its pro rata share of such unreimbursed drawing in same day funds on the day of notification by the Agent of an unreimbursed drawing pursuant to the provisions of subsection (d) below. The obligation of each Lender to so reimburse the applicable Issuing Lender shall be absolute and unconditional and shall not be affected by the occurrence of a Default, an Event of Default or any other occurrence or event. Any such reimbursement shall not relieve or otherwise impair the obligation of the Borrower to reimburse the applicable Issuing Lender under any Letter of Credit, together with interest as hereinafter provided.

(d) Reimbursement. In the event of any drawing under any Letter of Credit, the applicable Issuing Lender will promptly notify the Borrower and the Agent. Unless the Borrower shall promptly notify the Agent and the applicable Issuing Lender that the Borrower intends to otherwise reimburse the applicable Issuing Lender for such drawing, the Borrower shall be deemed to have requested that the Lenders make a Revolving Loan in the amount of such drawing as provided in subsection (e) below, the proceeds of which will

be used to satisfy the related reimbursement obligations. The Borrower promises to reimburse the applicable Issuing Lender (such reimbursement to made to the Agent for the account of the applicable Issuing Lender) for each drawing under any Letter of Credit (either with the proceeds of a Revolving Loan obtained hereunder or otherwise) in same day funds (i) if it shall receive notice of such drawing from the applicable Issuing Lender prior to 1:00 P.M. (Charlotte, North Carolina time) on any Business Day, on such Business Day and (ii) if it shall receive such notice after 1:00 P.M. (Charlotte, North Carolina time) on any day, on the next Business Day after it shall receive such notice. The unreimbursed amount of any drawing shall bear interest from the date of such drawing through the date upon which reimbursement thereof is required as provided above at the Federal Funds Rate. If the Borrower shall fail to reimburse the applicable Issuing Lender as provided hereinabove, the unreimbursed amount of such drawing shall thereafter bear interest at a per annum rate equal to the Adjusted Base Rate plus 2%. The Borrower's reimbursement obligations hereunder shall be absolute and unconditional under all circumstances irrespective of any rights of setoff, counterclaim or defense to payment the Borrower may claim or have against the applicable Issuing Lender, the Agent, the Lenders, the beneficiary of the Letter of Credit drawn upon or any other Person, including without limitation any defense based on any failure of the Borrower or any other Credit Party to receive consideration or the legality, validity, regularity or unenforceability of the Letter of Credit. The applicable Issuing Lender will promptly notify the Agent, who shall, in turn, promptly notify the other Lenders of the amount of any unreimbursed drawing and each Lender shall promptly pay to the Agent for the account of the applicable Issuing Lender in Dollars and in immediately available funds, the amount of such Lender's pro rata share of such unreimbursed drawing. Such payment shall be made on the day such notice is received by such Lender from the Agent if such notice is received at or before 3:00 P.M. (Charlotte, North Carolina time), and otherwise such payment shall be made at or before 12:00 Noon (Charlotte, North Carolina time) on the Business Day next succeeding the day such notice is received. If such Lender does not pay such amount to the Agent for the account of the applicable Issuing Lender in full upon such request, such Lender shall, on demand, pay to the Agent for the account of the applicable Issuing Lender interest on the unpaid amount during the period from the date of such drawing until such Lender pays such amount to the Agent for the account of the applicable Issuing Lender in full at a rate per annum equal to, if paid within two (2) Business Days of the date that such Lender is required to make payments of such amount pursuant to the preceding sentence, the Federal Funds Rate and thereafter at a rate equal to the Base Rate. Each Lender's obligation to make such payment to the applicable Issuing Lender, and the right of the applicable Issuing Lender to receive the same, shall be absolute and unconditional, shall not be affected by any circumstance whatsoever and without regard to the termination of this Credit Agreement or the Commitments hereunder, the existence of a Default or Event of Default or the acceleration of the obligations of the Borrower hereunder and shall be made without any offset, abatement, withholding or reduction whatsoever. Simultaneously with the making of each such payment by a Lender to the Agent for the account of the applicable Issuing Lender, such Lender shall, automatically and without any further action on the part of the Agent, the applicable Issuing Lender or such Lender, acquire a Participation Interest in an amount equal to such payment (excluding the portion of such payment constituting interest owing to the applicable Issuing Lender) in the related unreimbursed drawing portion of the LOC

Obligation and in the interest thereon, and shall have a claim against the Borrower with respect thereto.

(e) Repayment with Revolving Loans. On any day on which the Borrower shall have requested, or been deemed to have requested, a Revolving Loan advance to reimburse a drawing under a Letter of Credit, the Agent shall give notice to the Lenders that a Revolving Loan has been requested or deemed requested by the Borrower to be made in connection with a drawing under a Letter of Credit, in which case a Revolving Loan advance comprised of Base Rate Loans shall be immediately made to the Borrower by all Lenders (notwithstanding any termination of the Commitments pursuant to Section 9.2) pro rata based on the respective Commitment Percentages of the Lenders (determined before giving effect to any termination of the Commitments pursuant to Section 9.2) and the proceeds thereof shall be paid directly to the Agent for the account of the applicable Issuing Lender for application to the respective LOC Obligations. Each such Lender hereby irrevocably agrees to make its pro rata share of each such Revolving Loan immediately upon any such request or deemed request in the amount, in the manner and on the date specified in the preceding sentence notwithstanding (i) the amount of such borrowing may not comply with the minimum amount for advances of Revolving Loans otherwise required hereunder, (ii) whether any conditions specified in Section 5.2 are then satisfied, (iii) whether a Default or an Event of Default then exists, (iv) failure of any such request or deemed request for Revolving Loan to be made by the time otherwise required hereunder, (v) whether the date of such borrowing is a date on which Revolving Loans are otherwise permitted to be made hereunder or (vi) any termination of the Commitments immediately prior to or contemporaneously with such borrowing. In the event that any Revolving Loan cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to the Borrower or any other Credit Party), then each such Lender hereby agrees that it shall forthwith purchase (as of the date such borrowing would otherwise have occurred, but adjusted for any payments received from the Borrower on or after such date and prior to such purchase) from the applicable Issuing Lender such Participation Interests in the outstanding LOC Obligations as shall be necessary to cause each such Lender to share in such LOC Obligations ratably (based upon the respective Commitment Percentages of the Lenders (determined before giving effect to any termination of the Commitments pursuant to Section 9.2)), provided that at the time any purchase of Participation Interests pursuant to this sentence is actually made, the purchasing Lender shall be required to pay to the Agent for the account of the applicable Issuing Lender, to the extent not paid to the applicable Issuing Lender by the Borrower in accordance with the terms of subsection (d) above, interest on the principal amount of Participation Interests purchased for each day from and including the day upon which such borrowing would otherwise have occurred to but excluding the date of payment for such Participation Interests, at the rate equal to, if paid within two (2) Business Days of the date of the Revolving Loan advance, the Federal Funds Rate, and thereafter at a rate equal to the Base Rate.

(f) Designation of Consolidated Parties as Account Parties. Notwithstanding anything to the contrary set forth in this Credit Agreement, including without limitation Section 2.2(a), a Letter of Credit issued hereunder may be issued for the account of a

Consolidated Party other than the Borrower, provided that notwithstanding such statement, the Borrower shall be the actual account party for all purposes of this Credit Agreement for such Letter of Credit and such statement shall not affect the Borrower's reimbursement obligations hereunder with respect to such Letter of Credit.

(g) Renewal, Extension. The renewal or extension of any Letter of Credit shall, for purposes hereof, be treated in all respects the same as the issuance of a new Letter of Credit hereunder.

(h) Uniform Customs and Practices. The applicable Issuing Lender may have the Letters of Credit be subject to The Uniform Customs and Practice for Documentary Credits, as published as of the date of issue by the International Chamber of Commerce (the "UCP"), in which case the UCP may be incorporated therein and deemed in all respects to be a part thereof. Standby Letters of Credit may also be subject to IFP98 (International Standby Practice).

(i) Indemnification; Nature of Issuing Lender's Duties.

(i) In addition to its other obligations under this Section 2.2, the Borrower hereby agrees to pay, and protect, indemnify and save each Lender harmless from and against, any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that such Lender may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit or (B) the failure of such Lender to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority (all such acts or omissions, herein called "Government Acts").

(ii) As between the Borrower and the Lenders (including the applicable Issuing Lender), the Borrower shall assume all risks of the acts, omissions or misuse of any Letter of Credit by the beneficiary thereof. No Lender (including the applicable Issuing Lender) shall be responsible: (A) for the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (B) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (D) for any loss or delay in the transmission or otherwise of any document required in order to make a drawing under a Letter of Credit or of the proceeds thereof; and (E) for any consequences arising from causes beyond the control of such Lender, including, without limitation, any Government Acts. None of the above shall affect, impair, or prevent the vesting of the applicable Issuing Lender's rights or powers hereunder.

(iii) Nothing in this subsection (i) is intended to limit the reimbursement obligations of the Borrower contained in subsection (d) above. The obligations of the Borrower under this subsection (i) shall survive the termination of this Credit Agreement. No act or omission of any current or prior beneficiary of a Letter of Credit shall in any way affect or impair the rights of the Lenders (including the applicable Issuing Lender) to enforce any right, power or benefit under this Credit Agreement.

(iv) Notwithstanding anything to the contrary contained in this subsection (i), the Borrower shall have no obligation to indemnify any Lender (including the applicable Issuing Lender) in respect of any liability incurred by such Lender (A) arising out of the gross negligence or willful misconduct of such Lender, or (B) caused by such Lender's failure to pay under any Letter of Credit after presentation to it of a request strictly complying with the terms and conditions of such Letter of Credit, unless such payment is prohibited by any law, regulation, court order or decree.

(j) Responsibility of Issuing Lender. It is expressly understood and agreed that the obligations of the applicable Issuing Lender hereunder to the Lenders are only those expressly set forth in this Credit Agreement and that the applicable Issuing Lender shall be entitled to assume that the conditions precedent set forth in Section 5.2 have been satisfied unless it shall have acquired actual knowledge that any such condition precedent has not been satisfied; provided, however, that nothing set forth in this Section 2.2 shall be deemed to prejudice the right of any Lender to recover from the applicable Issuing Lender any amounts made available by such Lender to the applicable Issuing Lender pursuant to this Section 2.2 in the event that it is determined by a court of competent jurisdiction that the payment with respect to a Letter of Credit constituted gross negligence or willful misconduct on the part of the applicable Issuing Lender.

(k) Conflict with LOC Documents. In the event of any conflict between this Credit Agreement and any LOC Document (including any letter of credit application), this Credit Agreement shall control.

### 2.3 SWINGLINE LOAN SUBFACILITY OF THE REVOLVER.

(a) Swingline Commitment. Subject to the terms and conditions hereof and in reliance upon the representations and warranties set forth herein, the Swingline Lender, in its individual capacity, agrees to make certain revolving credit loans requested by the Borrower in Dollars to the Borrower (each a "Swingline Loan" and, collectively, the "Swingline Loans") from time to time from the Closing Date until the Maturity Date for the purposes hereinafter set forth; provided, however, (i) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed TEN MILLION DOLLARS (\$10,000,000) (the "Swingline Committed Amount"), and (ii) the sum of the aggregate outstanding principal amount of Revolving Loans plus LOC Obligations plus Swingline

Loans shall not exceed the Revolving Committed Amount. Swingline Loans hereunder may be repaid and reborrowed in accordance with the provisions hereof.

(b) Swingline Loan Advances.

(i) Notices; Disbursement. Whenever the Borrower desires a Swingline Loan advance hereunder it shall give written notice (or telephonic notice promptly confirmed in writing) to the Swingline Lender not later than 3:00 P.M. (Charlotte, North Carolina time) on the Business Day of the requested Swingline Loan advance. Each such notice shall be irrevocable and shall specify (A) that a Swingline Loan advance is requested, (B) the date of the requested Swingline Loan advance (which shall be a Business Day) and (C) the principal amount of the Swingline Loan advance requested. Each Swingline Loan shall be made as a Base Rate Loan and shall have such maturity date as the Swingline Lender and the Borrower shall agree upon receipt by the Swingline Lender of any such notice from the Borrower. The Swingline Lender shall initiate the transfer of funds representing the Swingline Loan advance to the Borrower by 3:00 P.M. (Charlotte, North Carolina time) on the Business Day of the requested borrowing.

(ii) Minimum Amounts. Each Swingline Loan advance shall be in a minimum principal amount of \$100,000 and integral multiples of \$100,000 (or the remaining amount of the Swingline Committed Amount, if less).

(iii) Repayment of Swingline Loans. The principal amount of all Swingline Loans shall be due and payable on the earlier of (A) the maturity date agreed to by the Swingline Lender and the Borrower with respect to such Loan (which maturity date shall not be a date more than seven (7) Business Days from the date of advance thereof) or (B) the Maturity Date. The Swingline Lender may, at any time, in its sole discretion, by written notice to the Borrower and the Lenders, demand repayment of its Swingline Loans by way of a Revolving Loan advance, in which case the Borrower shall be deemed to have requested a Revolving Loan advance comprised solely of Base Rate Loans in the amount of such Swingline Loans; provided, however, that any such demand shall be deemed to have been given one Business Day prior to the Maturity Date and on the date of the occurrence of any Event of Default described in Section 9.1 and upon acceleration of the indebtedness hereunder and the exercise of remedies in accordance with the provisions of Section 9.2. Each Lender hereby irrevocably agrees to make its pro rata share of each such Revolving Loan in the amount, in the manner and on the date specified in the preceding sentence notwithstanding (I) the amount of such borrowing may not comply with the minimum amount for advances of Revolving Loans otherwise required hereunder, (II) whether any conditions specified in Section 5.2 are then satisfied, (III) whether a Default or an Event of Default then exists, (IV) failure of any such request or deemed request for Revolving Loan to be made by the time otherwise required hereunder, (V) whether the date of such borrowing is a date on which Revolving Loans are otherwise permitted to be made hereunder or (VI) any termination of the Commitments relating thereto immediately

prior to or contemporaneously with such borrowing. In the event that any Revolving Loan cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to the Borrower or any other Credit Party), then each Lender hereby agrees that it shall forthwith purchase (as of the date such borrowing would otherwise have occurred, but adjusted for any payments received from the Borrower on or after such date and prior to such purchase) from the Swingline Lender such Participation Interests in the outstanding Swingline Loans as shall be necessary to cause each such Lender to share in such Swingline Loans ratably based upon its Commitment Percentage of the Revolving Committed Amount (determined before giving effect to any termination of the Commitments pursuant to Section 3.4), provided that (A) all interest payable on the Swingline Loans shall be for the account of the Swingline Lender until the date as of which the respective Participation Interest is purchased and (B) at the time any purchase of Participation Interests pursuant to this sentence is actually made, the purchasing Lender shall be required to pay to the Swingline Lender, to the extent not paid to the Swingline Lender by the Borrower in accordance with the terms of subsection (c)(ii) below, interest on the principal amount of Participation Interests purchased for each day from and including the day upon which such borrowing would otherwise have occurred to but excluding the date of payment for such Participation Interests, at the rate equal to the Federal Funds Rate.

(c) Interest on Swingline Loans.

(i) Rate of Interest . Subject to the provisions of Section 3.1, each Swingline Loan shall bear interest at a per annum rate equal to the Base Rate.

(ii) Payment of Interest. Interest on Swingline Loans shall be payable in arrears on each applicable Interest Payment Date (or at such other times as may be specified herein), unless accelerated sooner pursuant to Section 9.2.

(d) Swingline Note. The Swingline Loans shall be evidenced by a duly executed promissory note of the Borrower to the Swingline Lender in an original principal amount equal to the Swingline Committed Amount substantially in the form of Exhibit 2.3(d).

### SECTION 3

#### OTHER PROVISIONS RELATING TO CREDIT FACILITY

##### 3.1 DEFAULT RATE.

Upon the occurrence, and during the continuance, of a default in the payment of any amount hereunder, under the Notes or under any of the other Credit Documents, such overdue amount shall bear interest, payable on demand, at a per annum rate 2% greater than the rate which would



otherwise be applicable (or if no rate is applicable, whether in respect of interest, fees or other amounts, then the Adjusted Base Rate plus 2%).

### 3.2 EXTENSION AND CONVERSION.

The Borrower shall have the option, on any Business Day, to extend existing Loans into a subsequent permissible Interest Period or to convert Loans into Loans of another interest rate type; provided, however, that (i) except as provided in Section 3.8, Eurodollar Loans may be converted into Base Rate Loans or extended as Eurodollar Loans for new Interest Periods only on the last day of the Interest Period applicable thereto, (ii) without the consent of the Requisite Lenders, Eurodollar Loans may be extended, and Base Rate Loans may be converted into Eurodollar Loans, only if the conditions precedent set forth in Section 5.2 are satisfied on the date of extension or conversion, (iii) Loans extended as, or converted into, Eurodollar Loans shall be subject to the terms of the definition of "Interest Period" set forth in Section 1.1 and shall be in such minimum amounts as provided in, with respect to Revolving Loans, Section 2.1(b)(ii), (iv) no more than 6 Eurodollar Loans which are Revolving Loans shall be outstanding hereunder at any time (it being understood that, for purposes hereof, Eurodollar Loans with different Interest Periods shall be considered as separate Eurodollar Loans, even if they begin on the same date, although borrowings, extensions and conversions may, in accordance with the provisions hereof, be combined at the end of existing Interest Periods to constitute a new Eurodollar Loan with a single Interest Period), (v) any request for extension or conversion of a Eurodollar Loan which shall fail to specify an Interest Period shall be deemed to be a request for an Interest Period of one month and (vi) Swingline Loans may not be extended or converted pursuant to this Section 3.2. Each such extension or conversion shall be effected by the Borrower by giving a Notice of Extension/Conversion (or telephonic notice promptly confirmed in writing) to the office of the Agent specified in Schedule 2.1(a), or at such other office as the Agent may designate in writing, prior to 12:00 Noon (Charlotte, North Carolina time) on the Business Day of, in the case of the conversion of a Eurodollar Loan into a Base Rate Loan, and on the third Business Day prior to, in the case of the extension of a Eurodollar Loan as, or conversion of a Base Rate Loan into, a Eurodollar Loan, the date of the proposed extension or conversion, specifying the date of the proposed extension or conversion, the Loans to be so extended or converted, the types of Loans into which such Loans are to be converted and, if appropriate, the applicable Interest Periods with respect thereto. Each request for extension or conversion shall be irrevocable and shall constitute a representation and warranty by the Borrower of the matters specified in clauses (b), (c), (d) and (e) of Section 5.2. In the event the Borrower fails to request extension or conversion of any Eurodollar Loan in accordance with this Section 3.2, or any such conversion or extension is not permitted or required by this Credit Agreement, then such Eurodollar Loan shall be automatically converted into a Base Rate Loan at the end of the Interest Period applicable thereto. The Agent shall give each Lender notice as promptly as practicable of any such proposed extension or conversion affecting any Loan.

