

prepayment of the Loans required under this Section 1.09(g), and shall be permitted, until the date which is 90 days (or 180 days, if the Agent elects in its sole discretion to extend such number of days) after receipt of such proceeds, to apply such amounts on deposit solely to pay any amount required to be paid by any Company to any person (other than the Borrower or any of its Affiliates) as a result of (and upon the occurrence of) a judgment with respect to, or settlement of, the Seamless Litigation; provided, however, that the Borrower shall not be permitted to elect to deposit amounts exceeding \$4 million in the aggregate into such collateral account; and provided further, that if such amounts on deposit in such collateral account shall not have been so applied during such 90-day (or 180-day, if applicable) period, then such amounts shall thereupon immediately be required to be applied as set forth in clause (ii) above. All documentation with respect to such collateral account and any release of amounts therefrom shall be reasonably satisfactory to the Agent.

All DBS Rights Litigation Proceeds applied to the repayment of the Term Loans shall be allocated between the Initial Term Loans and the Incremental Term Loans pro rata according to the outstanding principal balance of such Term Loans at the time of such application (determined before giving effect to such application), and shall be applied to scheduled repayments of Term Loans within each such tranche in the order in which such repayments are scheduled to occur.

(h) [Intentionally Omitted].

(i) Global Litigation Settlement. Upon the date on which any Global Litigation Settlement becomes binding on one or more Affiliates of the Borrower, the Borrower shall prepay in full all of the Loans and other Obligations, with the Tranche D Term Loans being payable at the then applicable Fixed Early Prepayment Amount.

(j) Mandatory Prepayment of Tranche D Term Loans.

(i) Notwithstanding anything to the contrary contained in this Agreement, the Tranche D Term Loans shall not be subject to mandatory prepayment pursuant to subsections (a), (b), (c), (d), (e) or (g) above of this Section 1.09, but shall be subject to mandatory prepayment pursuant to subsection (i) of this Section 1.09.

(ii) On and after such time as all amounts payable in respect of the Initial Term Loans and the Incremental Term Loans shall have been paid in full, the principal of the Tranche D Term Loans shall be subject to mandatory prepayment at a price equal to the Fixed Early Prepayment Amount as follows:

(A) Excess Cash Flow. On or before May 1 of each year (commencing with the first May 1 to occur after the date on which the Initial Term Loans and the Incremental Term Loans shall have been paid in full), the Borrower shall prepay the Tranche D Term Loans in an aggregate amount equal to 75% of Excess Cash Flow for the immediately preceding fiscal year. Such prepayment shall be applied to the Loans as set forth in Section 1.09(j)(ii)(F) below.

(B) Dispositions. Immediately upon the receipt by any Company of any proceeds consisting of cash or Cash Equivalents from a Disposition (other than an Excluded Disposition), the Borrower shall prepay the Tranche D Term Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of such Disposition received by such Company. Such prepayment shall be applied to the Tranche D Term Loans as set forth in Section 1.09(j)(ii)(F) below. In connection with any such prepayment, the Borrower shall deliver to the Agent a notice of such prepayment together with a certificate of an Authorized Officer, on behalf of the Borrower, setting forth in reasonable detail the calculation of the estimated Net Cash Proceeds from the related Disposition. The Borrower will endeavor to provide such notice and certificate to the Agent at least two (2) Business Days prior to such prepayment. For the purposes hereof, an "Excluded Disposition" shall mean, with respect to any Company, any Disposition consisting of (a) the sale, lease, license, transfer or other disposition of property or other assets in the ordinary course of such Company's business, (b) the sale, lease, license, transfer or other disposition of machinery and equipment no longer used or useful in the conduct of such Company's business, (c) any sale, lease, license, transfer or other disposition of property or assets by such Company to the Borrower or any wholly owned Subsidiary of the Borrower, provided that the Borrower shall cause to be executed and delivered such documents, instruments and certificates as the Agent may request so as to cause the Borrower to be in compliance with the terms of Sections 2.02, 6.08 and 6.12 hereof after giving effect to such transaction, (iv) any Casualty Event, (v) any Disposition by such Company constituting a Permitted Investment and (vi) if such Company is a Subsidiary that is not a party to the Subsidiary Agreement, any sale, lease, license, transfer or other disposition of property or assets by such Subsidiary to any other Subsidiary that is also not a party to the Subsidiary Agreement.

(C) Casualty Events. Subject to the provisions of Section 6.02, within one hundred eighty (180) days following the receipt by the Borrower or any of the Subsidiaries of any Insurance Proceeds in respect of any Casualty Event (or upon such earlier date as the Borrower or any Subsidiary shall have determined not to restore, repair or replace the asset or property affected by such Casualty Event), which Insurance Proceeds, together with all other such Insurance Proceeds theretofore received in respect of Casualty Events and not so applied, exceed \$1,000,000 in the aggregate, (i) the Notes shall be prepaid in an aggregate amount, if any, equal to the aggregate amount of such proceeds not theretofore applied to the repair or replacement of such asset or property under Section 6.02(b), as provided in Section 1.09(j)(ii)(F). Nothing in this Section 1.09(j)(ii)(C) shall be deemed (i) to limit any obligation of the Companies pursuant to the Security Agreements to remit to the Collateral Account the Insurance Proceeds received in respect of any Casualty Event, or (ii) to obligate the Agent to release any of such proceeds from the Collateral Account to the Borrower or any Subsidiary during the existence of any Default. In connection with any such prepayment, the Borrower shall deliver to the Agent a notice of such prepayment together with a certificate of an Authorized Officer, on behalf of the

Borrower, setting forth in reasonable detail the calculation of the estimated Excess Insurance Proceeds from the related Casualty Event. The Borrower will endeavor to provide such notice and certificate to the Agent at least two (2) Business Days prior to such prepayment.