### 3.3 PREPAYMENTS.

(a) Voluntary Prepayments. The Borrower shall have the right to prepay Loans in whole or in part from time to time; provided, however, that each partial prepayment of Loans (other than Swingline Loans) shall be in a minimum principal amount of \$1,000,000 and integral multiples of \$250,000 in excess thereof (or the then remaining principal balance of the Revolving Loans, if less). Subject to the foregoing terms, amounts prepaid under this Section 3.3(a) shall be applied as the Borrower may elect; provided that if the Borrower shall fail to specify, voluntary prepayments shall be applied first to Base Rate Loans and then to Eurodollar Loans in direct order of Interest Period maturities. All prepayments under this Section 3.3(a) shall be subject to Section 3.12, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

(b) Mandatory Prepayments.

(i) (A) Revolving Committed Amount. If at any time, the sum of the aggregate outstanding principal amount of Revolving Loans plus LOC Obligations plus Swingline Loans shall exceed the Revolving Committed Amount, the Borrower immediately shall prepay the Revolving Loans and (after all Revolving Loans have been repaid) cash collateralize the LOC Obligations, in an amount sufficient to eliminate such excess.

(B) LOC Committed Amount. If at any time, the sum of the aggregate principal amount of LOC Obligations shall exceed the LOC Committed Amount, the Borrower immediately shall cash collateralize the LOC Obligations in an amount sufficient to eliminate such excess.

(ii) (A) Asset Dispositions. Immediately upon the occurrence of any Asset Disposition Prepayment Event, the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of the related Asset Disposition not applied (or caused to be applied) by the Credit Parties during the related Application Period to make Eligible Reinvestments as contemplated by the terms of Section 8.5(g) (such prepayment to be applied as set forth in clause (iii) below).

(B) Casualty and Condemnation Events. Immediately upon the occurrence of any event requiring application of any insurance proceeds to the prepayment of Loans (and cash collateralization of LOC Obligations) pursuant to Section 7.6(b), the Borrower shall prepay the Loans in the amount required by such Section 7.6(b) (such prepayment to be applied as set forth in clause (iii) below).

(iii) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 3.3(b) shall be applied as follows: (A) with respect to all amounts prepaid pursuant to Section 3.3(b)(i)(A), to Revolving Loans (without

any reduction in the Revolving Committed Amount) and (after all Revolving Loans have been repaid) to a cash collateral account in respect of LOC Obligations, (B) with respect to all amounts prepaid pursuant to Section 3.3(b)(i)(B), to a cash collateral account in respect of LOC Obligations and (C) with respect to all amounts prepaid pursuant to Section 3.3(b)(ii), first, to the Swingline Loans, second (after all Swingline Loans have been repaid), to Revolving Loans and, third (after all Revolving Loans have been repaid), to a cash collateral account in respect of LOC Obligations (without a corresponding permanent reduction in the Revolving Committed Amount in connection with any application required pursuant to this Section 3.3(b)). Within the parameters of the applications set forth above, prepayments shall be applied first to Base Rate Loans and then to Eurodollar Loans subject to Section 3.3(b)(iv) in direct order of Interest Period maturities. All prepayments under this Section 3.3(b) shall be subject to Section 3.12, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

(iv) Prepayment Account. If the Borrower is required to make a mandatory prepayment of Eurodollar Loans under this Section 3.3(b), the Borrower shall have the right, in lieu of making such prepayment in full, to deposit an amount equal to such mandatory prepayment with the Agent in a cash collateral account maintained (pursuant to documentation reasonably satisfactory to the Agent) by and in the sole dominion and control of the Agent. Any amounts so deposited shall be held by the Agent as collateral for the prepayment of such Eurodollar Loans and shall be applied to the prepayment of the applicable Eurodollar Loans at the end of the current Interest Periods applicable thereto. At the request of the Borrower, amounts so deposited shall be invested by the Agent in Cash Equivalents maturing prior to the date or dates on which it is anticipated that such amounts will be applied to prepay such Eurodollar Loans; any interest earned on such Cash Equivalents will be for the account of the Borrower and the Borrower will deposit with the Agent the amount of any loss on any such Cash Equivalents to the extent necessary in order that the amount of the prepayment to be made with the deposited amounts may not be reduced.

#### 3.4 TERMINATION AND REDUCTION OF REVOLVING COMMITTED AMOUNT.

(a) Voluntary Reductions. The Borrower may from time to time permanently reduce or terminate the Revolving Committed Amount in whole or in part (in minimum aggregate amounts of \$5,000,000 or in integral multiples of \$1,000,000 in excess thereof (or, if less, the full remaining amount of the then applicable Revolving Committed Amount)) upon five Business Days' prior written notice to the Agent; provided, however, no such termination or reduction shall be made which would cause the sum of the aggregate outstanding principal amount of Revolving Loans plus LOC Obligations plus Swingline Loans to exceed the Revolving Committed Amount unless, concurrently with such termination or reduction, the Revolving Loans are repaid to the extent necessary to eliminate such excess. The Agent shall promptly notify each affected Lender of receipt by the Agent of any notice from the Borrower pursuant to this Section 3.4(a).

(b) Maturity Date. The Revolving Commitments of the Lenders, the LOC Commitment of the Issuing Lender(s) and the Swingline Commitment of the Swingline Lender shall automatically terminate on the Maturity Date.

(c) General. The Borrower shall pay to the Agent for the account of the Lenders in accordance with the terms of Section 3.5(b), on the date of each termination or reduction of the Revolving Committed Amount, the Unused Fee accrued through the date of such termination or reduction on the amount of the Revolving Committed Amount so terminated or reduced.

### 3.5 FEES.

(a) Underwriting Fee. The Borrower promises to pay to the Agent, for the benefit of the Lenders, on the Closing Date an underwriting fee in the amount provided in the Agent's Fee Letter.

(b) Unused Fee. In consideration of the Revolving Commitments of the Lenders hereunder, the Borrower promises to pay to the Agent for the account of each Lender a fee (the "Unused Fee") on the Unused Revolving Committed Amount computed at a per annum rate for each day during the applicable Unused Fee Calculation Period (hereinafter defined) at a rate equal to .50%. The Unused Fee shall commence to accrue on the Closing Date and shall be due and payable in arrears on the last Business Day of each March, June, September and December (and on any date that the Revolving Committed Amount is reduced and on the Maturity Date) for the immediately preceding quarter (or portion thereof) (each such quarter or portion thereof for which the Unused Fee is payable hereunder being herein referred to as an "Unused Fee Calculation Period"), beginning with the first of such dates to occur after the Closing Date.

(c) Letter of Credit Fees.

(i) Standby Letter of Credit Issuance Fee. In consideration of the issuance of standby Letters of Credit hereunder, the Borrower promises to pay to the Agent for the account of each Lender a fee (the "Standby Letter of Credit Fee") on such Lender's Commitment Percentage of the average daily maximum amount available to be drawn under each such standby Letter of Credit computed at a per annum rate for each day from the date of issuance to the date of expiration equal to the Applicable Percentage. The Standby Letter of Credit Fee will be payable quarterly in arrears on the last Business Day of each March, June, September and December for the immediately preceding quarter (or a portion thereof).

(ii) Trade Letter of Credit Drawing Fee. In consideration of the issuance of trade Letters of Credit hereunder, the Borrower promises to pay to the Agent for the account of each Lender a fee (the "Trade Letter of Credit Fee") on such Lender's Commitment Percentage of the average daily maximum amount available to be drawn under each such trade Letter of Credit computed at a per annum rate for each

day from the date of issuance to the date of expiration equal to the Applicable Percentage. The Trade Letter of Credit Fee will be payable quarterly in arrears on the last Business Day of each March, June, September and December for the immediately preceding quarter (or a portion thereof).

(iii) Issuing Lender Fees. In addition to the Standby Letter of Credit Fee payable pursuant to clause (i) above and the Trade Letter of Credit Fee payable pursuant to clause (ii) above, the Borrower promises to pay to the Agent for the account of the applicable Issuing Lender, without sharing by the other Lenders, (i) a letter of credit fronting fee of 1/4% on the average daily maximum amount available to be drawn under each Letter of Credit computed at a per annum rate for each day from the date of issuance to the date of expiration (which fronting fee shall be payable quarterly in arrears on the last Business Day of each March, June, September and December for the immediately preceding quarter (or a portion thereof)) and (ii) the customary charges from time to time of the applicable Issuing Lender with respect to the issuance, amendment, transfer, administration, cancellation and conversion of, and drawings under, such Letters of Credit.

(d) Administrative Fees. The Borrower promises to pay to the Agent, for its own account and for the account of Banc of America Securities LLC, as applicable, the fees referred to in the Agent's Fee Letter.

### 3.6 CAPITAL ADEQUACY.

If any Lender has determined, after the date hereof, that the adoption or the becoming effective of, or any change in, or any change by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof in the interpretation or administration of, any applicable law, rule or regulation regarding capital adequacy, or compliance by such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's capital or assets as a consequence of its commitments or obligations hereunder to a level below that which such Lender could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's policies with respect to capital adequacy), then, upon notice from such Lender to the Borrower, the Borrower shall be obligated to pay to such Lender such additional amount or amounts as will compensate such Lender for such reduction. Each determination by any such Lender of amounts owing under this Section shall, absent manifest error, be conclusive and binding on the parties hereto. Notwithstanding any other provision in this Section 3.6, none of the Lenders shall be entitled to demand compensation pursuant to this Section 3.6, if it shall not be the general practice of such Lender to demand such compensation in similar circumstances under comparable provisions of other comparable credit agreements.

### 3.7 LIMITATION ON EURODOLLAR LOANS.

If on or prior to the first day of any Interest Period for any Eurodollar Loan:

(a) the Agent determines (which determination shall be conclusive) that by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period; or

(b) the Requisite Lenders determine (which determination shall be conclusive) and notify the Agent that the Eurodollar Rate will not adequately and fairly reflect the cost to the Lenders of funding Eurodollar Loans for such Interest Period;

then the Agent shall give the Borrower prompt notice thereof, and so long as such condition remains in effect, the Lenders shall be under no obligation to make additional Eurodollar Loans, Continue Eurodollar Loans, or to Convert Base Rate Loans into Eurodollar Loans and the Borrower shall, on the last day(s) of the then current Interest Period(s) for the outstanding Eurodollar Loans, either prepay such Eurodollar Loans or Convert such Eurodollar Loans into Base Rate Loans in accordance with the terms of this Credit Agreement.

### 3.8 ILLEGALITY.

Notwithstanding any other provision of this Credit Agreement, in the event that it becomes unlawful for any Lender or its Applicable Lending Office to make, maintain, or fund Eurodollar Loans hereunder, then such Lender shall promptly notify the Borrower thereof and such Lender's obligation to make or Continue Eurodollar Loans and to Convert Base Rate Loans into Eurodollar Loans shall be suspended until such time as such Lender may again make, maintain, and fund Eurodollar Loans (in which case the provisions of Section 3.10 shall be applicable).

### 3.9 REQUIREMENTS OF LAW.

If, after the date hereof, the adoption of any applicable law, rule, or regulation, or any change in any applicable law, rule, or regulation, or any change in the interpretation or administration thereof by any Governmental Authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Applicable Lending Office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank, or comparable agency:

(i) shall subject such Lender (or its Applicable Lending Office) to any tax, duty, or other charge with respect to any Eurodollar Loans, its Notes, or its obligation to make Eurodollar Loans, or change the basis of taxation of any amounts payable to such Lender (or its Applicable Lending Office) under this Credit Agreement or its Notes in respect of any Eurodollar Loans (other than franchise taxes and taxes imposed on the overall net income of such Lender by the jurisdiction in which such Lender is organized or any political subdivision thereof or therein or has its principal office or such Applicable Lending Office);

(ii) shall impose, modify, or deem applicable any reserve, special deposit, assessment, or similar requirement (other than the Eurodollar Reserve Requirement utilized in the determination of the Adjusted Eurodollar Rate) relating to any extensions of credit or other assets of, or any deposits with or other liabilities or commitments of, such Lender (or its Applicable Lending Office), including the Commitment of such Lender hereunder; or

(iii) shall impose on such Lender (or its Applicable Lending Office) or the London interbank market any other condition affecting this Credit Agreement or its Notes or any of such extensions of credit or liabilities or commitments;

and the result of any of the foregoing is to increase the cost to such Lender (or its Applicable Lending Office) of making, Converting into, Continuing, or maintaining any Eurodollar Loans or to reduce any sum received or receivable by such Lender (or its Applicable Lending Office) under this Credit Agreement or its Notes with respect to any Eurodollar Loans, then the Borrower shall pay to such Lender within 5 Business Days following demand such amount or amounts as will compensate such Lender for such increased cost or reduction; provided that such increases or reductions shall not include any increased costs or reductions in respect of taxes that are governed by the provisions of Section 3.11, and the provisions of this Section 3.9 shall not be interpreted to cause a duplication in payment or treatment of any taxes in a manner inconsistent with the provisions of Section 3.11. If any Lender requests compensation by the Borrower under this Section 3.9, the Borrower may, by notice to such Lender (with a copy to the Agent), suspend the obligation of such Lender to make or Continue Eurodollar Loans, or to Convert Base Rate Loans into Eurodollar Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.10 shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested. Each Lender shall promptly notify the Borrower and the Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle such Lender to compensation pursuant to this Section 3.9 and will designate a different Applicable Lending Office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the judgment of such Lender, be otherwise disadvantageous to it. Any Lender claiming compensation under this Section 3.9 shall furnish to the Borrower and the Agent a statement setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Lender may use any reasonable averaging and attribution methods.

#### 3.10 TREATMENT OF AFFECTED LOANS.

If the obligation of any Lender to make any Eurodollar Loan or to Continue, or to Convert Base Rate Loans into, Eurodollar Loans shall be suspended pursuant to Section 3.7, 3.8 or 3.9 hereof, such Lender's Eurodollar Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Eurodollar Loans (or, in the case of a Conversion, on such earlier date as such Lender may specify to the Borrower with a copy to the Agent) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.7, 3.8 or 3.9 hereof that gave rise to such Conversion no longer exist:

(a) to the extent that such Lender's Eurodollar Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's Eurodollar Loans shall be applied instead to its Base Rate Loans; and

(b) all Loans that would otherwise be made or Continued by such Lender as Eurodollar Loans shall be made or Continued instead as Base Rate Loans, and all Base Rate

Loans of such Lender that would otherwise be  
Converted into Eurodollar Loans shall remain as Base Rate Loans.

If such Lender gives notice to the Borrower (with a copy to the Agent) that the circumstances specified in Section 3.7, 3.8 or 3.9 hereof that gave rise to the Conversion of such Lender's Eurodollar Loans pursuant to this Section 3.10 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurodollar Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments.

### 3.11 TAXES.

(a) Any and all payments by any Credit Party to or for the account of any Lender or the Agent hereunder or under any other Credit Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender and the Agent, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction under the laws of which such Lender (or its Applicable Lending Office) or the Agent (as the case may be) is organized or any political subdivision thereof or therein (all such non-excluded taxes, duties, levies, imposts, deductions, charges, withholdings, and liabilities being hereinafter referred to as "Taxes"). If any Credit Party shall be required by law to deduct any Taxes from or in respect of any sum payable under this Credit Agreement or any other Credit Document to any Lender or the Agent, (i) 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 3.11) such Lender or the Agent receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Credit Party shall make such deductions, (iii) such Credit Party shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law, and (iv) such Credit Party shall furnish to the Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, the Borrower agrees to pay any and all present or future stamp or documentary taxes and any other excise or property taxes or charges or similar levies which arise from any payment made under this Credit Agreement or any other Credit Document or from the execution or delivery of, or otherwise with respect to, this Credit Agreement or any other Credit Document (hereinafter referred to as "Other Taxes").

(c) The Borrower agrees to indemnify each Lender and the Agent for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 3.11) paid by such Lender or the Agent (as the case may be) and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto.



(d) Each Lender on or prior to the date of its execution and

delivery of this Credit Agreement in the case of each Lender listed on the signature pages hereof and on or prior to the date on which it becomes a Lender in the case of each other Lender, and from time to time thereafter if requested in writing by the Borrower or the Agent (but only so long as such Lender remains lawfully able to do so), shall provide the Borrower and the Agent with (A) if such Lender is a United States person under Section 7701(a)(30) of the Code (other than any such Lender that is a financial institution whose name includes the word "Bank", "Credit Union", "Savings and Loan" or "Mutual Savings Bank"), Internal Revenue Service Form W-9 or any successor form prescribed by the Internal Revenue Service or (B) if such Lender is not a United States person under Section 7701(a)(30) of the Code (i) Internal Revenue Service Form W-8 BEN or W-8 ECI, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party which reduces to zero the rate of withholding tax on payments of hereunder or under any other Credit Document or certifying that the income receivable hereunder or under any other Credit Document is effectively connected with the conduct of a trade or business in the United States or (ii) with respect to payments of interest, if such Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a certificate substantially in the form of Exhibit 3.11(d) and Internal Revenue Service Form W-8 BEN. The Borrower shall be entitled to rely on such forms in its possession until receipt of any revised or successor form pursuant to this Section 3.11(d).

(e) For any period with respect to which a Lender has failed to provide the Borrower and the Agent with the appropriate form pursuant to Section 3.11(d) (unless such failure is due to a change in treaty, law, or regulation occurring subsequent to the date on which a form originally was required to be provided), (i) the Borrower shall be entitled to deduct or withhold on payments to the Agent or such Lender as a result of such failure, as required by law, and (ii) the Borrower shall not be required to make payments of additional amounts with respect to such withheld amounts pursuant to Section 3.11(a) (or to indemnify a Lender pursuant to Section 3.11(c)) to the extent such withholding (or liability for Tax) is required solely by reason of the failure of the Agent or such Lender to provide the necessary certificate, document or other evidence of an exemption from withholding; provided, however, that should a Lender, which is otherwise exempt from withholding tax, become subject to Taxes because of its failure to deliver a form required hereunder, the Borrower shall take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes.

(f) If any Credit Party is required to pay additional amounts to or for the account of any Lender pursuant to this Section 3.11, then such Lender will agree to use reasonable efforts to change the jurisdiction of its Applicable Lending Office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the judgment of such Lender, is not otherwise disadvantageous to such Lender.

(g) Without prejudice to the survival of any other agreement of the Credit Parties hereunder, the agreements and obligations of the Credit Parties contained in this

Section 3.11 shall survive the repayment of the Loans, LOC Obligations and other obligations under the Credit Documents and the termination of the Commitments hereunder.

### 3.12 COMPENSATION.

Upon the request of any Lender, the Borrower shall pay to such Lender such amount or amounts as shall be sufficient (in the reasonable opinion of such Lender) to compensate it for any loss, cost, or expense (excluding loss of anticipated profits) incurred by it as a result of:

(a) any payment, prepayment, or Conversion of a Eurodollar Loan for any reason (including, without limitation, (i) in connection with any assignment by Bank of America pursuant to Section 11.3(b) as part of the primary syndication of the Loans during the 180-day period immediately following the Closing Date and (ii) the acceleration of the Loans pursuant to Section 9.2) on a date other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower for any reason (including, without limitation, the failure of any condition precedent specified in Section 5 to be satisfied) to borrow, Convert, Continue, or prepay a Eurodollar Loan on the date for such borrowing, Conversion, Continuation, or prepayment specified in the relevant notice of borrowing, prepayment, Continuation, or Conversion under this Credit Agreement.

With respect to Eurodollar Loans, such indemnification may include an amount equal to the excess, if any, of (a) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, Converted or Continued, for the period from the date of such prepayment or of such failure to borrow, Convert or Continue to the last day of the applicable Interest Period (or, in the case of a failure to borrow, Convert or Continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Loans provided for herein (excluding, however, the Applicable Percentage included therein, if any) over (b) the amount of interest (as reasonably determined by such Lender) which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. The covenants of the Borrower set forth in this Section 3.12 shall survive the repayment of the Loans, LOC Obligations and other obligations under the Credit Documents and the termination of the Commitments hereunder.

### 3.13 PRO RATA TREATMENT.

Except to the extent otherwise provided herein:

(a) Loans. Each Loan, each payment or (subject to the terms of Section 3.3) prepayment of principal of any Loan or reimbursement obligations arising from drawings under Letters of Credit, each payment of interest on the Loans or reimbursement obligations arising from drawings under Letters of Credit, each payment of Unused Fees, each payment of the Standby Letter of Credit Fee, each payment of the Trade Letter of Credit Fee, each reduction of the Revolving Committed Amount and each conversion or extension of any

Loan, shall be allocated pro rata among the Lenders in accordance with the respective principal amounts of their outstanding Loans of the applicable type and Participation Interests in Loans of the applicable type and Letters of Credit.

(b) Advances. No Lender shall be responsible for the failure or delay by any other Lender in its obligation to make its ratable share of a borrowing hereunder; provided, however, that the failure of any Lender to fulfill its obligations hereunder shall not relieve any other Lender of its obligations hereunder. Unless the Agent shall have been notified by any Lender prior to the date of any requested borrowing that such Lender does not intend to make available to the Agent its ratable share of such borrowing to be made on such date, the Agent may assume that such Lender has made such amount available to the Agent on the date of such borrowing, and the Agent in reliance upon such assumption, may (in its sole discretion but without any obligation to do so) make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Agent, the Agent shall be able to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Agent's demand therefor, the Agent will promptly notify the Borrower, and the Borrower shall within 3 Business Days after demand pay such corresponding amount to the Agent. The Agent shall also be entitled to recover from the Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Agent to the Borrower to the date such corresponding amount is recovered by the Agent at a per annum rate equal to (i) from the Borrower at the applicable rate for the applicable borrowing pursuant to the Notice of Borrowing and (ii) from a Lender at the Federal Funds Rate.

#### 3.14 SHARING OF PAYMENTS.

The Lenders agree among themselves that, in the event that any Lender shall obtain payment in respect of any Loan, LOC Obligations or any other obligation owing to such Lender under this Credit Agreement through the exercise of a right of setoff, banker's lien or counterclaim, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, in excess of its pro rata share of such payment as provided for in this Credit Agreement, such Lender shall promptly purchase from the other Lenders a Participation Interest in such Loans, LOC Obligations and other obligations in such amounts, and make such other adjustments from time to time, as shall be equitable to the end that all Lenders share such payment in accordance with their respective ratable shares as provided for in this Credit Agreement. The Lenders further agree among themselves that if payment to a Lender obtained by such Lender through the exercise of a right of setoff, banker's lien, counterclaim or other event as aforesaid shall be rescinded or must otherwise be restored, each Lender which shall have shared the benefit of such payment shall, by repurchase of a Participation Interest theretofore sold, return its share of that benefit (together with its share of any accrued interest payable with respect thereto) to each Lender whose payment shall have been rescinded or otherwise restored. The Borrower agrees that any Lender so purchasing such a Participation Interest may, to the fullest extent permitted by law, exercise all rights of payment, including setoff, banker's lien or counterclaim, with respect to such Participation Interest

as fully as if such Lender were a holder of such Loan, LOC Obligations or other obligation in the amount of such Participation Interest. Except as otherwise expressly provided in this Credit Agreement, if any Lender shall fail to remit to the Agent or any other Lender an amount payable by such Lender to the Agent or such other Lender pursuant to this Credit Agreement on the date when such amount is due, such payments shall be made together with interest thereon for each date from the date such amount is due until the date such amount is paid to the Agent or such other Lender at a rate per annum equal to the Federal Funds Rate. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section 3.14 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders under this Section 3.14 to share in the benefits of any recovery on such secured claim.

### 3.15 PAYMENTS, COMPUTATIONS, ETC.

(a) Generally. Except as otherwise specifically provided herein, all payments hereunder shall be made to the Agent in Dollars in immediately available funds, without setoff, deduction, counterclaim or withholding of any kind, at the Agent's office specified in Schedule 2.1(a) not later than 2:00 P.M. (Charlotte, North Carolina time) on the date when due. Payments received after such time shall be deemed to have been received on the next succeeding Business Day. The Borrower shall, at the time it makes any payment under this Credit Agreement, specify to the Agent the Loans, LOC Obligations, Fees, interest or other amounts payable by the Borrower hereunder to which such payment is to be applied (and in the event that it fails so to specify, the Agent shall distribute such payments first to Swingline Loans and second to Revolving Loans (first to Base Rate Loans and then to Eurodollar Loans in direct order of Interest Period maturities), and, after all Revolving Loans have been repaid, to a cash collateral account in respect of LOC Obligations. The Agent will distribute such payments to such Lenders, if any such payment is received prior to 2:00 P.M. (Charlotte, North Carolina time) on a Business Day in like funds as received prior to the end of such Business Day and otherwise the Agent will distribute such payment to such Lenders on the next succeeding Business Day. Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day (subject to accrual of interest and Fees for the period of such extension), except that in the case of Eurodollar Loans, if the extension would cause the payment to be made in the next following calendar month, then such payment shall instead be made on the next preceding Business Day. Except as expressly provided otherwise herein, all computations of interest and fees shall be made on the basis of actual number of days elapsed over a year of 360 days, except with respect to computation of interest on Base Rate Loans which shall be calculated based on a year of 365 or 366 days, as appropriate. Interest shall accrue from and include the date of borrowing, but exclude the date of payment.

(b) Allocation of Payments After Event of Default. Notwithstanding any other provisions of this Credit Agreement to the contrary, after acceleration of the Credit Party Obligations pursuant to Section 9.2, all amounts collected or received by the Agent or any Lender on account of the Credit Party Obligations or any other amounts outstanding under any of the Credit Documents or in respect of the Collateral shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of the Agent in connection with enforcing the rights of the Lenders under the Credit Documents and any protective advances made by the Agent with respect to the Collateral under or pursuant to the terms of the Collateral Documents;

SECOND, to payment of any fees owed to the Agent;

THIRD, to the payment of all of the Credit Party Obligations consisting of accrued fees and interest;

FOURTH, to the payment of the outstanding principal amount of the Credit Party Obligations (including the payment or cash collateralization of the outstanding LOC Obligations);

FIFTH, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation, reasonable attorneys' fees) of each of the Lenders in connection with enforcing its rights under the Credit Documents or otherwise with respect to the Credit Party Obligations owing to such Lender;

SIXTH, to all other Credit Party Obligations and other obligations which shall have become due and payable under the Credit Documents or otherwise and not repaid pursuant to clauses "FIRST" through "FIFTH" above; and

SEVENTH, to the payment of the surplus, if any, to whomever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (ii) each of the Lenders shall receive an amount equal to its pro rata share (based on the proportion that the then outstanding Loans and LOC Obligations held by such Lender bears to the aggregate then outstanding Loans and LOC Obligations) of amounts available to be applied pursuant to clauses "THIRD", "FOURTH", "FIFTH" and "SIXTH" above; and (iii) to the extent that any amounts available for distribution pursuant to clause "FIFTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by the Agent in a cash collateral account and applied (A) first, to reimburse the Issuing Lender(s) from time to time for any drawings under such Letters of Credit and (B) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clauses "FIFTH" and "SIXTH" above in the manner provided in this Section 3.15(b).

### 3.16 EVIDENCE OF DEBT.

(a) Each Lender shall maintain an account or accounts evidencing each Loan made by such Lender to the Borrower from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Credit

Agreement. Each Lender will make reasonable efforts to maintain the accuracy of its account or accounts and to promptly update its account or accounts from time to time, as necessary.

(b) The Agent shall maintain the Register pursuant to Section 11.3(c), and a subaccount for each Lender, in which Register and subaccounts (taken together) shall be recorded (i) the amount, type and Interest Period of each such Loan hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable to each Lender hereunder and (iii) the amount of any sum received by the Agent hereunder from or for the account of any Credit Party and each Lender's share thereof. The Agent will make reasonable efforts to maintain the accuracy of the subaccounts referred to in the preceding sentence and to promptly update such subaccounts from time to time, as necessary.

(c) The entries made in the accounts, Register and subaccounts maintained pursuant to clause (b) of this Section 3.16 (and, if consistent with the entries of the Agent, clause (a)) shall be prima facie evidence of the existence and amounts of the obligations of the Credit Parties therein recorded; provided, however, that the failure of any Lender or the Agent to maintain any such account, such Register or such subaccount, as applicable, or any error therein, shall not in any manner affect the obligation of the Credit Parties to repay the Credit Party Obligations owing to such Lender.

### 3.17 REPLACEMENT OF AFFECTED LENDERS.

If any Lender having a Revolving Commitment becomes a Defaulting Lender or otherwise defaults in its Revolving Commitment or if any Lender is owed increased costs under Section 3.6, Section 3.8, Section 3.9, or, or the Borrower is required to make any payments under Section 3.11 to any Lender in excess of those to the other Lenders or if any Lender elects not to enter into any amendment, modification, consent or waiver with respect to the Credit Agreement or any other Credit Document requested by the Borrower, which amendment, modification, consent or waiver cannot become effective without the consent of such Lender, the Borrower shall have the right, if no Event of Default then exists, to replace such Lender (the "Replaced Lender") with one or more other Eligible Assignee or Eligible Assignees, none of whom shall constitute a Defaulting Lender at the time of such replacement (collectively, the "Replacement Lender"), provided that (i) at the time of any replacement pursuant to this Section 3.17, the Replaced Lender and Replacement Lender shall enter into an Assignment and Acceptance in the form of Exhibit 11.3(b), pursuant to which the Replacement Lender shall acquire all or a portion, as the case may be, of the Commitments and outstanding Loans of, and participation in Letters of Credit by, the Replaced Lender and (ii) all obligations of the Borrower owing to the Replaced Lender relating to the Loans so replaced (including, without limitation, such increased costs and excluding those specifically described in clause (i) above in respect of which the assignment purchase price has been, or is concurrently being paid) shall be paid in full to such Replaced Lender concurrently with such replacement. Upon the execution of the assignment documentation, the payment of amounts referred to in clauses (i) and (ii) above and, if so requested by the Replacement Lender, delivery to the Replacement Lender of the appropriate Note or Notes executed by the Borrower, the Replacement Lender shall become a Lender hereunder and the Replaced Lender shall cease to constitute a Lender hereunder with respect to

such replaced Loans, except with respect to indemnification provisions under this Agreement, which shall survive as to such Replaced Lender. Notwithstanding anything to the contrary contained above, (1) any Lender that acts as an Issuing Lender may not be replaced hereunder at any time that it has Letters of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer satisfactory to such Lender or the depositing of cash collateral into a cash collateral account maintained with the Agent in amounts and pursuant to arrangements satisfactory to such Lender) have been made with respect to such outstanding Letters of Credit and (2) the Lender that acts as the Agent may not be replaced hereunder except in accordance with the terms of Section 10.7. The Replaced Lender shall be required to deliver for cancellation its applicable Notes to be canceled on the date of replacement, or if any such Note is lost or unavailable, such other assurances or indemnification therefor as the Borrower may reasonably request.

#### SECTION 4

##### GUARANTY

###### 4.1 THE GUARANTY.

Each of the Guarantors hereby jointly and severally guarantees to each Lender, each Affiliate of a Lender that enters into a Hedging Agreement, and the Agent as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Credit Party Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Credit Party Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Credit Party Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Credit Documents or Hedging Agreements, the obligations of each Guarantor under this Credit Agreement and the other Credit Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under Section 548 of the Bankruptcy Code or any comparable provisions of any applicable state law.

###### 4.2 OBLIGATIONS UNCONDITIONAL.

The obligations of the Guarantors under Section 4.1 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents or Hedging Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security

for any of the Credit Party Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this Section 4 until such time as the Credit Party Obligations have been Fully Satisfied. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Credit Party Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Credit Documents, any Hedging Agreement between the Borrower and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Credit Documents or such Hedging Agreements shall be done or omitted;

(c) the maturity of any of the Credit Party Obligations shall be accelerated, or any of the Credit Party Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Credit Documents, any Hedging Agreement between the Borrower and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Credit Documents or such Hedging Agreements shall be waived or any other guarantee of any of the Credit Party Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Agent or any Lender or Lenders as security for any of the Credit Party Obligations shall fail to attach or be perfected; or

(e) any of the Credit Party Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Agent or any Lender exhaust any right, power or remedy or proceed against any Person under any of the Credit Documents, any Hedging Agreement between the Borrower and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Credit Documents or such Hedging Agreements, or against any other Person under any other guarantee of, or security for, any of the Credit Party Obligations.



#### 4.3 REINSTATEMENT.

The obligations of the Guarantors under this Section 4 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Credit Party Obligations is rescinded or must be otherwise restored by any holder of any of the Credit Party Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Agent and each Lender on demand for all reasonable costs and expenses (including, without limitation, fees and expenses of counsel) incurred by the Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

#### 4.4 CERTAIN ADDITIONAL WAIVERS.

In the event that North Carolina law is determined to be controlling in any legal action or proceeding with respect to this Section 4 notwithstanding the parties' contractual choice of New York law pursuant to Section 11.10(a), each Guarantor hereby specifically waives the benefits of N.C. Gen. Stat. Sections 26-7 through 26-9, inclusive, to the extent applicable. Each Guarantor further agrees that such Guarantor shall have no right of recourse to security for the Credit Party Obligations, except through the exercise of rights of subrogation pursuant to Section 4.2 and through the exercise of rights of contribution pursuant to Section 4.6.

#### 4.5 REMEDIES.

The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Agent and the Lenders, on the other hand, the Credit Party Obligations may be declared to be forthwith due and payable as provided in Section 9.2 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.2) for purposes of Section 4.1 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Credit Party Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Credit Party Obligations being deemed to have become automatically due and payable), the Credit Party Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.1. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the Lenders may exercise their remedies thereunder in accordance with the terms thereof.

#### 4.6 RIGHTS OF CONTRIBUTION.

The Guarantors hereby agree as among themselves that, if any Guarantor shall make an Excess Payment (as defined below), such Guarantor shall have a right of contribution from each other Guarantor in an amount equal to such other Guarantor's Contribution Share (as defined below) of such Excess Payment. The payment obligations of any Guarantor under this Section 4.6 shall be subordinate and subject in right of payment to the Credit Party Obligations until such time as the Credit Party Obligations have been Fully Satisfied, and none of the Guarantors shall exercise

any right or remedy under this Section 4.6 against any other Guarantor until such Credit Party Obligations have been Fully Satisfied. For purposes of this Section 4.6, (a) "Excess Payment" shall mean the amount paid by any Guarantor in excess of its Pro Rata Share of any Credit Party Obligations; (b) "Pro Rata Share" shall mean, for any Guarantor in respect of any payment of Credit Party Obligations, the ratio (expressed as a percentage) as of the date of such payment of Credit Party Obligations of (i) the amount by which the aggregate present fair salable value on a going concern basis of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair salable value on a going concern basis of all assets and other properties of all of the Credit Parties exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Credit Parties hereunder) of the Credit Parties; provided, however, that, for purposes of calculating the Pro Rata Shares of the Guarantors in respect of any payment of Credit Party Obligations, any Guarantor that became a Guarantor subsequent to the date of any such payment shall be deemed to have been a Guarantor on the date of such payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such payment; and (e) "Contribution Share" shall mean, for any Guarantor in respect of any Excess Payment made by any other Guarantor, the ratio (expressed as a percentage) as of the date of such Excess Payment of (i) the amount by which the aggregate present fair salable value on a going concern basis of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair salable value on a going concern basis of all assets and other properties of the Credit Parties other than the maker of such Excess Payment exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Credit Parties) of the Credit Parties other than the maker of such Excess Payment; provided, however, that, for purposes of calculating the Contribution Shares of the Guarantors in respect of any Excess Payment, any Guarantor that became a Guarantor subsequent to the date of any such Excess Payment shall be deemed to have been a Guarantor on the date of such Excess Payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such Excess Payment. This Section 4.6 shall not be deemed to affect any right of subrogation, indemnity, reimbursement or contribution that any Guarantor may have under applicable law against the Borrower in respect of any payment of Credit Party Obligations. Notwithstanding the foregoing, all rights of contribution against any Guarantor shall terminate from and after such time, if ever, that such Guarantor shall be relieved of its obligations pursuant to Section 8.5.

#### 4.7 GUARANTEE OF PAYMENT; CONTINUING GUARANTEE.

The guarantee in this Section 4 is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Credit Party Obligations whenever arising.

SECTION 5

CONDITIONS

5.1 CLOSING CONDITIONS.

The obligation of the Lenders to enter into this Credit Agreement and to make the initial Loans or the applicable Issuing Lender to issue the initial Letter of Credit, whichever shall occur first, shall be subject to satisfaction of the following conditions:

(a) Executed Credit Documents. Receipt by the Agent of duly executed copies of: (i) this Credit Agreement, (ii) the Notes, (iii) the Security Agreement and (iv) the Agent's Fee Letter.