(D) Debt Issuances. Without limiting the obligation of the Borrower to obtain any required consent thereto of the Required Lenders or the Agent under Section 7.01, immediately upon the receipt by any Company of any proceeds consisting of cash or Cash Equivalents from the issuance of any additional debt securities not permitted under Section 7.01, the Borrower shall prepay the Tranche D Term Loans in an aggregate amount equal to 100% of the net cash proceeds thereof. Such prepayment pursuant to this clause (D) shall be applied to the Loans as set forth in Section 1.09(j)(ii)(F) below. In connection with any such prepayment, the Borrower shall deliver to the Agent a notice of such prepayment together with a certificate of an Authorized Officer, on behalf of the Borrower, setting forth in reasonable detail the calculation of the estimated net cash proceeds from the related debt issuance. The Borrower will endeavor to provide such notice and certificate to the Agent at least two (2) Business Days prior to such prepayment.

(E) Application of DBS Rights Litigation Proceeds. On each date on which the Borrower or any of its Affiliates receives any DBS Rights Litigation Proceeds,

(i) the DBS Rights Litigation Expenses may be retained by the Borrower and its Subsidiaries (other than the Finance Subsidiaries, the Special Purpose Subsidiary, and the Letter-of-Credit Subsidiary) and used for general corporate purposes;

(ii) the Borrower shall immediately repay the Tranche D Term Loans in an aggregate amount equal to the least of the amounts described in the following clauses (x), (y) and (z):

(x) the excess of

(I) the aggregate amount of DBS Rights Litigation Proceeds received by the Borrower and its Affiliates on or prior to such date over

(II) the sum of (A) the aggregate amount of DBS Rights Litigation Expenses and (B) the aggregate amount of all repayments made prior to such date under Section 1.09(g)(ii) and this Section 1.09(j)(ii)(E),

(y) the excess of

(I) 50% of the excess of (A) the aggregate amount of Net DBS Rights Litigation Proceeds received by the

Borrower and its Affiliates on or prior to such date over (B) the aggregate amount of DBS Rights Litigation Expenses paid after April 2, 2003, over

(II) the aggregate amount of all repayments made prior to such date under Section 1.09(g)(ii) and this Section 1.09(j)(ii)(E), and

(z) the excess of

(I) \$50,000,000 over

(II) the aggregate amount of all repayments made prior to such date under Section 1.09(g)(ii) and this Section 1.09(j)(ii)(E); and

(iii) any portion of the DBS Rights Litigation Proceeds that remains after giving effect to the application of clauses (i) and (ii) above shall be retained by the Borrower and its Subsidiaries and used (A) until the Discharge of Parent Term Debt shall have occurred, by the Companies for Permitted Acquisitions or the acquisition, within 180 days of the receipt of such DBS Rights Litigation Proceeds (or, if one or more definitive agreements with respect to Permitted Acquisitions are entered into within such 180 day period, within 360 days following the receipt of such DBS Rights Litigation Proceeds), of tangible assets or the payment of other capitalized costs used or useful in the DBS Business or broadcast business of any Company and (B) after the Discharge of Parent Term Debt, for general corporate purposes.

In connection with any such prepayment, the Borrower shall deliver to the Agent a notice of such prepayment together with a certificate of an Authorized Officer, on behalf of the Borrower, setting forth in reasonable detail the calculation of the estimated prepayment amount. The Borrower will endeavor to provide such notice and certificate to the Agent at least two (2) Business Days prior to such prepayment. Notwithstanding clause (ii) above, in the event that the Borrower or any of its Affiliates receives DBS Rights Litigation Proceeds in excess of the aggregate amount of DBS Rights Litigation Expenses at a time when a judgment shall not have been rendered or a settlement reached with respect to the Seamless Litigation, the Borrower may, at its election, deposit up to 10% of such excess DBS Rights Litigation Proceeds in a restricted collateral account of the Borrower (in which account the Agent shall have a first priority security interest) in lieu of making any prepayment of the Loans required under this Section 1.09(j)(ii)(E), and shall be permitted, until the date which is 90 days (or 180 days, if the Agent elects in its sole discretion to extend such number of days) after receipt of such proceeds, to apply such amounts on deposit solely to pay any amount required to be paid by any Company to any person (other than the Borrower or any of its Affiliates) as a result of (and upon the occurrence of) a judgment with respect to, or settlement of, the Seamless Litigation; provided, however, that the Borrower shall not be permitted to elect to deposit amounts

exceeding \$4 million in the aggregate into such collateral account; and provided further, that if such amounts on deposit in such collateral account shall not have been so applied during such 90-day (or 180-day, if applicable) period, then such amounts shall thereupon immediately be required to be applied as set forth in clause (ii) above. All documentation with respect to such collateral account and any release of amounts therefrom shall be reasonably satisfactory to the Agent. Any prepayment of the Tranche D Term Loans pursuant to this Section 1.09(j)(ii)(E) shall be applied to the Tranche D Term Loans as set forth in Section 1.09(j)(ii)(F) below.

(F) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 1.09(j)(ii) shall be allocated to the remaining installments of the Tranche D Term Loans pro rata based upon the then outstanding principal amount of such installments; provided, that to the extent permitted by the allocation set forth in the immediately preceding sentence, prepayments of the Tranche D Term Loans shall be applied ratably to Base Rate Loans and LIBOR Loans.

**Section 1.09A. Prepayments in Connection with this Agreement.**

(a) On the Fourth Amendment Effective Date, the Borrower shall (i) prepay in full all outstanding principal and accrued interest and fees on the Revolving Notes and (ii) prepay the Incremental Term Loans and Initial Term Loans in an aggregate principal amount equal to \$235,000,000, such amount to be allocated proportionally between the Initial Term Loans and the Incremental Term Loans, in each case to remaining installments of principal in direct order of maturity thereof, plus accrued but unpaid interest thereon and all unpaid amounts requested by any Lender prior to such date under Section 1.14 of the Existing Credit Agreement with respect thereto. The Borrower shall fund all such payments by requesting that Bank of America, N.A., as initial Tranche D Term Loan Lender, forward a portion of the proceeds of the Tranche D Term Loan by wire transfer directly to the Resigning Agent on behalf of the Lenders, as provided in Section 1.07. The payments of principal to be made hereunder shall constitute voluntary prepayments for purposes of the Existing Credit Agreement (notwithstanding the fact that such prepayments shall become mandatory upon the effectiveness of this Agreement), and all notices required under such sections by the Borrower are hereby waived.

(b) The Resigning Agent shall, on the Fourth Amendment Effective Date, apply the portion of the proceeds of the Tranche D Term Loan received by it from Bank of America, N.A. (i) to the payment in full of the outstanding principal amount of, and all accrued and unpaid interest on and all unpaid amounts requested by any Lender prior to such date under Section 1.14 of the Existing Credit Agreement with respect thereto, the Revolving Loans, and all accrued Commitment Fees and Letter of Credit Fees, and then (ii) to the ratable prepayment of the Initial Term Loans and the Incremental Term Loans, and all accrued and unpaid interest on the principal amount being prepaid and all unpaid amounts requested by any Lender prior to such date under Section 1.14 of the Existing Credit Agreement, in respect of such prepayments of the Initial Term Loans and the Incremental Term Loans, in the case of all items referred to in clauses (i) and (ii) above in the amounts set forth in Schedule 1.09(A) attached hereto.

(c) Any unpaid amounts requested by any Lender on or after the Fourth Amendment Effective Date under Section 1.14 of the Existing Credit Agreement (which shall survive the

Fourth Amendment Effective Date for purposes of this Section 1.09A(c)) with respect to the prepayment of the Revolving Loans, Initial Term Loans and Incremental Term Loans pursuant to this Section 1.09A shall be paid by the Borrower to the Resigning Agent for the account of such Lender in accordance with Section 1.14 of the Existing Credit Agreement. All such amounts shall constitute Obligations under this Agreement and the other Loan Documents.

**Section 1.10. [Intentionally Omitted].**

**Section 1.11. Requirements of Law.**

(a) In the event that any Regulatory Change shall:

(i) change the basis of taxation of any amounts payable to any Lender under this Agreement or any Notes in respect of any Loans, including without limitation LIBOR Loans made by it (other than taxes imposed on the overall net income of such Lender in its jurisdiction of organization or in the jurisdiction where its lending office is located);

(ii) impose or modify any reserve, compulsory loan assessment, special deposit or similar requirement relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, any office of such Lender (including any of such Loans or any deposits referred to in the definition of "LIBOR Base Rate" in Article XIV); or

(iii) impose any other conditions affecting this Agreement in respect of Loans, including without limitation LIBOR Loans (or any of such extensions of credit, assets, deposits or liabilities);

and the result of any of the foregoing shall be to increase such Lender's costs of making or maintaining any Loans, including without limitation LIBOR Loans, or to reduce any amount receivable by such Lender hereunder in respect of any of its Loans, in each case only to the extent that such additional amounts are not included in the LIBOR Base Rate or Base Rate applicable to such Loans, then the Borrower shall pay on demand to such Lender, through the Agent, and from time to time as specified by such Lender, such additional amounts as such Lender shall reasonably determine are sufficient to compensate such Lender for such increased cost or reduced amount receivable.