(b) Corporate Documents. Receipt by the Agent of the following:

(i) Charter Documents. Copies of the articles or certificates of incorporation or other charter documents of each Credit Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation and certified by a secretary or assistant secretary of such Credit Party to be true and correct as of the Closing Date.

(ii) Bylaws. A copy of the bylaws of each Credit Party certified by a secretary or assistant secretary of such Credit Party to be true and correct as of the Closing Date.

(iii) Resolutions. Copies of resolutions of the Board of Directors of each Credit Party approving and adopting the Credit Documents to which it is a party, the transactions contemplated therein and authorizing execution and delivery thereof, certified by a secretary or assistant secretary of such Credit Party to be true and correct and in force and effect as of the Closing Date.

(iv) Good Standing. Copies of (A) certificates of good standing, existence or its equivalent with respect to each Credit Party certified as of a recent date by the appropriate Governmental Authorities of the state or other jurisdiction of incorporation and the state or other jurisdiction of the chief executive office and principal place of business and (B) to the extent available, a certificate indicating payment of all corporate or comparable franchise taxes certified as of a recent date by the appropriate governmental taxing authorities.

(v) Incumbency. An incumbency certificate of each Credit Party certified by a secretary or assistant secretary to be true and correct as of the Closing Date.

(c) Opinions of Counsel. The Agent shall have received, in each case dated as of the Closing Date:

(i) a legal opinion of Paul, Weiss, Rifkind, Wharton & Garrison, in form and substance reasonably satisfactory to the Agent; and

(ii) a legal opinion of special Nevada counsel for the Borrower, in form and substance reasonably satisfactory to the Agent.

(d) Personal Property Collateral. The Agent shall have received:

(i) searches of Uniform Commercial Code filings in the jurisdiction of the chief executive office of each Credit Party and each jurisdiction where any Collateral is located or where a filing would need to be made in order to perfect the Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens;

(ii) duly executed UCC financing statements for each appropriate jurisdiction as is necessary, in the Agent's sole discretion, to perfect the Agent's security interest in the Collateral;

(iii) searches of ownership of, and Liens on, intellectual property of each Credit Party in the appropriate governmental offices;

(iv) all certificates evidencing any certificated Capital Stock pledged to the Agent pursuant to the Pledge Agreement, together with duly executed in blank, undated stock powers attached thereto;

(v) such patent/trademark/copyright filings as requested by the Agent in order to perfect the Agent's security interest in the Collateral;

(vi) all instruments and chattel paper in the possession of any of the Credit Parties, together with allonges or assignments as may be necessary or appropriate to perfect the Agent's security interest in the Collateral; and

(vii) duly executed consents as are necessary, in the Agent's sole discretion, to perfect the Agent's security interest in the Collateral.

(e) Initial Public Offering and Receipt of Proceeds. The Initial Public Offering shall have been consummated and the Agent shall be satisfied that (i) the Parent shall have received net cash proceeds from the Initial Public Offering of not less than \$125,000,000 and (ii) the Parent shall have contributed such net cash proceeds to the Borrower after payment in full by Parent of its obligations under the Subordinated Note Agreement (as defined in the Existing Credit Agreement) and expenses related to the Initial Public Offering, in each case on terms and conditions reasonably satisfactory to the Agent.

(f) Litigation. There shall not exist any pending or threatened in writing action, suit, investigation or proceeding against the Parent or any Consolidated Party that could reasonably be expected to have a Material Adverse Effect.

(g) Repayment of Term Loans and Acquisition Loans. The Term Loans and the Acquisition Loans (as such terms are defined in the Existing Credit Agreement) shall have been paid in full.

(h) Repayment of Subordinated Note Agreement. The obligations of the Parent under the Subordinated Note Agreement (as defined in the Existing Credit Agreement) shall have been paid in full.

(i) Other Indebtedness. Receipt by the Agent of evidence that, after giving effect to the Initial Public Offering, the Parent and the Consolidated Parties shall have no Funded Indebtedness other than Indebtedness permitted under Section 8.1.

(j) Officer's Certificates. The Agent shall have received a certificate or certificates executed by an Executive Officer of the Borrower as of the Closing Date, in form and substance reasonably satisfactory to the Agent, stating that (i) all governmental, shareholder and third party consents and approvals, if any, with respect to the Credit Documents and the transactions contemplated thereby have been obtained, (ii) no action, suit, investigation or proceeding is pending or threatened in any court or before any arbitrator or governmental instrumentality that purports to affect any Credit Party or any transaction contemplated by the Credit Documents, if such action, suit, investigation or proceeding could reasonably be expected to have a Material Adverse Effect and (iii) (A) no Default or Event of Default exists and (B) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects as of the Closing Date (except for such representations and warranties which expressly relate to an earlier date).

(k) Fees and Expenses. Payment by the Credit Parties to the Lenders and the Agent of all fees and expenses relating to the Credit Facility which are due and payable on the Closing Date, including, without limitation, payment to the Agent of the fees set forth in the Agent's Fee Letter.

(l) Other. Receipt by the Agent of such other documents, instruments, agreements or information as reasonably requested by the Agent, including, but not limited to, information regarding litigation, tax, accounting, labor, insurance, pension liabilities (actual or contingent), real estate leases, material contracts, debt agreements, property ownership and contingent liabilities of the Parent and the Consolidated Parties.

## 5.2 CONDITIONS TO ALL EXTENSIONS OF CREDIT.

The obligations of each Lender to make, convert or extend any Loan and of the applicable Issuing Lender to issue or extend any Letter of Credit (including the initial Loans and the initial

Letter of Credit) are subject to satisfaction of the following conditions in addition to satisfaction on the Closing Date of the conditions set forth in Section 5.1:

(a) The Borrower shall have delivered (i) in the case of any Revolving Loan, an appropriate Notice of Borrowing or Notice of Extension/Conversion or (ii) in the case of any Letter of Credit, the applicable Issuing Lender shall have received an appropriate request for issuance in accordance with the provisions of Section 2.2(b);

(b) The representations and warranties set forth in Section 6 shall, subject to the limitations set forth therein, be true and correct in all material respects as of such date (except for those which expressly relate to an earlier date);

(c) There shall not have been commenced against the Parent or any Consolidated Party an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or any case, proceeding or other action for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or for the winding up or liquidation of its affairs, and such involuntary case or other case, proceeding or other action shall remain undismissed, undischarged or unbonded;

(d) No Default or Event of Default shall exist and be continuing either prior to or after giving effect thereto; and

(e) Immediately after giving effect to the making of such Loan (and the application of the proceeds thereof) or to the issuance of such Letter of Credit, as the case may be, (i) the sum of the aggregate outstanding principal amount of Revolving Loans plus LOC Obligations plus Swingline Loans shall not exceed the Revolving Committed Amount and (ii) the LOC Obligations shall not exceed the LOC Committed Amount.

The delivery of each Notice of Borrowing, each Notice of Extension/Conversion and each request for a Letter of Credit pursuant to Section 2.2(b) shall constitute a representation and warranty by the Credit Parties of the correctness of the matters specified in clauses (b), (c), (d) and (e) above.

## SECTION 6

### REPRESENTATIONS AND WARRANTIES

The Credit Parties hereby represent to the Agent and each Lender that:

#### 6.1 FINANCIAL CONDITION.

(a) The audited consolidated balance sheets and income statements of the Consolidated Parties for the fiscal year ended December 31, 2000 (including the notes thereto) (i) have been audited by KPMG Peat Marwick, (ii) have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby and

(iii) present fairly in all material respects (on the basis disclosed in the footnotes to such financial statements) the consolidated financial condition, results of operations and cash flows of the Consolidated Parties as of such date and for such periods. The unaudited interim balance sheets of the Consolidated Parties as at the end of, and the related unaudited interim statements of earnings and of cash flows for, each fiscal quarterly period ended after December 31, 2000 and prior to the Closing Date (i) have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby, and (ii) present fairly in all material respects the consolidated and consolidating financial condition, results of operations and cash flows of the Consolidated Parties as of such date and for such periods except that they do not contain the materials and disclosures to be found in notes to financial statements prepared in accordance with GAAP nor do they reflect year-end adjustments. During the period from December 31, 2000 to and including the Closing Date, there has been no sale, transfer or other disposition by any Consolidated Party of any material part of the business or property of the Consolidated Parties, taken as a whole, and no purchase or other acquisition (other than O'Grady Peyton International (USA), Inc. and its subsidiaries) by any of them of any business or property (including any Capital Stock of any other Person) material in relation to the consolidated financial condition of the Consolidated Parties, taken as a whole, in each case, which is not reflected in the foregoing financial statements or in the notes thereto. Except as set forth on Schedule 6.1(a), as of the Closing Date, the Borrower and its Subsidiaries have no material liabilities (contingent or otherwise) that are not reflected in the foregoing financial statements or in the notes thereto.

(b) The financial statements delivered pursuant to Section 7.1(a) and (b) have been prepared in accordance with GAAP (except as may otherwise be permitted under Section 7.1(a) and (b)) and present fairly in all material respects (on the basis disclosed in the footnotes, if any, to such financial statements) the consolidated and consolidating financial condition, results of operations and cash flows of the Consolidated Parties as of such date and for such periods.

#### 6.2 NO MATERIAL CHANGE.

Since June 30, 2001, there has been no development or event relating to or affecting the Parent or any Consolidated Party which has had or could reasonably be expected to have a Material Adverse Effect.

#### 6.3 ORGANIZATION AND GOOD STANDING.

Each of the Parent and the Consolidated Parties (a) is duly organized, validly existing and is in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has the corporate or other necessary power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged and (c) is duly qualified as a foreign entity and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, other than in such jurisdictions where the failure to be so qualified and in good standing could not reasonably be expected to have a Material Adverse Effect.

#### 6.4 POWER; AUTHORIZATION; ENFORCEABLE OBLIGATIONS.

Each of the Credit Parties has the corporate or other necessary power and authority, and the legal right, to make, deliver and perform the Credit Documents to which it is a party, and in the case of the Borrower, to obtain extensions of credit hereunder, and has taken all necessary corporate or other necessary action to authorize the borrowings and other extensions of credit on the terms and conditions of this Credit Agreement and to authorize the execution, delivery and performance of the Credit Documents to which it is a party. No consent or authorization of, filing with, notice to or other similar act by or in respect of, any Governmental Authority or any other Person is required to be obtained or made by or on behalf of any Credit Party in connection with the borrowings or other extensions of credit hereunder, with the execution, delivery, performance, validity or enforceability of the Credit Documents to which such Credit Party is a party, except for (i) consents, authorizations, notices and filings described in Schedule 6.4, all of which have been obtained or made or have the status described in such Schedule 6.4 and (ii) filings to perfect the Liens created by the Collateral Documents. This Credit Agreement has been, and each other Credit Document to which any Credit Party is a party will be, duly executed and delivered on behalf of the Credit Parties. This Credit Agreement constitutes, and each other Credit Document to which any Credit Party is a party when executed and delivered will constitute, a legal, valid and binding obligation of such Credit Party enforceable against such party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

#### 6.5 NO CONFLICTS.

Neither the execution and delivery of the Credit Documents, nor the consummation of the transactions contemplated therein, nor performance of and compliance with the terms and provisions thereof by such Credit Party will (a) violate or conflict with any provision of its articles or certificate of incorporation or bylaws or other organizational or governing documents of such Person, (b) violate, contravene or materially conflict with any material Requirement of Law or any other law, regulation (including, without limitation, Regulation U or Regulation X), order, writ, judgment, injunction, decree or permit applicable to it, (c) violate, contravene or conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound, the violation, contravention, conflict or default of which could reasonably be expected to have a Material Adverse Effect, or (d) result in or require the creation of any Lien (other than Permitted Liens) upon or with respect to its properties.

#### 6.6 NO DEFAULT.

Neither the Parent nor any Consolidated Party is in default in any respect under any contract, lease, loan agreement, indenture, mortgage, security agreement or other agreement or obligation to which it is a party or by which any of its properties is bound which default could have a Material Adverse Effect. No Default or Event of Default has occurred or exists except as previously disclosed in writing to the Agent.



#### 6.7 OWNERSHIP.

Except to the extent the failure of which could not reasonably be expected to have a Material Adverse Effect, each of the Parent and the Consolidated Parties is the owner of, and has good and marketable title to, or a valid leasehold interest in, all of its respective assets shown on the balance sheet dated June 30, 2001 and all assets and properties acquired since the date of such balance sheet, except for such properties as are no longer used or useful in the conduct of such Person's business or as have been disposed of in the ordinary course of business or as otherwise permitted by this Credit Agreement, and except for minor defects in title that do not interfere with the ability of such Person to conduct its business as now conducted, and none of such assets is subject to any Lien other than Permitted Liens.

#### 6.8 INDEBTEDNESS.

Except as otherwise permitted under Section 8.1, the Parent and the Consolidated Parties have no Indebtedness.

#### 6.9 LITIGATION.

Except as disclosed in Schedule 6.9, there are no actions, suits or legal, equitable, arbitration or administrative proceedings, pending or, to the knowledge of any Executive Officer of any Credit Party, threatened in writing against the Parent or any Consolidated Party which could reasonably be expected to have a Material Adverse Effect.

#### 6.10 TAXES.

Each of the Parent and the Consolidated Parties has filed, or caused to be filed, all material tax returns (Federal, state, local and foreign) required to be filed and paid (a) all amounts of taxes shown thereon to be due (including interest and penalties) and (b) all other material taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes (i) which are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP. No Credit Party is aware as of the Closing Date of any proposed tax assessments by any taxing authority against the Parent or any Consolidated Party.

#### 6.11 COMPLIANCE WITH LAW.

Each of the Parent and the Consolidated Parties is in compliance with all Requirements of Law and all other laws, rules, regulations, orders and decrees (including without limitation Environmental Laws) applicable to it, or to its properties, unless such failure to comply could not reasonably be expected to have a Material Adverse Effect. No Requirement of Law could reasonably be expected to cause a Material Adverse Effect.

Except as disclosed and described in Schedule 6.12 attached hereto:

(a) During the five-year period prior to the date on which this representation is made or deemed made: (i) no ERISA Event has occurred, and, to the best knowledge of the Executive Officers of the Credit Parties, no event or condition has occurred or exists as a result of which any ERISA Event could reasonably be expected to occur, with respect to any Plan; (ii) no "accumulated funding deficiency," as such term is defined in Section 302 of ERISA and Section 412 of the Code, whether or not waived, has occurred with respect to any Plan; (iii) each Plan has been maintained, operated, and funded in compliance with its own terms and in material compliance with the provisions of ERISA, the Code, and any other applicable Federal or state laws; and (iv) no lien in favor of the PBGC or a Plan has arisen or is reasonably likely to arise on account of any Plan.

(b) The actuarial present value of all "benefit liabilities" (as defined in Section 4001(a)(16) of ERISA), whether or not vested, under each Single Employer Plan, as of the last annual valuation date prior to the date on which this representation is made or deemed made (determined, in each case, in accordance with Financial Accounting Standards Board Statement 87, utilizing the actuarial assumptions used in such Plan's most recent actuarial valuation report), did not exceed as of such valuation date the fair market value of the assets of such Plan.

(c) Neither the Parent, any Consolidated Party nor any ERISA Affiliate has incurred, or, to the best knowledge of the Executive Officers of the Credit Parties, could be reasonably expected to incur, any withdrawal liability under ERISA to any Multiemployer Plan or Multiple Employer Plan. Neither the Parent, any Consolidated Party nor any ERISA Affiliate would become subject to any withdrawal liability under ERISA if the Parent, any Consolidated Party or any ERISA Affiliate were to withdraw completely from all Multiemployer Plans and Multiple Employer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made. Neither the Parent, any Consolidated Party nor any ERISA Affiliate has received any notification that any Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA), is insolvent (within the meaning of Section 4245 of ERISA), or has been terminated (within the meaning of Title IV of ERISA), and no Multiemployer Plan is, to the best knowledge of the Executive Officers of the Credit Parties, reasonably expected to be in reorganization, insolvent, or terminated.

(d) No prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary responsibility has occurred with respect to a Plan which has subjected or may subject the Parent, any Consolidated Party or any ERISA Affiliate to any liability under Sections 406, 409, 502(i), or 502(l) of ERISA or Section 4975 of the Code, or under any agreement or other instrument pursuant to which the Parent, any Consolidated Party or any ERISA Affiliate has agreed or is required to indemnify any Person against any such liability.

(e) Neither the Parent, any Consolidated Party nor any ERISA Affiliates has any material liability with respect to "expected post-retirement benefit obligations" within the meaning of the Financial Accounting Standards Board Statement 106. Each Plan which is a welfare plan (as defined in Section 3(1) of ERISA) to which Sections 601-609 of ERISA and Section 4980B of the Code apply has been administered in compliance in all material respects of such sections.

(f) Neither the execution and delivery of this Credit Agreement nor the consummation of the financing transactions contemplated thereunder will involve any transaction which is subject to the prohibitions of Sections 404, 406 or 407 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975 of the Code. The representation by the Credit Parties in the preceding sentence is made in reliance upon and subject to the accuracy of the Lenders' representation in Section 11.15 with respect to their source of funds and is subject, in the event that the source of the funds used by the Lenders in connection with this transaction is an insurance company's general asset account, to the application of Prohibited Transaction Class Exemption 95-60, 60 Fed. Reg. 35,925 (1995), compliance with the regulations issued under Section 401(c)(1)(A) of ERISA, or the issuance of any other prohibited transaction exemption or similar relief, to the effect that assets in an insurance company's general asset account do not constitute assets of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Code.

#### 6.13 CORPORATE STRUCTURE; CAPITAL STOCK, ETC.

The capital and ownership structure of the Parent and the Consolidated Parties as of the Closing Date is as described in Schedule 6.13A. Set forth on Schedule 6.13B is a complete and accurate list as of the Closing Date with respect to the Borrower and each of its direct and indirect Subsidiaries of (i) jurisdiction of incorporation, (ii) number of shares of each class of Capital Stock outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by the Parent and the Consolidated Parties and (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto. The outstanding Capital Stock of all such Persons is validly issued, fully paid and non-assessable and as of the Closing Date is owned by the Parent and the Consolidated Parties, directly or indirectly, in the manner set forth on Schedule 6.13B, free and clear of all Liens (other than Permitted Liens). As of the Closing Date, other than as set forth in Schedule 6.13B, neither the Borrower nor any of its Subsidiaries has outstanding any securities convertible into or exchangeable for its Capital Stock nor does any such Person have outstanding any rights to subscribe for or to purchase any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its Capital Stock.

#### 6.14 GOVERNMENTAL REGULATIONS, ETC.

(a) None of the transactions contemplated by this Credit Agreement (including, without limitation, the direct or indirect use of the proceeds of the Loans) will violate or result in a violation of the Securities Act, the Securities Exchange Act or any of

Regulations U and X. If requested by any Lender or the Agent, the Borrower will furnish to the Agent and each Lender a statement, in conformity with the requirements of FR Form U-1 referred to in Regulation U, that no part of the Letters of Credit or proceeds of the Loans will be used, directly or indirectly, for the purpose of "buying" or "carrying" any "margin stock" within the meaning of Regulations U and X, or for the purpose of purchasing or carrying or trading in any securities.

(b) Neither the Parent nor any of the Consolidated Parties is (i) an "investment company", or a company "controlled" by "investment company", within the meaning of the Investment Company Act of 1940, as amended, (ii) a "holding company" as defined in, or otherwise subject to regulation under, the Public Utility Holding Company Act of 1935, as amended or (iii) subject to regulation under any other Federal or state statute or regulation which limits its ability to incur Indebtedness.

#### 6.15 PURPOSE OF LOANS AND LETTERS OF CREDIT.

The Borrower will use the proceeds of the Revolving Loans to provide for working capital and general corporate purposes of the Borrower and its Subsidiaries (including, without limitation, Permitted Acquisitions). The Letters of Credit shall be used only for or in connection with appeal bonds, reimbursement obligations arising in connection with surety and reclamation bonds, reinsurance, domestic or international trade transactions and obligations not otherwise aforementioned relating to transactions entered into by the applicable account party in the ordinary course of business.

#### 6.16 ENVIRONMENTAL MATTERS.

Effect: Except as would not reasonably be expected to have a Material Adverse

(a) Each of the facilities and properties owned, leased or operated by the Parent and the Consolidated Parties (the "Real Properties") and all operations at the Real Properties are in compliance with all applicable Environmental Laws, there is no violation of any Environmental Law with respect to the Real Properties or the businesses operated by the Parent and the Consolidated Parties (the "Businesses"), and there are no conditions relating to the Real Properties or the Businesses that are reasonably likely to give rise to liability under any applicable Environmental Laws.

(b) None of the Real Properties contains, or has previously contained, any Materials of Environmental Concern at, on or under the Real Properties in amounts or concentrations that constitute or constituted a violation of, or are reasonably likely to give rise to liability under, Environmental Laws.

(c) Neither the Parent nor any Consolidated Party has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Real Properties

or the Businesses, nor does any Executive Officer of any Credit Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) Materials of Environmental Concern have not been transported or disposed of from the Real Properties, or generated, treated, stored or disposed of at, on or under any of the Real Properties or any other location, in each case by or on behalf of the Parent or any Consolidated Party in violation of, or in a manner that are reasonably likely to give rise to liability under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the best knowledge of the Executive Officers of the Credit Parties, threatened, under any Environmental Law to which the Parent or any Consolidated Party is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Parent or the Consolidated Parties, the Real Properties or the Businesses.

(f) There has been no release, or threat of release, of Materials of Environmental Concern at or from the Real Properties, or arising from or related to the operations (including, without limitation, disposal) of the Parent or any Consolidated Party in connection with the Real Properties or otherwise in connection with the Businesses, in violation of or in amounts or in a manner that are reasonably likely to give rise to liability under Environmental Laws.

#### 6.17 INTELLECTUAL PROPERTY.

Each of the Parent and the Consolidated Parties owns, or has the legal right to use, all trademarks, tradenames, copyrights, technology, know-how and processes (the "Intellectual Property") necessary for each of them to conduct its business as currently conducted except for those the failure to own or have such legal right to use could not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 6.17 is a list of all Intellectual Property registered with the United States Copyright Office or the United States Patent and Trademark Office and owned by each of the Parent and the Consolidated Parties or that the Parent or any Consolidated Party has the right to use. Except as provided on Schedule 6.17, no claim has been asserted in writing and is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Credit Party know of any such claim, and, to the knowledge of the Executive Officers of the Credit Parties, the use of such Intellectual Property by the Parent or any Consolidated Party does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### 6.18 SOLVENCY.

The Credit Parties, on a consolidated basis, are Solvent.

6.19 INVESTMENTS.

All Investments of each of the Parent and the Consolidated Parties are Permitted Investments.

6.20 BUSINESS LOCATIONS.

Set forth on Schedule 6.20(a) is a list as of the Closing Date of all real property located in the United States and owned or leased by any Credit Party with street address and state where located. Set forth on Schedule 6.20(b) is a list as of the Closing Date of all locations where any tangible personal property of a Credit Party is located, including street address and state where located. Set forth on Schedule 6.20(c) is the chief executive office and principal place of business of each Credit Party as of the Closing Date.

6.21 DISCLOSURE.

Taken as whole, this Credit Agreement, the financial statements referred to in Section 6.1(a) and the other documents, certificates or statements furnished by or on behalf of the Parent or any Consolidated Party in connection with this Credit Agreement do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein or herein in light of the circumstances under which they were made not misleading.

6.22 NO BURDENSOME RESTRICTIONS.

Neither the Parent nor any Consolidated Party is a party to any agreement or instrument or subject to any other obligation or any charter or corporate restriction or any provision of any applicable law, rule or regulation which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

6.23 BROKERS' FEES.

Other than in connection with the Initial Public Offering, neither the Parent nor any Consolidated Party has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with any of the transactions contemplated under the Credit Documents.

6.24 LABOR MATTERS.

Other than as set forth on Schedule 6.24, there are no collective bargaining agreements or Multiemployer Plans covering the employees of the Parent or any Consolidated Party as of the Closing Date and neither the Parent nor any of the Consolidated Parties has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years.

6.25 NATURE OF BUSINESS.

As of the Closing Date, the Parent and the Consolidated Parties are engaged in the business of providing temporary medical staffing services.

SECTION 7

AFFIRMATIVE COVENANTS

Each Credit Party hereby covenants and agrees that, so long as this Credit Agreement is in effect or any amounts payable hereunder or under any other Credit Document shall remain outstanding or any Letter of Credit is outstanding, and until all of the Commitments hereunder shall have terminated:

7.1 INFORMATION COVENANTS.

The Credit Parties will furnish, or cause to be furnished, to the Agent:

(a) Annual Financial Statements.

(i) As soon as available, and in any event within 90 days after the close of each fiscal year of the Consolidated Parties, a consolidated and consolidating balance sheet and income statement of the Consolidated Parties as of the end of such fiscal year, together with related consolidated statements of retained earnings and cash flows for such fiscal year, in each case setting forth in comparative form figures for the preceding fiscal year, all such financial information described above to be in reasonable form and detail and reasonably acceptable to the Agent, and accompanied by a certificate of an Executive Officer of the Borrower to the effect that such annual financial statements fairly present in all material respects the financial condition of the Consolidated Parties and have been prepared in accordance with GAAP and the absence of footnotes.

(ii) As soon as available, and in any event within 90 days after the close of each fiscal year of the Parent, a consolidated and consolidating balance sheet and income statement of the Parent as of the end of such fiscal year, together with related consolidated statements of retained earnings and cash flows for such fiscal year, in each case setting forth in comparative form figures for the preceding fiscal year, all such financial information described above to be in reasonable form and detail and audited by independent certified public accountants of recognized national standing reasonably acceptable to the Agent and whose opinion shall be to the effect that such financial statements have been prepared in accordance with GAAP (except for changes with which such accountants concur) and shall not be limited as to the scope of the audit or qualified as to the status of the Parent as a going concern or any other material qualifications or exceptions. Notwithstanding the foregoing, the Lenders agree that, to the extent that the

requirements of this paragraph (ii) are contained in the annual report of the Parent for such fiscal year on Form 10-K as filed with the SEC (the "Annual Report"), the obligations of the Credit Parties under this paragraph (ii) will be satisfied by delivering to the Agent, within 90 days after the end of such fiscal year, the Annual Report, with copies for each Lender.

(b) Quarterly Statements. As soon as available, and in any event within 45 days after the close of each of the first three fiscal quarters of the Consolidated Parties, a consolidated and consolidating balance sheet and income statement of the Consolidated Parties as of the end of such fiscal quarter, together with related consolidated statements of retained earnings and cash flows for such fiscal quarter, in each case setting forth in comparative form figures for the corresponding period of the preceding fiscal year, all such financial information described above to be in reasonable form and detail and reasonably acceptable to the Agent, and accompanied by a certificate of an Executive Officer of the Borrower to the effect that such quarterly financial statements fairly present in all material respects the financial condition of the Consolidated Parties and have been prepared in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments and the absence of footnotes.

(c) Officer's Certificate. At the time of delivery of the financial statements provided for in Sections 7.1(a)(i) and 7.1(b) above, a certificate of an Executive Officer of the Borrower substantially in the form of Exhibit 7.1(c), (i) demonstrating compliance with the financial covenants contained in Section 7.11 by calculation thereof as of the end of each such fiscal period and (ii) stating that no Default or Event of Default exists, or, if any Default or Event of Default does exist, specifying the nature and extent thereof and what action the Credit Parties propose to take with respect thereto.

(d) Annual Business Plan and Budgets. As soon as available but in any event no later than 45 days following the end of each fiscal year of the Borrower, an annual business plan and budget of the Consolidated Parties containing, among other things, pro forma financial statements for the next four fiscal quarters and the next fiscal year.

(e) Compliance With Certain Provisions of the Credit Agreement. Within 90 days after the end of each fiscal year of the Credit Parties, a certificate executed by an Executive Officer of the Borrower regarding the amount of all Asset Dispositions that were made during the prior fiscal year.

(f) Accountant's Certificate. Within the period for delivery of the annual financial statements provided in Section 7.1(a)(ii), a certification of the accountants conducting the annual audit stating that they have reviewed this Credit Agreement as it relates to accounting and other financial matters and stating further whether, in the course of their audit, they have become aware of any Default or Event of Default and, if any such Default or Event of Default exists, specifying the nature and extent thereof, provided that such accountants shall not be liable by reason of any failure to obtain knowledge of any such Default or Event of Default that would not be disclosed in the course of their audit examination.



(g) Auditor's Reports. Within a reasonable time period after receipt, a copy of any "management letter" submitted by independent accountants to the Parent or any Consolidated Party in connection with any annual audit of the books of such Person.

(h) Reports. Promptly upon transmission or receipt thereof, (i) copies of any filings and registrations with, and reports to or from, the Securities and Exchange Commission, or any successor agency (other than exhibits and registration statements on Form S-8) and (ii) upon the request of the Agent, all reports and written information to and from the United States Environmental Protection Agency, or any state or local agency responsible for environmental matters, the United States Occupational Health and Safety Administration, or any state or local agency responsible for health and safety matters, or any successor agencies or authorities concerning environmental, health or safety matters.

(i) Notices. Upon any Executive Officer of a Credit Party obtaining knowledge thereof, the Credit Parties will give written notice to the Agent immediately of (i) the occurrence of an event or condition consisting of a Default or Event of Default, specifying the nature and existence thereof and what action the Credit Parties propose to take with respect thereto, and (ii) the occurrence of any of the following with respect to the Parent or any Consolidated Party (A) the pendency or commencement of any litigation, arbitral or governmental proceeding against such Person which if adversely determined is reasonably likely to have a Material Adverse Effect or (B) the institution of any proceedings against such Person with respect to, or the receipt of notice by such Person of potential liability or responsibility for violation, or alleged violation of any Federal, state or local law, rule or regulation, including but not limited to, Environmental Laws, the violation of which could reasonably be expected to have a Material Adverse Effect.

(j) ERISA. Upon any Executive Officer of a Credit Party obtaining knowledge thereof, the Credit Parties will give written notice to the Agent promptly (and in any event within five Business Days) of: (i) any event or condition, including, but not limited to, any Reportable Event, that constitutes, or might reasonably lead to, an ERISA Event; (ii) with respect to any Multiemployer Plan, the receipt of notice as prescribed in ERISA or otherwise of any withdrawal liability assessed against the Credit Parties or any ERISA Affiliates, or of a determination that any Multiemployer Plan is in reorganization or insolvent (both within the meaning of Title IV of ERISA); (iii) the failure to make full payment on or before the due date (including extensions) thereof of all amounts which the Parent, any Consolidated Party or any ERISA Affiliate is required to contribute to each Plan pursuant to its terms and as required to meet the minimum funding standard set forth in ERISA and the Code with respect thereto; or (iv) any change in the funding status of any Plan that could reasonably be expected to have a Material Adverse Effect, together with a description of any such event or condition or a copy of any such notice and a statement by an Executive Officer of the Borrower briefly setting forth the details regarding such event, condition, or notice, and the action, if any, which has been or is being taken or is proposed to be taken by the Credit Parties with respect thereto. Promptly upon request, the Credit Parties shall furnish the Agent and the Lenders with such additional information concerning any Plan as may be reasonably requested, including, but not limited to, copies of each

annual report/return (Form 5500 series), as well as all schedules and attachments thereto required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA and the Code, respectively, for each "plan year" (within the meaning of Section 3(39) of ERISA).

(k) Environmental. Upon the reasonable written request of the Agent following the occurrence of any event or the discovery of any condition which the Agent reasonably believes has caused (or could be reasonably expected to cause) the representations and warranties set forth in Section 6.16 to be untrue in any material respect, the Credit Parties will furnish or cause to be furnished to the Agent, at the Credit Parties' expense, a report of an environmental assessment of reasonable scope, form and depth, (including, where appropriate, invasive soil or groundwater sampling) by a consultant reasonably acceptable to the Agent as to the nature and extent of the presence of any Materials of Environmental Concern on any Real Properties (as defined in Section 6.16) and as to the compliance by the Parent, any Consolidated Party with Environmental Laws at such Real Properties. If the Credit Parties fail to deliver such an environmental report within seventy-five (75) days after receipt of such written request then the Agent may arrange for same, and the Credit Parties hereby grant to the Agent and their representatives access to the Real Properties to reasonably undertake such an assessment (including, where appropriate, invasive soil or groundwater sampling). The reasonable cost of any assessment arranged for by the Agent pursuant to this provision will be payable by the Credit Parties on demand and added to the obligations secured by the Collateral Documents.

(l) Additional Patents and Trademarks. At the time of delivery of the financial statements and reports provided for in Section 7.1(a), a report signed by an Executive Officer of the Borrower setting forth (i) a list of registration numbers for all patents, trademarks, service marks, tradenames and copyrights awarded to the Parent or any Consolidated Party since the last day of the immediately preceding fiscal year and (ii) a list of all patent applications, trademark applications, service mark applications, trade name applications and copyright applications submitted by the Parent or any Consolidated Party since the last day of the immediately preceding fiscal year and the status of each such application, all in such form as shall be reasonably satisfactory to the Agent.

(m) Other Information. With reasonable promptness upon any such request, such other information regarding the business, properties or financial condition of the Parent or any Consolidated Party as the Agent may reasonably request.

## 7.2 PRESERVATION OF EXISTENCE AND FRANCHISES.

Except as a result of or in connection with a dissolution, merger or disposition of a Subsidiary not prohibited by Section 8.4 or Section 8.5, each Credit Party will, and will cause each of its Subsidiaries to, do all things necessary to preserve and keep in full force and effect its existence, authority and material rights and franchises.

### 7.3 BOOKS AND RECORDS.

Each Credit Party will, and will cause each of its Subsidiaries to, keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves).

### 7.4 COMPLIANCE WITH LAW.

Each Credit Party will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders, and all applicable restrictions imposed by all Governmental Authorities, applicable to it and its Property if noncompliance with any such law, rule, regulation, order or restriction could reasonably be expected to have a Material Adverse Effect.

### 7.5 PAYMENT OF TAXES AND OTHER INDEBTEDNESS.

Each Credit Party will, and will cause each of its Subsidiaries to, pay and discharge (a) all material taxes, assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent, (b) all lawful claims (including claims for labor, materials and supplies) which, if unpaid, might give rise to a Lien upon any of its properties, and (c) except as prohibited hereunder, all of its other Indebtedness as it shall become due; provided, however, that neither the Parent nor any Consolidated Party shall be required to pay any such tax, assessment, charge, levy, claim or Indebtedness which is being contested in good faith by appropriate proceedings and as to which adequate reserves therefor have been established in accordance with GAAP, unless the failure to make any such payment (i) could give rise to an immediate right to foreclose on a Lien securing such amounts or (ii) could reasonably be expected to have a Material Adverse Effect.

### 7.6 INSURANCE.

(a) Each Credit Party will, and will cause each of its Subsidiaries to, at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice (or as otherwise required by the Collateral Documents). The Agent shall be named as loss payee or mortgagee, as its interest may appear, and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Agent, that it will give the Agent thirty (30) days prior written notice before any such policy or policies shall be altered or canceled. The present insurance coverage of the Parent and the Consolidated Parties as of the Closing Date is outlined as to carrier, policy number, expiration date, type and amount on Schedule 7.6.

(b) In the event that the Parent or any of the Consolidated Parties receive Net Cash Proceeds in excess of \$100,000 in aggregate amount during any fiscal year of the Parent and the Consolidated Parties ("Excess Proceeds") on account of any loss of, damage

to or destruction of, or any condemnation or other taking for public use of, any Property of the Parent or the Consolidated Parties (with respect to the Parent or any Consolidated Party, an "Involuntary Disposition"), the Credit Parties shall, within the period of 360 days following the date of receipt of such Excess Proceeds, apply (or cause to be applied) an amount equal to such Excess Proceeds to (i) make Eligible Reinvestments (including but not limited to the repair or replacement of the related Property) or (ii) prepay the Loans (and cash collateralize LOC Obligations) in accordance with the terms of Section 3.3(b)(ii)(B); provided, however, that such Person shall not undertake replacement or restoration of such Property unless, after giving pro forma effect to any Funded Indebtedness to be incurred in connection with such replacement or restoration, no Default or Event of Default would have occurred as of the most recent fiscal quarter end preceding the date of determination with respect to which the Agent has received the Required Financial Information (assuming, for purposes hereof, that such Funded Indebtedness was incurred as of the first day of the four fiscal-quarter period ending as of such fiscal quarter end). All insurance proceeds shall be subject to the security interest of the Agent (for the ratable benefit of the Lenders) under the Collateral Documents. Pending final application of any Excess Proceeds, the Credit Parties may apply such Excess Proceeds to temporarily reduce the Revolving Loans or to make Permitted Investments.