(b) If at any time after the date of this Agreement any Lender shall have determined that the applicability of any law, rule, regulation or guideline adopted pursuant to or arising out of the July 1988 report of the Basle Committee on Lending Regulations and Supervisory Practices entitled "International Convergence of Capital Measurement and Capital Standards", or the adoption or implementation of any Regulatory Change regarding capital adequacy, or any change therein, 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 (whether or not having the force of law), has or will have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of the existence of its obligations hereunder (whether with

respect to the Loans or any other Obligation) to a level below that which such Lender or its holding company could have achieved but for such adoption, change or compliance (taking into consideration such Lender's policies with respect to capital adequacy) by an amount reasonably deemed by such Lender to be material, then from time to time following written notice by such Lender to the Borrower as provided in paragraph (c) of this Section, within fifteen (15) days after demand by such Lender, the Borrower shall pay to such Lender, through the Agent, such additional amount or amounts as such Lender shall reasonably determine will compensate such Lender or such holding company, as the case may be, for such reduction, provided that to the extent that any or all of the Borrower's liability under this Section arises following the date of the adoption of any such Regulatory Change (the "Effective Date"), such compensation shall be payable only with respect to that portion of such liability arising after notice of such Regulatory Change is given by such Lender to the Borrower (unless such notice is given within sixty (60) days after the Effective Date, in which case such compensation shall be payable in respect of all periods before and after the Effective Date).

(c) If any Lender becomes entitled to claim any additional amounts pursuant to this Section, it shall promptly notify the Borrower of the event by reason of which it has become so entitled. A certificate setting forth in reasonable detail the computation of any additional amounts payable pursuant to this Section submitted by such Lender to the Borrower shall be delivered to the Borrower and the other Lenders promptly after the initial incurrence of such additional amounts and shall be conclusive in the absence of manifest error. The covenants contained in this Section shall survive for six months following the termination of this Agreement and the payment of the outstanding Notes. No failure on the part of any Lender to demand compensation under paragraph (a) or (b) above on any one occasion shall constitute a waiver of its rights to demand compensation on any other occasion. The protection of this Section shall be available to each Lender regardless of any possible contention of the invalidity or inapplicability of any law, regulation or other condition which shall give rise to any demand by such Lender for compensation thereunder.

#### **Section 1.12. Limitations on LIBOR Loans; Illegality.**

(a) Anything herein to the contrary notwithstanding, if, on or prior to the determination of an interest rate for any LIBOR Loans for any applicable LIBOR Period, the Agent shall determine (which determination shall be conclusive absent manifest error) that:

(i) by reason of any event affecting United States money markets or the London interbank market, quotations of interest rates for the relevant deposits are not being provided in the relevant amounts or for the relevant maturities for purposes of determining the rate of interest for such Loans under this Agreement; or

(ii) the rates of interest referred to in the definition of "LIBOR Base Rate" in Article XIV, on the basis of which the rate of interest on any LIBOR Loans for such period is determined, do not accurately reflect the cost to the Lenders of making or maintaining such LIBOR Loans for such period; then the Agent shall give the Borrower prompt notice thereof (and shall thereafter give the Borrower prompt notice of the cessation, if any, of such condition), and so long as such condition remains in effect, the

Lenders shall be under no obligation to make LIBOR Loans or to convert Base Rate Loans into LIBOR Loans and the Borrower shall, on the last day(s) of the then current LIBOR Period(s) for any outstanding LIBOR Loans, either prepay such LIBOR Loans in accordance with Section 1.08 or convert such Loans into Base Rate Loans in accordance with Section 1.06.

(b) Notwithstanding any other provision herein, if for any reason a Lender shall be unable to make or maintain LIBOR Loans as contemplated by this Agreement, such Lender shall provide prompt written notice to the Borrower and (i) such Lender's commitment hereunder to make LIBOR Loans, continue LIBOR Loans as such and convert Base Rate Loans to LIBOR Loans shall thereupon terminate and (ii) such Lender's Loans then outstanding as LIBOR Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current LIBOR Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a LIBOR Loan occurs on a day which is not the last day of the then current LIBOR Period with respect thereto, and if the reason for such Lender's inability to make or maintain LIBOR Loans as contemplated by this Agreement is a Regulatory Change, then the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 1.14.

#### **Section 1.13. Taxes.**

(a) All payments made by the Borrower under this Agreement and the Notes shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (all such taxes, levies, imposts, duties, charges, fees, deductions and withholdings being hereinafter called "Taxes"); provided, however, that the term "Taxes" shall not include net income taxes, franchise taxes (imposed in lieu of net income taxes) and general intangibles taxes (such as those imposed by the State of Florida) imposed on the Agent or any Lender, as the case may be, as a result of a present or former connection or nexus between the jurisdiction of the government or taxing authority imposing such tax (or any political subdivision or taxing authority thereof or therein) and the Agent or such Lender other than that arising solely from the Agent or such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement, the Notes or any of the Security Documents. If any Taxes are required to be withheld from any amounts payable to the Agent or any Lender hereunder or under the Notes, the amounts so payable to the Agent or such Lender shall be increased to the extent necessary to yield to the Agent or such Lender (after payment of all Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement and the Notes, as the case may be. Whenever any Taxes are payable by the Borrower in respect of this Agreement or the Notes, as promptly as possible thereafter the Borrower shall send to the Agent for its own account or for the account of such Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Agent or any Lender as a result of any such



failure. If, after any payment of Taxes by the Borrower under this Section, any part of any Tax paid by the Agent or any Lender is subsequently recovered by the Agent or such Lender, the Agent or such Lender shall reimburse the Borrower to the extent of the amount so recovered. A certificate of an officer of the Agent or such Lender setting forth the amount of such recovery and the basis therefor shall, in the absence of manifest error, be conclusive. The Agent and the Lenders shall use reasonable efforts to notify the Borrower of their attempts, if any, to obtain abatements of any such Taxes and the receipt by the Agent or the Lenders of any funds in connection therewith. The agreements in this subsection shall survive the termination of this Agreement and the payment of the Notes and all other amounts payable hereunder.

(b) Each Lender, if any, that is not incorporated under the laws of the United States or a state thereof agrees that prior to the date any payment is required to be made to it hereunder it will deliver to the Borrower and the Agent either (i) two duly completed copies of United States Internal Revenue Service Form 1001 or 4224 or successor applicable form, as the case may be, and an Internal Revenue Service Form W-8 or W-9 or successor applicable form or (ii) in the case of a Lender that is not legally entitled to deliver either form listed in clause (b), (A) a certificate of such Lender to the effect that such Lender is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (3) a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code (such certificate, an "Exemption Certificate") and (B) two duly completed copies of Internal Revenue Service Form W-8BEN or applicable successor form. Each such Lender also agrees to deliver to the Borrower and the Agent two further copies of the said Form 1001 or 4224 and Form W-8 or W-9, or successor applicable forms or other manner of certification, as the case may be, on or before the date that any such form expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower, and such extensions or renewals thereof as may reasonably be requested by the Borrower or the Agent, unless in any such case an event (including, without limitation, any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such form with respect to it and such Lender so advises the Borrower and the Agent. Such Lender shall certify (x) in the case of a Form 1001 or 4224, that it is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes and (y) in the case of a Form W-8 or W-9, that it is entitled to an exemption from United States backup withholding tax.

#### **Section 1.14. Indemnification.**

The Borrower shall pay to the Agent, for the account of each Lender, upon the request of such Lender delivered to the Agent and thereafter delivered by the Agent to the Borrower, such amount or amounts as shall compensate such Lender for any loss, cost or expense incurred by such Lender (as reasonably determined by such Lender) as a result of:

(a) any payment or prepayment or conversion of any LIBOR Loan held by such Lender on a date other than the last day of the LIBOR Period for such LIBOR Loan (including

without limitation any such payment, prepayment or conversion required under Section 1.03, 1.04, 1.04A, 1.06, 1.08, 1.09 or 1.09A); or

(b) any failure by the Borrower to borrow, convert into or continue a LIBOR Loan on the date for such borrowing specified in the relevant Interest Rate Option Notice under Section 1.06 or otherwise.

Such indemnification may include an amount equal to the excess, if any, of (i) 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 such LIBOR Period (or, in the case of a failure to borrow, convert or continue, the LIBOR Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) 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. This covenant shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder. The determination by each such Lender of the amount of any such loss or expense, when set forth in a written notice delivered to the Agent (and thereafter delivered by the Agent to the Borrower), containing such Lender's calculation thereof in reasonable detail, shall be conclusive in the absence of manifest error.

#### **Section 1.15. Payments Under the Notes.**

(a) All payments and prepayments made by the Borrower of principal of, and interest on, the Notes and other sums and charges payable under this Agreement and, with respect to fees payable to the Agent and its affiliates, the Fee Agreements, including without limitation any payments under Sections 1.11, 1.13 and 1.14, shall be made in immediately available funds to the Agent (as specified in Section 13.03) for the accounts of the Lenders as provided in Section 1.17 and otherwise herein not later than 2:00 P.M. (New York Time), on the date on which such payment shall become due. The failure by the Borrower to make any such payment by such hour shall not constitute a Default hereunder so long as payment is received later that day, provided that any such payment made after 2:00 P.M. (New York Time), on such due date shall be deemed to have been made on the next Business Day for the purpose of calculating interest on amounts outstanding on the Notes. The Borrower shall, at the time of making each payment under this Agreement or the Notes, specify to the Agent the Notes or amounts payable by the Borrower hereunder to which such payment is to be applied (and in the event that it fails to so specify, or if an Event of Default has occurred and is continuing, the Agent may distribute such payments in such manner as the Required Lenders may direct or, absent such direction, as it determines to be appropriate, subject to the provisions of Section 1.17).

(b) Except as otherwise provided in the definition of "LIBOR Period" with respect to LIBOR Loans, if any payment hereunder or under the Notes shall be due and payable on a day which is not a Business Day, such payment shall be deemed due on the next following Business Day and interest shall be payable at the applicable rate specified herein through such extension

period. The Agent, or any Lender for whose account any such payment is made, may (but shall not be obligated to) debit the amount of any such payment which is not made by such time to any deposit account of the Borrower with the Agent or such Lender, as the case may be. Each payment received by the Agent under this Agreement or any Note for the account of a Lender shall be paid promptly to such Lender, in immediately available funds, for the account of such Lender for the Note in respect to which such payment is made.