#### 7.7 MAINTENANCE OF PROPERTY.

Each Credit Party will, and will cause each of its Subsidiaries to, maintain and preserve its properties and equipment material to the conduct of its business in good repair, working order and condition, normal wear and tear and casualty and condemnation excepted, and will make, or cause to be made, in such properties and equipment from time to time all repairs, renewals, replacements, extensions, additions, betterments and improvements thereto as may be needed or proper, to the extent and in the manner customary for companies in similar businesses.

#### 7.8 PERFORMANCE OF OBLIGATIONS.

Each Credit Party will, and will cause each of its Subsidiaries to, perform in all material respects all of its material obligations under the terms of all material agreements, indentures, mortgages, security agreements or other debt instruments to which it is a party or by which it is bound.

#### 7.9 USE OF PROCEEDS.

The Borrower will use the proceeds of the Loans and will use the Letters of Credit solely for the purposes set forth in Section 6.15.

#### 7.10 AUDITS/INSPECTIONS.

Upon reasonable notice and during normal business hours, each Credit Party will, and will cause each of its Subsidiaries to, permit representatives appointed by the Agent, including, without limitation, independent accountants, agents, attorneys, and appraisers to visit and inspect its property, including its books and records, its accounts receivable and inventory, its facilities and its

other business assets, and to make photocopies or photographs thereof and to write down and record any information such representative obtains and shall permit the Agent or its representatives to investigate and verify the accuracy of information provided to the Lenders and to discuss all such matters with the officers, employees and representatives of such Person; provided, however, that, unless an Event of Default shall be in existence, the Agent shall not exercise its rights under this sentence more often than one time during any calendar year. The Credit Parties agree that the Agent, and its representatives, may conduct an annual audit of the Collateral, at the expense of the Credit Parties not to exceed \$10,000 per annum.

#### 7.11 FINANCIAL COVENANTS.

(a) Leverage Ratio. The Credit Parties shall not permit the Leverage Ratio as of the last day of any fiscal quarter of the Consolidated Parties to be greater than 2.00 to 1.00.

(b) Fixed Charge Coverage Ratio. The Credit Parties shall not permit the Fixed Charge Coverage Ratio as of the last day of any fiscal quarter of the Consolidated Parties to be less than 3.00 to 1.00.

#### 7.12 ADDITIONAL GUARANTORS.

As soon as practicable and in any event within 30 days after any Person becomes a direct or indirect Subsidiary of the Parent, the Borrower shall provide the Agent with written notice thereof setting forth information in reasonable detail describing all of the assets of such Person and shall (a) if such Person is a Domestic Subsidiary, (i) cause such Person to execute a Joinder Agreement in substantially the same form as Exhibit 7.12 and (ii) cause 100% of the issued and outstanding Capital Stock of such Person to be delivered (if certificated) to the Agent (together with undated stock powers signed in blank) and pledged to the Agent pursuant to an appropriate pledge agreement(s) in substantially the form of the Pledge Agreement and otherwise in form reasonably acceptable to the Agent, (b) if such Person is a direct Foreign Subsidiary of a Credit Party, cause 65% (or such greater percentage that, due to a change in an applicable Requirement of Law after the date hereof, (i) could not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Foreign Subsidiary's United States parent and (ii) could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Capital Stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of such Person to be delivered (if certificated) to the Agent (together with undated stock powers signed in blank (unless, with respect to a Foreign Subsidiary, such stock powers are deemed unnecessary by the Agent in its reasonable discretion under the law of the jurisdiction of incorporation of such Person)) and pledged to the Agent pursuant to an appropriate pledge agreement(s) in substantially the form of the Pledge Agreement and otherwise in form acceptable to the Agent and (c) cause such Person to (i) if such Person is a Domestic Subsidiary which has any real Property required by Section 7.13 to be pledged to the Agent, use commercially reasonable efforts to cause to be delivered to the Agent with respect to such real Property, such real property documents, instruments and other items, in form reasonably acceptable to the Agent, as the Agent shall reasonably request in order to provide the

Agent with a first priority, perfected and title insured Lien in such real Property to secure the Credit Party Obligations and (ii) deliver such other documentation as the Agent may reasonably request in connection with the foregoing, including, without limitation, appropriate UCC-1 financing statements, real estate title insurance policies, environmental reports, landlord's waivers, certified resolutions and other organizational and authorizing documents of such Person, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above and the perfection of the Agent's Liens thereunder) and other items of the types required to be delivered pursuant to Section 5.1(b), (c) and (d), all in form, content and scope reasonably satisfactory to the Agent.

#### 7.13 PLEDGED ASSETS.

Each Credit Party will (i) cause all of its owned Property other than Excluded Property, and (ii) to the extent deemed to be material by the Agent or the Requisite Lender in its or their sole reasonable discretion, use commercially reasonable efforts to cause all of its leased Property other than Excluded Property, to be subject at all times to first priority, perfected and, in the case of owned real Property, title insured Liens in favor of the Agent to secure the Credit Party Obligations pursuant to the terms and conditions of the Collateral Documents or, with respect to any such Property acquired subsequent to the Closing Date, such other additional security documents as the Agent shall reasonably request, subject in any case to Permitted Liens. In keeping with the requirements of the preceding sentence, each Credit Party will use commercially reasonable efforts to cause to be delivered to the Agent, with respect to any real Property acquired by such Person subsequent to the Closing Date and required by this Section 7.13 to be pledged to the Agent, such real property documents, instruments and other items, in form reasonably acceptable to the Agent, as the Agent shall reasonably request in order to provide the Agent with a first priority, perfected and title insured Lien in such real Property to secure the Credit Party Obligations. Without limiting the generality of the above, the Credit Parties will cause (i) 100% of the issued and outstanding Capital Stock of the Borrower, (ii) 100% of the issued and outstanding Capital Stock of each Domestic Subsidiary and (iii) 65% (or such greater percentage that, due to a change in an applicable Requirement of Law after the date hereof, (i) could not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Foreign Subsidiary's United States parent and (ii) could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Capital Stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each Foreign Subsidiary directly owned by the Parent or any Domestic Subsidiary to be subject at all times to a first priority, perfected Lien in favor of the Agent pursuant to the terms and conditions of the Collateral Documents or such other security documents as the Agent shall reasonably request.

#### 7.14 ENVIRONMENTAL.

The Parent and the Consolidated Parties will conduct and complete all investigations, studies, sampling, and testing and all remedial, removal, and other actions necessary to address all

Materials of Environmental Concern on, from or affecting any of the Real Properties to the extent necessary to be in compliance with all Environmental Laws and with the validly issued orders and directives of all Governmental Authorities with jurisdiction over such Real Properties to the extent any failure to undertake such action could reasonably be expected to have a Material Adverse Effect.

## SECTION 8

### NEGATIVE COVENANTS

Each Credit Party hereby covenants and agrees that, so long as this Credit Agreement is in effect or any amounts payable hereunder or under any other Credit Document shall remain outstanding or any Letter of Credit is outstanding, and until all of the Commitments hereunder shall have terminated:

#### 8.1 INDEBTEDNESS.

The Credit Parties will not permit the Parent or any Consolidated Party to contract, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness arising under this Credit Agreement and the other Credit Documents;

(b) Indebtedness of the Borrower and its Subsidiaries set forth in Schedule 8.1 (and renewals, refinancings and extensions thereof on terms and conditions no less favorable to such Person than such existing Indebtedness);

(c) purchase money Indebtedness (including obligations in respect of Capital Leases or Synthetic Leases) hereafter incurred by the Borrower or any of its Subsidiaries to finance the purchase of fixed assets provided that (i) the total of all such Indebtedness under this clause (c) for all such Persons taken together shall not exceed an aggregate principal amount of \$5,000,000 at any one time outstanding; (ii) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed; and (iii) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing;

(d) obligations of the Borrower in respect of Hedging Agreements entered into in order to manage existing or anticipated interest rate or exchange rate risks and not for speculative purposes;

(e) intercompany Indebtedness arising out of loans, advances and Guaranty Obligations permitted under Section 8.6;

(f) Subordinated Indebtedness of the Parent in an aggregate principal amount not to exceed \$25,000,000 at any one time outstanding plus any accumulated accrued pay-

in-kind interest on such Indebtedness; provided, that such Subordinated Indebtedness does not provide for the payment of cash interest prior to six months after the Maturity Date;

(g) Indebtedness of any Subsidiary of the Borrower that existed at the time such Person became a Subsidiary of the Borrower in connection with a Permitted Acquisition and Indebtedness assumed by the Borrower or any Subsidiary of the Borrower in connection with a Permitted Acquisition; provided that (i) such Indebtedness was not incurred in contemplation of such Permitted Acquisition; (ii) the total of all such Indebtedness under this clause (h) for all such Persons taken together shall not exceed an aggregate principal amount of \$5,000,000 at any one time outstanding; and (iii) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing;

(h) Subordinated Indebtedness of the Borrower in an aggregate principal amount not to exceed \$25,000,000 at any one time outstanding plus any accumulated accrued pay-in-kind interest on such Indebtedness;

(i) other unsecured Indebtedness of the Borrower or any of its Subsidiaries in an aggregate principal amount not to exceed \$10,000,000 at any one time outstanding; and

(j) Guaranty Obligations of the Parent, the Borrower or any of the Subsidiaries of the Borrower with respect to any Indebtedness of the Borrower or any of its Subsidiaries permitted by this Section 8.1.

## 8.2 LIENS.

The Credit Parties will not permit the Parent or any Consolidated Party to contract, create, incur, assume or permit to exist any Lien with respect to any of its Property, whether now owned or after acquired, except for Permitted Liens.

## 8.3 NATURE OF BUSINESS.

The Credit Parties will not permit the Parent or any Consolidated Party to engage at any time in any business or business activity other than the business conducted by such Person as of the Closing Date and any business reasonably related or similar thereto.

## 8.4 CONSOLIDATION, MERGER, DISSOLUTION, ETC.

Except in connection with a Permitted Asset Disposition, the Credit Parties will not permit the Parent or any Consolidated Party to merge or consolidate or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); provided that, notwithstanding the foregoing provisions of this Section 8.4 but subject to the terms of Sections 7.12 and 7.13, (a) the Borrower may merge or consolidate with any of its Subsidiaries; provided that the Borrower shall be the continuing or surviving corporation, (b) any Credit Party other than the Parent or the Borrower may merge or consolidate with any other Credit Party other than the Parent or the Borrower, (c) any Consolidated



Party which is not a Credit Party may be merged or consolidated with or into any Credit Party other than the Parent provided that such Credit Party shall be the continuing or surviving corporation, (d) any Consolidated Party which is not a Credit Party may be merged or consolidated with or into any other Consolidated Party which is not a Credit Party, (e) any Subsidiary of the Borrower may merge with any Person that is not a Credit Party in connection with an Asset Disposition permitted under Section 8.5, (f) the Borrower or any Subsidiary of the Borrower may merge with any Person other than a Consolidated Party in connection with a Permitted Acquisition provided that, if such transaction involves the Borrower, the Borrower shall be the continuing or surviving corporation and (g) any Subsidiary of the Borrower may dissolve, liquidate or wind up its affairs at any time provided that such dissolution, liquidation or winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect. It is understood that this Section 8.4 shall not prohibit the Parent or any Consolidated Party from entering into any agreement of merger or consolidation, but shall prohibit the consummation of any such merger or consolidation (except as permitted pursuant to this Section 8.4).

#### 8.5 ASSET DISPOSITIONS.

The Credit Parties will not permit the Parent or any Consolidated Party to make any Asset Disposition other than an Excluded Asset Disposition unless (a) at least 80% of the consideration paid in connection therewith shall consist of cash or Cash Equivalents, (b) if such transaction is a Sale and Leaseback Transaction, such transaction is not prohibited by the terms of Section 8.13, (c) such transaction does not involve the sale or other disposition of a minority equity interest in any Consolidated Party, (d) such transaction does not involve a sale or other disposition of receivables other than receivables owned by or attributable to other Property concurrently being disposed of in a transaction otherwise permitted under this Section 8.5, (e) the aggregate net book value of all of the assets sold or otherwise disposed of by the Parent and the Consolidated Parties in all such transactions after the Closing Date shall not exceed \$5,000,000, (f) if the aggregate net book value of the assets being sold or otherwise disposed of by the Parent and the Consolidated Parties in such transaction exceeds \$250,000, a certificate of an Executive Officer of the Borrower specifying the anticipated date of such Asset Disposition, briefly describing the assets to be sold or otherwise disposed of and setting forth the net book value of such assets, the aggregate consideration and the Net Cash Proceeds to be received for such assets in connection with such Asset Disposition and (g) the Credit Parties shall, within the period of 360 days following the consummation of such Asset Disposition (with respect to any such Asset Disposition, the "Application Period"), apply (or cause to be applied) an amount equal to the Net Cash Proceeds of such Asset Disposition to (i) make Eligible Reinvestments or (ii) prepay the Loans (and cash collateralize LOC Obligations) in accordance with the terms of Section 3.3(b)(ii)(A). Pending final application of the Net Cash Proceeds of any Asset Disposition, the Parent and the Consolidated Parties may apply such Net Cash Proceeds to temporarily reduce the Revolving Loans or to make Investments in Cash Equivalents.

Upon a sale of assets or the sale of Capital Stock of a Consolidated Party permitted by this Section 8.5, the Agent shall (to the extent applicable) deliver to the Credit Parties, upon the Credit Parties' request and at the Credit Parties' expense, such documentation as is reasonably necessary to evidence the release of the Agent's security interest, if any, in such assets or Capital Stock, including, without limitation, amendments or terminations of UCC financing statements, if any, the

return of stock certificates, if any, and the release of such Consolidated Party from all of its obligations, if any, under the Credit Documents.

#### 8.6 INVESTMENTS.

The Credit Parties will not permit the Parent or any Consolidated Party to make Investments in or to any Person, except for Permitted Investments.

#### 8.7 RESTRICTED PAYMENTS.

The Credit Parties will not permit the Parent or any Consolidated Party to, directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment, except (a) to make dividends or other distributions payable to any Credit Party other than the Parent (directly or indirectly through Subsidiaries), (b) payments by any Consolidated Parties to the Parent in respect of the tax liability of the affiliated group of corporations that file consolidated federal income tax returns (or that file state or local income tax returns on a consolidated, combined, unitary or similar basis), (c) loans, advances, dividends or distributions by any Consolidated Party to the Parent not to exceed \$500,000 in any fiscal year to enable the Parent to pay its costs (including all professional fees and expenses) incurred to comply with its reporting obligations under federal or state laws or in connection with reporting obligations in respect of any Indebtedness of the Parent permitted under Section 8.1, (d) loans, advances, dividends or distributions by any Consolidated Party to the Parent to enable the Parent to pay for corporate, administrative and operating expenses in the ordinary course of business (including, without limitation, costs and expenses in connection with the Initial Public Offering and advisory fees, commissions and expenses incurred by a Credit Party in connection with any Permitted Acquisition or other business combination permitted under this Credit Agreement) not to exceed \$500,000 in any fiscal year (exclusive of costs and expenses in connection with the Initial Public Offering), (e) loans, advances, dividends or distributions by a Consolidated Party to enable the Parent to pay an annual management fee to the Sponsor Entities in an aggregate amount not to exceed \$500,000 in any fiscal year, (f) the repurchase, redemption or other acquisition or retirement for value of any Capital Stock or any option to acquire Capital Stock of the Parent held by members of senior management and other key employees of the Parent and its Subsidiaries in an aggregate cash amount of up to \$5,000,000 per year and not to exceed \$10,000,000 in the aggregate during the term of this Credit Agreement, (g) as permitted by Section 8.8 or Section 8.9, (h) loans, advances, dividends or distributions to the Parent to effect the consummation of the Initial Public Offering, (i) payments in kind of interest accrued in respect of any Subordinated Indebtedness, (j) the refinancing of any Subordinated Indebtedness with the proceeds received from any Equity Issuance or other Subordinated Indebtedness and (k) Restricted Payments in addition to the foregoing in an amount not to exceed (x) 50% of Excess Cash Flow for each fiscal year ended after the Closing Date minus (y) the cumulative aggregate amount of Restricted Payments paid under Section 8.7(k) since the Closing Date minus (z) the Used Revolving Committed Amount as of the date of such Restricted Payment.

#### 8.8 OTHER INDEBTEDNESS, ETC.

The Credit Parties will not permit the Parent or any Consolidated Party to (a) if any Default or Event of Default has occurred and is continuing or would be directly or indirectly caused as a

result thereof, (i) after the issuance thereof, amend or modify any of the terms of any Indebtedness of any such Person if such amendment or modification would add or change any terms in a manner adverse to such Person, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto or change any subordination provision thereof, or (ii) make (or give any notice with respect thereto) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any other Indebtedness of such Person, (b) shorten the final maturity of any Subordinated Indebtedness or amend or modify any of the subordination provisions of any Subordinated Indebtedness, (c) make interest payments in respect of any Subordinated Indebtedness in violation of the subordination provisions of the documents evidencing and/or governing such Subordinated Indebtedness or (d) except as otherwise permitted under Section 8.7, make (or give any notice with respect thereto) any voluntary or optional payment or prepayment, redemption, acquisition for value or defeasance of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any Subordinated Indebtedness.

#### 8.9 TRANSACTIONS WITH AFFILIATES.

The Credit Parties will not permit the Parent or any Consolidated Party to enter into or permit to exist any transaction or series of transactions with any officer, director, shareholder, Subsidiary or Affiliate of such Person other than (a) advances of working capital to any Credit Party other than the Parent, (b) transfers of cash and assets to any Credit Party other than the Parent, (c) transactions expressly permitted by Section 8.1, Section 8.4, Section 8.5, Section 8.6, or Section 8.7, (d) customary compensation and reimbursement of expenses of officers and directors, (e) transactions described on Schedule 8.9 and (f) except as otherwise specifically limited in this Credit Agreement, other transactions which are entered into in the ordinary course of such Person's business on terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director, shareholder, Subsidiary or Affiliate.

#### 8.10 ORGANIZATIONAL DOCUMENTS; FISCAL YEAR.

The Credit Parties will not permit the Parent or any Consolidated Party to (i) amend, modify or change its articles of incorporation (or corporate charter or other similar organizational document) or bylaws (or other similar document) in any manner materially adverse to the Lenders or (ii) change its fiscal year.