#### **Section 1.16. Set-Off, Etc.**

The Borrower agrees that, in addition to (and without limitation of) any right of set-off, bankers' lien or counterclaim a Lender may otherwise have and in addition to the debit right afforded in Section 1.15, each Lender (and each subsequent holder of any Note) shall be entitled, at its option, to offset balances held by it, or by any of its respective branches or agencies, for the account of the Borrower at any of its or their offices, in Dollars or in any other currency, against any principal of or interest on the Notes held by such Lender (or subsequent noteholder) or other fees or charges owed to such Lender (or subsequent noteholder) hereunder which are not paid when due (regardless of whether such balances are then due to the Borrower and regardless of whether the Lenders are otherwise fully secured), in which case it shall promptly notify the Borrower and the Agent thereof, provided that such Lender's (or subsequent noteholder's) failure to give such notice shall not affect the validity thereof and (as security for any indebtedness hereunder) the Borrower hereby grants to the Agent and the Lenders a continuing security interest in any and all balances, credit, deposits, accounts or moneys of the Borrower maintained with the Agent and any Lender now or hereafter. If a Lender (or subsequent noteholder) shall obtain payment of any principal, interest or other amounts payable under this Agreement through the exercise of any right of set-off, banker's lien or counterclaim or otherwise or pursuant to the debit right provided in Section 1.15, it shall promptly purchase from the other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Note(s) held by the other Lenders in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders shall share the benefit of such payment (net of any expenses which may be incurred by such Lender in obtaining or preserving such benefit) pro rata based upon the unpaid principal amounts of and interest on the Note(s) held by each of them. To such end, the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. The Borrower agrees that any Lender or any other Person which purchases a participation (or direct interest) in the Note(s) held by any or all of the Lenders (each being hereinafter referred to as a "Participant") may exercise all rights of set-off, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Participant were a direct holder of Notes in the amount of such participation, provided that the Borrower was notified of such purchase. Nothing contained herein shall be deemed to require any Participant to exercise any such right or shall affect the right of any Participant to exercise, and retain the benefits of exercising, any such right with respect to any indebtedness or obligation of the Borrower, other than the Borrower's indebtedness and obligations under this Agreement.

#### **Section 1.17. Pro Rata Treatment; Sharing; Payments after Default.**

(a) Except to the extent otherwise provided in this Agreement and, with respect to fees payable to the Agent, the Resigning Agent, the Syndication Agent, the Documentation Agent and their affiliates, the Fee Agreements, and except as otherwise agreed by the Lenders: (i) the principal amount of LIBOR Loans made by each Lender shall be determined on a pro rata basis in accordance with the outstanding principal amount of the applicable Loans owed to such Lender (in the case of conversions to or continuations of Loans as LIBOR Loans); (ii) each payment and prepayment of principal of any Notes shall be allocated to the Lenders holding such Notes pro rata in accordance with the unpaid principal amounts of the respective Notes held by such Lenders; (iii) each payment of interest on the Notes shall be allocated to the Lenders pro rata in accordance with the unpaid principal amounts of their respective Loans evidenced by such Notes; (iv) each payment of any other sums and charges payable for the Lenders' account under this Agreement (except for the fees payable under the Fee Agreements, and the amounts payable pursuant to Section 1.21, which are payable solely in accordance therewith) shall be allocated to the Lenders pro rata in accordance with the respective unpaid principal amounts of the aggregate Loans made by each of them; (v) each payment under Section 1.11, 1.13 or 1.14 shall be made to each Lender in the amount required to be paid to such Lender to adequately indemnify or compensate such Lender for losses suffered or costs incurred by such Lender as provided in such Section; and (vi) notwithstanding the foregoing, after and during the continuance of a Default, each payment or distribution of cash, property, securities or other value received by the Agent or any Lender, directly or indirectly, in respect of the Borrower's Indebtedness hereunder, whether pursuant to this Article I or any attachment, garnishment, execution or other proceedings for the collection thereof or pursuant to any bankruptcy, reorganization, liquidation or other similar proceeding or otherwise, after payment of collection and other expenses as provided herein and in the Security Documents, shall be apportioned among the Lenders pro rata based upon the respective aggregate unpaid principal amount of all Loans owed to each of them.

(b) Notwithstanding the foregoing, if any Lender (a "Recovering Party") shall receive any such distribution referred to in Section 1.17(a)(vi) above (a "Recovery") in respect thereof, such Recovering Party shall pay to the Agent for distribution to the Lenders as set forth herein their respective pro rata shares of such Recovery, based on the Lenders' pro rata shares of all Loans outstanding at such time, unless the Recovering Party is legally required to return any Recovery, in which case each party receiving a portion of such Recovery shall return to the Recovering Party its pro rata share of the sum required to be returned without interest. For purposes of this Agreement, calculations of the amount of the pro rata share of each Lender shall be rounded to the nearest whole dollar.

(c) The Borrower acknowledges and agrees that, if any Recovering Party shall be obligated to pay to the other Lenders a portion of any Recovery pursuant to Section 1.17(b) and shall make such recovery payment, the Borrower shall be deemed to have satisfied its obligations in respect of Indebtedness held by such Recovering Party only to the extent of the Recovery actually retained by such Recovering Party after giving effect to the pro rata payments by such Recovering Party to the other Lenders. The obligations of the Borrower in respect of Indebtedness held by each other Lender shall be deemed to have been satisfied to the extent of the amount of the Recovery distributed to each such other Lender by the Recovering Party.

#### **Section 1.18. Non-Receipt of Funds by the Agent.**

Unless the Agent shall have been notified in writing by a Lender or the Borrower prior to the date on which such Lender or the Borrower is scheduled to make payment to the Agent of (in the case of a Lender) the proceeds of a Loan to be made by it hereunder or (in the case of the Borrower) a payment to the Agent for the account of any or all of the Lenders hereunder (such payment being herein referred to as a "Required Payment"), which notice shall be effective upon actual receipt, that it does not intend to make such Required Payment to the Agent, the Agent may (but shall not be required to) assume that the Required Payment has been made and may (but shall not be required to), in reliance upon such assumption, make the amount thereof available to the intended recipient(s) on such date and, if such Lender or the Borrower (as the case may be) has not in fact made the Required Payment to the Agent, the recipient(s) of such payment shall, on demand, or with respect to payment received by the Borrower, within three (3) Business Days after such receipt repay to the Agent for the Agent's own account the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Agent until the date the Agent recovers such amount at a rate per annum equal to (a) the Federal Funds Rate for such day, with respect to interest paid by such Lender, or (b) the applicable rate provided under Section 1.05, with respect to interest paid by the Borrower.

#### **Section 1.19. Replacement of Notes.**

Upon receipt of evidence reasonably satisfactory to the Borrower of the loss, theft, destruction or mutilation of any Note and (a) in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to the Borrower (provided, however, that if the holder of such Note is the original holder of such Note or a financial institution with net capital, capital surplus and undivided profits in excess of \$50,000,000 its own agreement of indemnity shall be deemed to be satisfactory), or (b) in the case of any such mutilation, upon the surrender of such Note for cancellation, the Borrower will execute and deliver, in lieu of such lost, stolen, destroyed, or mutilated Note, a new Note of like tenor.

#### **Section 1.20. Replaced Lenders.**

(a) Upon the occurrence of any event requiring the payment of additional sums by the Borrower pursuant to Section 1.11, 1.13 or 1.14 with respect to any Lender, such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another lending office for any Loans.

(b) Upon the occurrence of any event giving rise to the operation of Section 1.11, 1.13 or 1.14 with respect to any Lender which results in such Lender charging to the Borrower increased costs materially in excess of those being charged generally by the other Lenders, or upon the occurrence of a Lender Default which is not addressed to the reasonable satisfaction of the Borrower within ten (10) Business Days, the Borrower shall have the right, so long as no Event of Default then exists, to replace such Lender (the "Replaced Lender") with one or more new lenders (each, a "New Lender") reasonably acceptable to the Agent, provided that:

(i) at the time of any replacement pursuant to this paragraph, the New Lender shall enter into one or more Assignment and Acceptances pursuant to paragraph (b) of Article XII (with all fees payable pursuant to such paragraph (b) to be paid by the New Lender), pursuant to which the New Lender shall acquire all outstanding Loans of the Replaced Lender, and in connection therewith shall pay to the Replaced Lender an amount equal to the principal amount of, and all accrued interest on, all outstanding Loans of the Replaced Lender; and

(ii) all obligations of the Borrower owing to the Replaced Lender under the Loan Documents (other than those expressly described in the preceding subparagraph (i) in respect of which the assignment purchase price has been, or is concurrently being, paid) shall be paid in full to such Replaced Lender by the Borrower concurrently with such replacement.

Upon the execution of the respective Assignment and Acceptance, the payment of the amounts referred to in subparagraphs (i) and (ii) above and delivery to the New Lender of the appropriate replacement Notes executed by the Borrower, the New Lender shall become a Lender hereunder and the Replaced Lender shall cease to constitute a Lender hereunder, except with respect to indemnification provisions applicable to the Replaced Lender under this Agreement, which shall survive as to such Replaced Lender.

#### **Section 1.21. Change of Control Put.**

(a) Upon the occurrence of a "Change of Control" (as defined in the PCC 1998 Indenture) or in the event that any holder of PSC Notes or PCC Preferred Stock shall exercise the right to require PSC to repurchase all or any part of such holder's PSC Notes or PCC Preferred Stock, as applicable, upon the occurrence of a "Change of Control" under, and as defined in any applicable PSC Indenture or the PCC Preferred Stock Designation, as applicable (unless all PSC Notes and/or PCC Preferred Stock tendered by holders thereof in consequence of such "Change of Control" are purchased by a Person(s) not an Affiliate of PSC in lieu of PSC repurchasing such tendered PSC Notes and/or PCC Preferred Stock) (each a "Put Change of Control"), each Lender shall, unless the Tranche D Term Loans shall have been accelerated in accordance with Article IX, have the right to require that the Borrower prepay such Lender's Tranche D Term Loans in full at a prepayment price equal to the greater of (i) 101% and (ii) the then applicable Fixed Early Payment Amount, in either case, of the principal amount of the Tranche D Term Loans then outstanding (such amount, the "Change of Control Put Amount"), plus accrued and unpaid interest, if any, to the date of prepayment and all other Obligations due to such Tranche D Term Loan Lenders under this Agreement and the other Loan Documents, in accordance with the terms contemplated in paragraph (b) below.