#### 8.11 LIMITATION ON RESTRICTED ACTIONS.

The Credit Parties will not permit the Parent or any Consolidated Party to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Person to (a) pay dividends or make any other distributions to any Credit Party on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, (b) pay any Indebtedness or other obligation owed to any Credit Party,

(c) make loans or advances to any Credit Party, (d) sell, lease or transfer any of its properties or assets to any Credit Party, or (e) act as a Credit Party and pledge its assets pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (a)-(d) above) for such encumbrances or restrictions existing under or by reason of (i) this Credit Agreement and the other Credit Documents, (ii) documents evidencing and/or governing any Subordinated Indebtedness to the extent consistent with the restrictions in this Section 8.11, (iii) applicable law, (iv) any document or instrument governing Indebtedness incurred pursuant to Section 8.1(c) or Section 8.1(g), provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (v) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien or (vi) customary restrictions and conditions contained in any agreement relating to the sale of any Property permitted under Section 8.5 pending the consummation of such sale.

#### 8.12 OWNERSHIP OF SUBSIDIARIES; LIMITATIONS ON PARENT.

Notwithstanding any other provisions of this Credit Agreement to the contrary:

(a) The Credit Parties will not permit the Parent or any Consolidated Party to (i) permit any Person (other than the Borrower or any Wholly Owned Subsidiary of the Borrower) to own any Capital Stock of any Subsidiary of the Borrower, except (A) to qualify directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Capital Stock of Foreign Subsidiaries or (B) as a result of or in connection with a dissolution, merger, consolidation or disposition of a Subsidiary not prohibited by Section 8.4 or Section 8.5, (ii) permit any Subsidiary of the Borrower to issue or have outstanding any shares of preferred Capital Stock or (iii) permit, create, incur, assume or suffer to exist any Lien on any Capital Stock of any Subsidiary of the Borrower, except for Permitted Liens.

(b) The Parent shall not (i) hold any material assets other than the Capital Stock of the Borrower, (ii) have any liabilities other than (A) Indebtedness permitted under Section 8.1, (B) tax liabilities in the ordinary course of business, (C) loans, advances and payments permitted under Section 8.9, (D) corporate, administrative and operating expenses in the ordinary course of business and (E) other liabilities under (1) the Credit Documents, (2) the documents evidencing and/or governing any Subordinated Indebtedness, (3) registration rights agreements, (4) stock option plans (including, without limitation, those in existence on the Closing Date), or (5) any other agreement, document or instrument related to any of the foregoing or (iii) engage in any business other than (A) owning the Capital Stock of the Borrower and activities incidental or related thereto, (B) acting as a Guarantor hereunder and pledging its assets to the Agent, for the benefit of the Lenders, pursuant to the Collateral Documents to which it is a party, (C) activities related to its obligations under the Securities Exchange Act, (D) acting as a borrower or guarantor, as applicable, in respect of Indebtedness permitted under Section 8.1 and (E) in connection with the exercise of its rights under and its compliance with the obligations applicable to it under the documents listed in clause (ii)(E) above.

8.13 SALE LEASEBACKS.

The Credit Parties will not permit the Parent or any Consolidated Party to enter into any Sale and Leaseback Transaction.

8.14 CAPITAL EXPENDITURES.

The Credit Parties will not permit Consolidated Capital Expenditures for any fiscal year to exceed \$10,000,000 plus the unused amount available for Consolidated Capital Expenditures under this Section 8.14 for the immediately preceding fiscal year (excluding any carry forward available from any prior fiscal year).

8.15 NO FURTHER NEGATIVE PLEDGES.

The Credit Parties will not permit the Parent or any Consolidated Party to enter into, assume or become subject to any agreement prohibiting or otherwise restricting the existence of any Lien upon any of its Property in favor of the Agent (for the benefit of the Lenders) for the purpose of securing the Credit Party Obligations, whether now owned or hereafter acquired, or requiring the grant of any security for any obligation if such Property is given as security for the Credit Party Obligations, except (a) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 8.1(c), provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (b) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 8.1(g), (c) in connection with any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien and (d) pursuant to customary restrictions and conditions contained in any agreement relating to the sale of any Property permitted under Section 8.5, pending the consummation of such sale.

8.16 LIMITATION ON FOREIGN OPERATIONS.

The Credit Parties will not permit (i) the Borrower and the Domestic Subsidiaries to own at any time less than 90% of Consolidated Total Assets or (ii) the portion of Consolidated EBITDA attributable to the Borrower and the Domestic Subsidiaries on a consolidated basis for any four quarter period to be less than 90% of total Consolidated EBITDA for such period.

SECTION 9

EVENTS OF DEFAULT

9.1 EVENTS OF DEFAULT.

An Event of Default shall exist upon the occurrence and during the continuance of any of the following specified events (each an "Event of Default"):

(a) Payment. Any Credit Party shall

(i) default in the payment when due of any principal of any of the Loans or of any reimbursement obligations arising from drawings under Letters of Credit, or

(ii) default, and such default shall continue for three (3) or more Business Days, in the payment when due of any interest on the Loans or on any reimbursement obligations arising from drawings under Letters of Credit, or of any Fees or other amounts owing hereunder, under any of the other Credit Documents or in connection herewith or therewith; or

(b) Representations. Any representation, warranty or statement made or deemed to be made by any Credit Party herein, in any of the other Credit Documents, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was deemed to have been made; or

(c) Covenants. Any Credit Party shall

(i) default in the due performance or observance of any term, covenant or agreement contained in Sections 7.2, 7.9 or 7.11 or Section 8;

(ii) default in the due performance or observance of any term, covenant or agreement contained in Sections 7.1(a) or (b), 7.12 or 7.13 and such default shall continue unremedied for a period of at least 15 days after the earlier of an Executive Officer of a Credit Party becoming aware of such default or notice thereof by the Agent; or

(iii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in clauses (a), (b), (c)(i) or (c)(ii) of this Section 9.1) contained in this Credit Agreement or any other Credit Document and such default shall continue unremedied for a period of at least 30 days after the earlier of an Executive Officer of a Credit Party becoming aware of such default or notice thereof by the Agent; or

(d) Other Credit Documents. Except as a result of or in connection with a dissolution, merger or disposition of a Subsidiary not prohibited by Section 8.4 or Section 8.5, any Credit Document shall fail to be in full force and effect or to give the Agent and/or the Lenders the Liens, rights, powers and privileges purported to be created thereby, or any Credit Party shall so state in writing; or

(e) Guaranties. Except as the result of or in connection with a dissolution, merger or disposition of a Subsidiary not prohibited by Section 8.4 or Section 8.5, the guaranty given by any Guarantor hereunder (including any Person after the Closing Date in

accordance with Section 7.12) or any provision thereof shall cease to be in full force and effect, or any Guarantor (including any Person after the Closing Date in accordance with Section 7.12) hereunder or any Person acting by or on behalf of such Guarantor shall deny or disaffirm such Guarantor's obligations under such guaranty, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to any guaranty; or

(f) Bankruptcy, etc. Any Bankruptcy Event shall occur with respect to the Parent or any Consolidated Party; or

(g) Defaults under Other Indebtedness. With respect to any Indebtedness (other than Indebtedness outstanding under this Credit Agreement) in excess of \$2,000,000 in the aggregate for the Parent and the Consolidated Parties taken as a whole, either (1) a default in any payment shall occur and continue (beyond the applicable grace period with respect thereto, if any) with respect to any such Indebtedness, or (2) a default in the observance or performance of any other agreement or condition relating to such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event or condition shall occur or exist, the effect of which default or other event or condition is to cause, or permit, the holder or holders of such Indebtedness (or trustee or agent on behalf of such holders) to cause (with the giving of notice, if required), any such Indebtedness to become due prior to its stated maturity, or, in the case of any such Indebtedness constituting a Guaranty Obligation, to become due and payable; or

(h) Judgments. One or more judgments or decrees shall be entered against one or more of the Parent and the Consolidated Parties involving a liability of \$2,000,000 or more in the aggregate (to the extent not paid or fully covered by insurance provided by a carrier who has acknowledged coverage and has the ability to perform) and any such judgments or decrees shall not have been vacated, discharged or stayed or bonded pending appeal within 30 days from the entry thereof; or

(i) ERISA. Any of the following events or conditions, if such event or condition could involve possible taxes, penalties, and other liabilities in an aggregate amount in excess of \$2,000,000: (i) any "accumulated funding deficiency," as such term is defined in Section 302 of ERISA and Section 412 of the Code, whether or not waived, shall exist with respect to any Plan, or any lien shall arise on the assets of the Parent, any Consolidated Party or any ERISA Affiliate in favor of the PBGC or a Plan; (ii) an ERISA Event shall occur with respect to a Single Employer Plan, which is, in the reasonable opinion of the Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA; (iii) an ERISA Event shall occur with respect to a Multiemployer Plan or Multiple Employer Plan, which is, in the reasonable opinion of the Agent, likely to result in (A) the termination of such Plan for purposes of Title IV of ERISA, or (B) the Parent, any Consolidated Party or any ERISA Affiliate incurring any liability in connection with a withdrawal from, reorganization of (within the meaning of Section 4241 of ERISA), or insolvency (within the meaning of Section 4245 of ERISA) of such Plan; or (iv) any prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary responsibility shall occur which may subject the Parent, any

Consolidated Party or any ERISA Affiliate to any liability under Sections 406, 409, 502(i), or 502(l) of ERISA or Section 4975 of the Code, or under any agreement or other instrument pursuant to which the Parent, any Consolidated Party or any ERISA Affiliate has agreed or is required to indemnify any person against any such liability; or

(j) Ownership. There shall occur a Change in Control.

## 9.2 ACCELERATION; REMEDIES.

Upon the occurrence and continuance of an Event of Default, the Agent shall, upon the request and direction of the Requisite Lenders, by written notice to the Credit Parties take any of the following actions:

(a) Termination of Commitments. Declare the Commitments terminated whereupon the Commitments shall be immediately terminated.

(b) Acceleration. Declare the unpaid principal of and any accrued interest in respect of all Loans, any reimbursement obligations arising from drawings under Letters of Credit and any and all other indebtedness or obligations of any and every kind owing by the Credit Parties to the Agent and/or any of the Lenders hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Credit Parties.

(c) Cash Collateral. Direct the Credit Parties to pay (and the Credit Parties agree that upon receipt of such notice they will immediately pay) to the Agent additional cash, to be held by the Agent, for the benefit of the Lenders, in a cash collateral account as additional security for the LOC Obligations in respect of subsequent drawings under all then outstanding Letters of Credit in an amount equal to the maximum aggregate amount which may be drawn under all Letters of Credits then outstanding.

(d) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Credit Documents including, without limitation, all rights and remedies existing under the Collateral Documents, all rights and remedies against a Guarantor and all rights of set-off.

Notwithstanding the foregoing, if an Event of Default specified in Section 9.1(f) shall occur with respect to the Borrower, then, without the giving of any notice or other action by the Agent or the Lenders, (i) the Commitments automatically shall terminate, (ii) all Loans, all reimbursement obligations arising from drawings under Letters of Credit, all accrued interest in respect thereof, all accrued and unpaid Fees and other indebtedness or obligations owing to the Agent and/or any of the Lenders hereunder automatically shall immediately become due and payable and (iii) the Credit Parties automatically shall be obligated to pay to the Agent additional cash, to be held by the Agent, for the benefit of the Lenders, in a cash collateral account as additional security for the LOC Obligations in respect of subsequent drawings under all then outstanding Letters of Credit in an amount equal to the maximum aggregate amount which may be drawn under all Letters of Credits then outstanding.



SECTION 10

AGENCY PROVISIONS

10.1 APPOINTMENT, POWERS AND IMMUNITIES.

Each Lender hereby irrevocably appoints and authorizes the Agent to act as its agent under this Credit Agreement and the other Credit Documents with such powers and discretion as are specifically delegated to the Agent by the terms of this Credit Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. The Agent (which term as used in this sentence and in Section 10.5 and the first sentence of Section 10.6 hereof shall include its Affiliates and its own and its Affiliates' officers, directors, employees, and agents): (a) shall not have any duties or responsibilities except those expressly set forth in this Credit Agreement and shall not be a trustee or fiduciary for any Lender; (b) shall not be responsible to the Lenders for any recital, statement, representation, or warranty (whether written or oral) made in or in connection with any Credit Document or any certificate or other document referred to or provided for in, or received by any of them under, any Credit Document, or for the value, validity, effectiveness, genuineness, enforceability, or sufficiency of any Credit Document, or any other document referred to or provided for therein or for any failure by any Credit Party or any other Person to perform any of its obligations thereunder; (c) shall not be responsible for or have any duty to ascertain, inquire into, or verify the performance or observance of any covenants or agreements by any Credit Party or the satisfaction of any condition or to inspect the property (including the books and records) of any Credit Party or any of its Subsidiaries or Affiliates; and (d) shall not be responsible for any action taken or omitted to be taken by it under or in connection with any Credit Document, except for its own gross negligence or willful misconduct. The Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

10.2 RELIANCE BY AGENT.

The Agent shall be entitled to rely upon any certification, notice, instrument, writing, or other communication (including, without limitation, any thereof by telephone or telecopy) believed by it to be genuine and correct and to have been signed, sent or made by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel (including counsel for any Credit Party), independent accountants, and other experts selected by the Agent. The Agent may deem and treat the payee of any Note as the holder thereof for all purposes hereof unless and until the Agent receives and accepts an Assignment and Acceptance executed in accordance with Section 11.3(b) hereof. As to any matters not expressly provided for by this Credit Agreement, the Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders, and such instructions shall be binding on all of the Lenders; provided, however, that the Agent shall not be required to take any action that exposes the Agent to personal liability or that is contrary to any Credit Document

or applicable law or unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking any such action.

#### 10.3 DEFAULTS.

The Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default unless the Agent has received written notice from a Lender or a Credit Party specifying such Default or Event of Default and stating that such notice is a "Notice of Default". In the event that the Agent receives such a notice of the occurrence of a Default or Event of Default, the Agent shall give prompt notice thereof to the Lenders. The Agent shall (subject to Section 10.2 hereof) take such action with respect to such Default or Event of Default as shall reasonably be directed by the Requisite Lenders (or such other Lenders as required by Section 11.6), provided that, unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Lenders.

#### 10.4 RIGHTS AS A LENDER.

With respect to its Commitment and the Loans made by it, Bank of America (and any successor acting as Agent) in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as the Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include the Agent in its individual capacity. Bank of America (and any successor acting as Agent) and its Affiliates may (without having to account therefor to any Lender) accept deposits from, lend money to, make investments in, provide services to, and generally engage in any kind of lending, trust, or other business with any Credit Party or any of its Subsidiaries or Affiliates as if it were not acting as Agent, and Bank of America (and any successor acting as Agent) and its Affiliates may accept fees and other consideration from any Credit Party or any of its Subsidiaries or Affiliates for services in connection with this Credit Agreement or otherwise without having to account for the same to the Lenders.

#### 10.5 INDEMNIFICATION.

The Lenders agree to indemnify the Agent (to the extent not reimbursed under Section 11.5 hereof, but without limiting the obligations of the Credit Parties under such Section) ratably (in accordance with their respective Revolving Commitments (or, if the Revolving Commitments have been terminated, the outstanding Revolving Loans and Participation Interests in Letters of Credit (including the Participation Interests of the Issuing Lender(s) in Letters of Credit))), for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees), or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against the Agent (including by any Lender) in any way relating to or arising out of any Credit Document or the transactions contemplated thereby or any action taken or omitted by the Agent under any Credit Document; provided that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Person to be indemnified. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its ratable share of any costs or expenses payable by the Credit Parties under Section 11.5, to the extent that the Agent is not promptly reimbursed for such costs and expenses by the Credit Parties. The agreements in this Section 10.5 shall survive the repayment of the Loans, LOC Obligations and other obligations under the Credit Documents and the termination of the Commitments hereunder.

#### 10.6 NON-RELIANCE ON AGENT AND OTHER LENDERS.

Each Lender agrees that it has, independently and without reliance on the Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Credit Parties and their Subsidiaries and decision to enter into this Credit Agreement and that it will, independently and without reliance upon the Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under the Credit Documents. Except for financial statements, notices and other information delivered to the Agent by any of the Credit Parties pursuant to the terms of Section 7.1 (which the Agent shall be required to deliver to each of the Lenders promptly following receipt thereof by the Agent) and except for any other notices, reports, and other documents and information expressly required to be furnished to the Lenders by the Agent hereunder, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition, or business of any Credit Party or any of its Subsidiaries or Affiliates that may come into the possession of the Agent or any of its Affiliates.

#### 10.7 SUCCESSOR AGENT.

The Agent may resign at any time by giving notice thereof to the Lenders and the Credit Parties. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Agent; provided that, unless an Event of Default has occurred and is continuing at the time such appointment, such successor Agent shall be approved by the Borrower (such approval not to be unreasonably withheld or delayed). If no successor Agent shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent's giving of notice of resignation, then the retiring Agent may, on behalf of the

Lenders, appoint a successor Agent which shall be a commercial bank organized under the laws of the United States having combined capital and surplus of at least \$100,000,000. Upon the acceptance of any appointment as Agent hereunder by a successor, such successor shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 10 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent. If no successor Agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Requisite Lenders appoint a successor Agent as provided for above; provided that, unless an Event of Default has occurred and is continuing at the time such appointment, such successor Agent shall be approved by the Borrower (such approval not to be unreasonably withheld or delayed).

## SECTION 11

### MISCELLANEOUS

#### 11.1 NOTICES.

Except as otherwise expressly provided herein, all notices and other communications shall have been duly given and shall be effective (a) when delivered, (b) when transmitted via telecopy (or other facsimile device) to the number set out below, (c) the Business Day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service, or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties at the address, in the case of the Credit Parties and the Agent, set forth below, and, in the case of the Lenders, set forth on Schedule 2.1(a), or at such other address as such party may specify by written notice to the other parties hereto:

if to any Credit Party:

AMN Healthcare, Inc.  
12235 El Camino Real  
Suite 200  
San Diego, California 92130  
Attn: Donald R. Myll  
Telephone: (858) 720-6257  
Telecopy: (866) 295-0267

with a copy to:

Hass Wheat and Partners, L.P.  
300 Crescent Court  
Suite 1700

Dallas, Texas 75201  
Attn: Douglas D. Wheat  
Telephone: (214) 871-8300  
Telecopy: (214) 871-8316

if to the Agent:

for notices regarding borrowings, payments, conversions, fees,  
interest, and other administrative matters:

Bank of America, N. A.  
101 North Tryon Street  
Location Code: NC1-001-15-04  
Charlotte, NC 28255  
Attention: Sam Maynard  
Telephone: (704) 386-9368  
Telecopy: (704) 409-0283

for all other notices (including with respect to Defaults and  
Events of Default, amendments, waivers and modifications of  
the Credit Documents, assignments):

Bank of America, N. A.  
Agency Management  
1455 Market Street, 5th Floor  
Location Code: CA5-701-05-19  
San Francisco, California 94103  
Attention: Charles Graber, Vice President  
Telephone: (415) 436-3495  
Telecopy: (415) 503-5006

Bank of America, N. A.

Location Code: NC1-007-13-06  
100 North Tryon, 13th Floor  
Charlotte, North Carolina 28202  
Attention: Robert Klawinski  
Telephone: (704) 387-0467  
Telecopy: (704) 409-0185

#### 11.2 RIGHT OF SET-OFF; ADJUSTMENTS.

Upon the occurrence and during the continuance of any Event of Default,  
each Lender is hereby authorized at any time and from time to time, to the  
fullest extent permitted by law, to set off and apply any and all deposits  
(general or special, time or demand, provisional or final) at any time held and  
other indebtedness at any time owing by such Lender (or any of its Affiliates)  
to or for the credit or the account of any Credit Party against any and all of  
the obligations of such

Person now or hereafter existing under this Credit Agreement, under the Notes, under any other Credit Document or otherwise, irrespective of whether such Lender shall have made any demand hereunder or thereunder and although such obligations may be unmatured. Each Lender agrees promptly to notify any affected Credit Party after any such set-off and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this Section 11.2 are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender may have.

### 11.3 BENEFIT OF AGREEMENT.

(a) This Credit Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided that none of the Credit Parties may assign or transfer any of its interests and obligations without prior written consent of each of the Lenders; provided further that the rights of each Lender to transfer, assign or grant participations in its rights and/or obligations hereunder shall be limited as set forth in this Section 11.3.

(b) Each Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Credit Agreement (including, without limitation, all or a portion of its Loans, its Notes, and its Commitment); provided, however, that

(i) each such assignment shall be to an Eligible Assignee;

(ii) except in the case of an assignment to another Lender, an Affiliate of an existing Lender or any fund that invests in bank loans and is advised or managed by an investment advisor to an existing Lender or an assignment of all of a Lender's rights and obligations under this Credit Agreement, any such partial assignment shall be in an amount at least equal to \$2,500,000 (or, if less, the remaining amount of the Commitment being assigned by such Lender) or an integral multiple of \$1,000,000 in excess thereof;

(iii) [Reserved.]

(iv) the parties to such assignment shall execute and deliver to the Agent for its acceptance an Assignment and Acceptance in the form of Exhibit 11.3(b), together with any Note subject to such assignment and a processing fee of \$3,500.

Upon execution, delivery, and acceptance of such Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of such assignment, have the obligations, rights, and benefits of a Lender hereunder and the assigning Lender shall, to the extent of such assignment, relinquish its rights and be released from its obligations under this Credit Agreement. Upon the consummation of any assignment pursuant to this Section 11.3(b), the assignor, the Agent and the Credit Parties shall make appropriate arrangements so that as soon as practicable new Notes are issued to the assignor and the

assignee. The assignee shall (to the extent required by Section 3.11) deliver to the Credit Parties and the Agent certification as to exemption from deduction or withholding of Taxes in accordance with Section 3.11.

(c) The Agent shall maintain at its address referred to in Section 11.1 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Credit Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Credit Agreement. The Register shall be available for inspection by the Credit Parties or any Lender at any reasonable time and from time to time upon reasonable prior notice. Any assignment of any Loan or other Credit Party Obligations shall be effective only upon an entry with respect thereto being made in the Register.

(d) Upon its receipt of an Assignment and Acceptance executed by the parties thereto, together with any Note subject to such assignment and payment of the processing fee, the Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit 11.3(b) hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the parties thereto.

(e) Each Lender may sell participations to one or more Persons in all or a portion of its rights, obligations or rights and obligations under this Credit Agreement (including all or a portion of its Commitment or its Loans); provided, however, that (i) such Lender's obligations under this Credit Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participant shall be entitled to the benefit of the yield protection provisions contained in Sections 3.6, 3.8, 3.9, 3.10, 3.11 and 3.12 (but only to the extent that the selling Lender is so entitled) and (iv) the Credit Parties shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement, and such Lender shall retain the sole right to enforce the obligations of the Credit Parties relating to the Credit Party Obligations owing to such Lender and to approve any amendment, modification, or waiver of any provision of this Credit Agreement (other than amendments, modifications, or waivers (A) decreasing the amount of principal of or the rate at which interest is payable on such Loans or Notes, (B) extending any scheduled principal payment date or date fixed for the payment of interest on such Loans or Notes, (C) extending its Commitment, (D) except as the result of or in connection with an Asset Disposition not prohibited by Section 8.5, releasing all or substantially all of the Collateral or (E) except as the result of or in connection with a dissolution, merger or disposition of a Consolidated Party not prohibited by Section 8.4 or Section 8.5, releasing the Borrower or substantially all of the other Credit Parties from its or their obligations under the Credit Documents).

(f) Notwithstanding any other provision set forth in this Credit Agreement, any Lender may at any time assign and pledge all or any portion of its Loans and its Notes to any Federal Reserve Bank as collateral security pursuant to Regulation A and any Operating Circular issued by such Federal Reserve Bank. No such assignment shall release the assigning Lender from its obligations hereunder.

(g) Any Lender may furnish any information concerning the Parent or any of the Consolidated Parties in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants), subject, however, to the provisions of Section 11.14 hereof.

#### 11.4 NO WAIVER; REMEDIES CUMULATIVE.

No failure or delay on the part of the Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Agent or any Lender and any of the Credit Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle the Credit Parties to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Agent or the Lenders to any other or further action in any circumstances without notice or demand.

#### 11.5 EXPENSES; INDEMNIFICATION.

(a) The Credit Parties jointly and severally agree to pay on demand all reasonable costs and expenses of the Agent in connection with the syndication, preparation, execution, delivery, administration, modification, and amendment of this Credit Agreement, the other Credit Documents, and the other documents to be delivered hereunder, including, without limitation, the reasonable fees and expenses of counsel for the Agent with respect thereto and with respect to advising the Agent as to its rights and responsibilities under the Credit Documents. The Credit Parties further jointly and severally agree to pay on demand all costs and expenses of the Agent and the Lenders, if any (including, without limitation, reasonable attorneys' fees of a single counsel for the Agent and the Lenders), in connection with the enforcement (whether through negotiations, legal proceedings, or otherwise) of the Credit Documents and the other documents to be delivered hereunder.

(b) The Credit Parties jointly and severally agree to indemnify and hold harmless the Agent and each Lender and each of their Affiliates and their respective officers, directors, employees, agents, and advisors (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation,



litigation, or proceeding or preparation of defense in connection therewith) the Credit Documents, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loans, except to the extent such claim, damage, loss, liability, cost, or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 11.5 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any of the Credit Parties, their respective directors, shareholders or creditors or an Indemnified Party or any other Person or any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Credit Parties agree not to assert any claim against the Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys, agents, and advisers, on any theory of liability, for special, indirect, consequential, or punitive damages arising out of or otherwise relating to the Credit Documents, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loans.

(c) Without prejudice to the survival of any other agreement of the Credit Parties hereunder, the agreements and obligations of the Credit Parties contained in this Section 11.5 shall survive the repayment of the Loans, LOC Obligations and other obligations under the Credit Documents and the termination of the Commitments hereunder.

#### 11.6 AMENDMENTS, WAIVERS AND CONSENTS.

Neither this Credit Agreement nor any other Credit Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing entered into by, or approved in writing by, each of the Credit Parties party thereto and the Requisite Lenders, provided, however, that:

(a) without the written consent of each Lender affected thereby, neither this Credit Agreement nor any other Credit Document may be amended, changed, waived, discharged or terminated so as to

(i) extend the final maturity of any Loan or of any reimbursement obligation, or any portion thereof, arising from drawings under Letters of Credit,

(ii) reduce the rate or extend the time of payment of interest on any Loan or of any reimbursement obligation, or any portion thereof, arising from drawings under Letters of Credit or of any Fees,

(iii) reduce or waive the principal amount of any Loan or of any reimbursement obligation, or any portion thereof, arising from drawings under Letters of Credit,

(iv) increase the Commitment of a Lender over the amount thereof in effect (it being understood and agreed that a waiver of any Default or Event of Default or mandatory reduction in the Commitments shall not constitute a change in the terms of any Commitment of any Lender),

(v) except as the result of or in connection with an Asset Disposition not prohibited by Section 8.5, release all or substantially all of the Collateral,

(vi) except as the result of or in connection with a dissolution, merger or disposition of a Consolidated Party not prohibited by Section 8.4 or Section 8.5, release the Borrower or substantially all of the other Credit Parties from its or their obligations under the Credit Documents,

(vii) amend, modify or waive any provision of this Section 11.6,

(viii) reduce any percentage specified in, or otherwise modify, the definition of Requisite Lenders, or

(ix) consent to the assignment or transfer by the Borrower or all or substantially all of the other Credit Parties of any of its or their rights and obligations under (or in respect of) the Credit Documents except as permitted thereby;

(b) without the written consent of the Agent, no provision of Section 10 or any other provision of any Credit Agreement pertaining to the duties and responsibilities of the Agent may be amended, changed, waived, discharged or terminated;

(c) without the written consent of the Issuing Lender(s), no provision of Section 2.2 may be amended, changed, waived, discharged or terminated; or

(d) without the written consent of the Swingline Lender, no provision of Section 2.3 may be amended, changed, waived, discharged or terminated.

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (x) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein and (y) the Requisite Lenders shall determine whether or not to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

#### 11.7 COUNTERPARTS.

This Credit Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Credit Agreement to produce or

account for more than one such counterpart for each of the parties hereto. Delivery by facsimile by any of the parties hereto of an executed counterpart of this Credit Agreement shall be as effective as an original executed counterpart hereof and shall be deemed a representation that an original executed counterpart hereof will be delivered.

#### 11.8 HEADINGS.

The headings of the sections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Credit Agreement.

#### 11.9 SURVIVAL.

All indemnities set forth herein, including, without limitation, in Section 2.2(i), 3.11, 3.12, 10.5 or 11.5 shall survive the execution and delivery of this Credit Agreement, the making of the Loans, the issuance of the Letters of Credit, the repayment of the Loans, LOC Obligations and other obligations under the Credit Documents and the termination of the Commitments hereunder, and all representations and warranties made by the Credit Parties herein shall survive until this Credit Agreement shall be terminated in accordance with the terms of Section 11.13(b).

#### 11.10 GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE.

(a) THIS CREDIT AGREEMENT AND, UNLESS OTHERWISE EXPRESSLY PROVIDED THEREIN, THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. Any legal action or proceeding with respect to this Credit Agreement or any other Credit Document may be brought in the courts of the State of New York, or of the United States for the Southern District of New York, and, by execution and delivery of this Credit Agreement, each of the Credit Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of such courts. Each of the Credit Parties further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address set out for notices pursuant to Section 11.1, such service to become effective three (3) days after such mailing. Nothing herein shall affect the right of the Agent or any Lender to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against any Credit Party in any other jurisdiction.

(b) Each of the Credit Parties hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Credit Agreement or any other Credit Document brought in the courts referred to in clause (a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) TO THE EXTENT PERMITTED BY LAW, EACH OF THE AGENT, THE LENDERS (INCLUDING THE ISSUING LENDER AND THE SWINGLINE LENDER), EACH OF THE CREDIT PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT, ANY OF THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.11 SEVERABILITY.

If any provision of any of the Credit Documents is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

11.12 ENTIRETY.

This Credit Agreement together with the other Credit Documents represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents or the transactions contemplated herein and therein.

11.13 BINDING EFFECT; TERMINATION.

(a) This Credit Agreement shall become effective at such time on or after the Closing Date upon satisfaction of all of the conditions in Section 5.1 and when it shall have been executed by each Credit Party and the Agent, and the Agent shall have received copies hereof (telefaxed or otherwise) which, when taken together, bear the signatures of each Lender, and thereafter this Credit Agreement shall be binding upon and inure to the benefit of each Credit Party, the Agent and each Lender (including the Issuing Lender(s) and the Swingline Lender) and their respective successors and assigns.

(b) The term of this Credit Agreement shall be until the Credit Party Obligations are Fully Satisfied.

(c) At such time as this Credit Agreement shall have become effective pursuant to the terms of Section 11.13(a) and Section 5.1, the promissory notes executed in connection with the Existing Credit Agreement shall be replaced with the Notes, if any, executed in connection with this Credit Agreement.

(d) The Agent and the Lenders acknowledge and agree (i) that the Acquisition Loans and the Term Loans (as such terms are defined under the Existing Credit Agreement) have been paid in full in cash and terminated on the Closing Date and (ii) to return any note(s) evidencing the Acquisition Loans or the Term Loans to the Borrower promptly after the Closing Date for cancellation.

(e) The Agent and the Lenders consent to the repayment in full in cash on the Closing Date of the Subordinated Note Agreement (as defined under the Existing Credit Agreement).

#### 11.14 CONFIDENTIALITY.

The Agent and each Lender (each, a "Lending Party") agrees to keep confidential (and to use reasonable efforts to cause their respective officers, directors, employees, agents and representatives to keep confidential) any information, materials and documents furnished or made available to it by or on behalf of the Credit Parties pursuant to this Credit Agreement; provided that nothing herein shall prevent any Lending Party from disclosing such information (a) to any other Lending Party or any Affiliate of any Lending Party, or any officer, director, employee, agent, or advisor of any Lending Party or Affiliate of any Lending Party or to any other Person if reasonably incidental to the administration of the Credit Facility, in each case, on a need to know basis in accordance with customary banking practices and who receive such information having been made aware of the restrictions of this Section 11.14, (b) as required by any law, rule, or regulation, (c) upon the order of any court or administrative agency, (d) upon the request or demand of any regulatory agency or authority, (e) that is or becomes available to the public or that is or becomes available to any Lending Party other than as a result of a disclosure by any Lending Party prohibited by this Credit Agreement, (f) in connection with any litigation to which such Lending Party or any of its Affiliates may be a party, (g) to the extent necessary in connection with the exercise of any remedy under this Credit Agreement or any other Credit Document, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, (i) to any direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty (i) has been approved in writing by the Borrower and (ii) agrees in a writing enforceable by the Borrower to be bound by the provisions of this Section 11.14) and (j) subject to provisions substantially similar to those contained in this Section 11.14, to any actual or proposed participant or assignee; provided, however, that with respect to clauses (b), (c), (d), (f) and (h), the Agent or such Lender shall, to the extent practicable, use reasonable efforts to give notice to the Borrower of the release of such information.

#### 11.15 SOURCE OF FUNDS.

Each of the Lenders hereby represents and warrants to the Borrower that at least one of the following statements is an accurate representation as to the source of funds to be used by such Lender in connection with the financing hereunder:

(a) no part of such funds constitutes assets allocated to any separate account maintained by such Lender in which any employee benefit plan (or its related trust) has any interest;

(b) to the extent that any part of such funds constitutes assets allocated to any separate account maintained by such Lender, such Lender has disclosed to the Borrower the name of each employee benefit plan whose assets in such account exceed 10% of the total assets of such account as of the date of such purchase (and, for purposes of this clause (b), all employee benefit plans maintained by the same employer or employee organization are deemed to be a single plan);

(c) to the extent that any part of such funds constitutes assets of an insurance company's general account, such insurance company has complied with all of the requirements of the regulations issued under Section 401(c)(1)(A) of ERISA such that the assets of such general account do not constitute assets of an employee benefit plan; or

(d) such funds constitute assets of one or more specific benefit plans which such Lender has identified in writing to the Borrower.

As used in this Section 11.15, the terms "employee benefit plan" and "separate account" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

#### 11.16 REGULATION D.

Each of the Lenders hereby represents and warrants to the Borrower that it is a commercial lender, other financial institution or other "accredited" investor (as defined in SEC Regulation D) which makes or acquires or loans on the ordinary course of business and that it will make or acquire Loans for its own account in the ordinary course of business.

#### 11.17 CONFLICT.

To the extent that there is a conflict or inconsistency between any provision hereof, on the one hand, and any provision of any Credit Document, on the other hand, this Credit Agreement shall control.

[Signature Page to Follow]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Credit Agreement to be duly executed and delivered as of the date first above written.

BORROWER: AMN HEALTHCARE, INC.

By:/s/ Donald Myll

-----  
Name: Donald Myll

-----  
Title: Chief Financial Officer  
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PARENT: AMN HEALTHCARE SERVICES, INC.  
(FORMERLY KNOWN AS AMN HOLDINGS, INC.)

By:/s/ Donald Myll

-----  
Name: Donald Myll

-----  
Title: Chief Financial Officer  
-----

SUBSIDIARY  
GUARANTORS: WORLDVIEW HEALTHCARE, INC.  
(FORMERLY KNOWN AS AMN SERVICES, INC.)

By:/s/ Donald Myll

-----  
Name: Donald Myll

-----  
Title: Chief Financial Officer  
-----

O'GRADY PEYTON INTERNATIONAL (USA), INC.

By:/s/ Diane Stumph

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Name: Diane Stumph

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Title: Senior Vice President  
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[Signatures Continued]

LENDERS:

BANK OF AMERICA, N. A.,  
as a Lender and as Agent

By:/s/ Robert Klawinski

-----  
Name: Robert Klawinski

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Title: Managing Director  
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GENERAL ELECTRIC CAPITAL CORPORATION

By:/s/ Robert Horak

-----  
Name: Robert Horak

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Title: Duly Authorized Signatory  
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UNION BANK OF CALIFORNIA, N.A.

By:/s/ Douglas S. Lambell

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Name: Douglas S. Lambell

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Title: Vice President/SCM  
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INDEPENDENT AUDITORS' REPORT ON SCHEDULE AND CONSENT

The Board of Directors and Stockholders  
AMN Healthcare Services, Inc.:

The audits referred to in our report dated February 12, 2002 included the related financial statement schedule as of December 31, 2001, and for each of the years in the three-year period ended December 31, 2001, included in the 2001 Annual Report on Form 10-K. This financial statement schedule is the responsibility of the Company's management. Our responsibility is to express an opinion on this financial statement schedule based on our audits. In our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We consent to incorporation by reference in the registration statement No. 333-73482 on Form S-8 of AMN Healthcare Services, Inc. of our report dated February 12, 2002, relating to the consolidated balance sheets of AMN Healthcare Services, Inc. and subsidiaries, (the Company), as of December 31, 2000 and 2001, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2001 and the financial statement schedule, which report appears in the December 31, 2001 Annual Report on Form 10-K of AMN Healthcare Services, Inc.

KPMG LLP

San Diego, California  
March 15, 2002