(b) At least ten (10) Business Days prior to the occurrence of any Put Change of Control, the Borrower shall mail a notice to each Tranche D Term Loan Lender (the "Put Offer"), with a copy to the Agent, stating:

(i) that a Put Change of Control will occur and that such Tranche D Term Loan Lender has the right to require the Borrower to prepay such Lender's Tranche D

Term Loans in full at a prepayment price equal to the Change of Control Put Amount, plus accrued and unpaid interest, if any, to the date of prepayment, and showing the calculation of the prepayment price (exclusive of other Obligations due to such Tranche D Term Loan Lender hereunder);

(ii) the circumstances and relevant facts regarding such Put Change of Control (including the information with respect to pro forma historical income, cash flow and capitalization, each after giving effect to such Put Change of Control;

(iii) the prepayment date (which shall be the date of the occurrence of such Put Change of Control); and

(iv) the reasonable instructions determined by the Borrower and Agent, consistent with this section, that a Lender must follow in order to accept the Put Offer, which must allow each Tranche D Term Loan Lender at least ten (10) Business Days after receipt of such Put Offer by each Tranche D Term Loan Lender to accept such Put Offer.

(c) Lenders electing to have their Tranche D Term Loans prepaid will be required to surrender their Tranche D Term Notes to the Agent at the address specified in Section 13.03 on the prepayment date.

(d) On the prepayment date, all Tranche D Term Notes evidencing any Tranche D Term Loans prepaid by the Borrower under this section shall be cancelled by the Borrower, and the Borrower shall pay the Change of Control Put Amount to the Agent, for the account of the Tranche D Term Loan Lenders electing to receive such prepayment, plus accrued and unpaid interest, if any, and all other Obligations due to such Lenders under this Agreement and the other Loan Documents to the Lenders entitled thereto.

(e) For the purposes of this Section 1.21 (i) "PSC Notes" means a collective reference to the PCC 1997 Senior Notes, the PCC 1998 Senior Notes, the PSC 2001 Senior Notes, the PCC Exchange Notes, the PSC Subordinated Notes and the Golden Sky Exchange Notes; and (ii) "PSC Indentures" means a collective reference to the PCC 1997 Indenture, the PCC 1998 Indenture, the PSC 2001 Indenture, the PSC Subordinated Indenture, the PCC Exchange Indenture and the Golden Sky Exchange Indentures.

Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 1.21 may not be amended, modified or otherwise waived without the consent of the Tranche D Term Loan Lenders holding in the aggregate at least eighty percent (80%) of the outstanding Tranche D Term Loans.

## II. SECURITY; SUBORDINATION; USE OF PROCEEDS.

### Section 2.01. Security for the Obligations; Subordination; Etc.

(a) Collateral. Except as specified in Schedule 2.01(a) the Borrower's obligations hereunder, under the Notes and in respect of any Rate Hedging Obligations entered into with any Hedging Lenders shall be secured at all times by:

(i) the unconditional guaranty of each of the Subsidiaries (including the Finance Subsidiaries but excluding the Special Purpose Subsidiary, the Letter-of-Credit Subsidiary and South Plains DBS (so long as South Plains DBS is not a Material Subsidiary)) and the Parent (provided that the Parent's guaranty shall be non-recourse, except to the extent of the Collateral required to be provided by the Parent under subparagraph (v) below);

(ii) a first priority perfected security interest in and lien upon all presently owned and hereafter acquired tangible and intangible personal property and fixtures of each of the Borrower and the Subsidiaries (including the Finance Subsidiaries but excluding the Special Purpose Subsidiary, each Letter-of-Credit Subsidiary and South Plains DBS (so long as South Plains DBS is not a Material Subsidiary)), including without limitation any intercompany notes, obligations or agreements, subject only to (A) any prior Permitted Liens and (B) the exclusion of any FCC License, except to the extent (if any) that such a security interest is permitted or not prohibited by the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC (but including, to the maximum extent permitted by law, all rights incident or appurtenant to any such FCC License including without limitation the right to receive all proceeds derived or arising from or in connection with the sale, assignment or transfer thereof);

(iii) first mortgages on all presently owned and hereafter acquired real estate owned by each of the Borrower and the Subsidiaries, subject only to any prior Permitted Liens, together with mortgagee's title insurance policies acceptable to the Lenders;

(iv) first priority perfected collateral assignments of or leasehold mortgages on all real estate leases in which any of the Borrower and the Subsidiaries now has or may in the future have an interest, subject only to any prior Permitted Liens, and such third party consents, lien waivers, non-disturbance agreements and estoppel certificates as the Agent shall reasonably require, together with mortgagee's title insurance policies acceptable to the Agent;

(v) a first priority perfected collateral assignment and/or pledge of all of the issued and outstanding ownership interests of each of the Borrower and the Subsidiaries and all warrants, options and other rights to purchase such ownership interests;

(vi) without limiting the generality of Section 2.01(a)(i), first priority perfected collateral assignments of all NRTC Member Agreements and any other satellite broadcasting distribution agreements as the Agent shall reasonably deem necessary to protect the interests of the Lenders, together with such third party consents, lien waivers and estoppel certificates as the Agent shall reasonably require;



(vii) a first priority perfected security interest in the Borrower Collateral Account (as defined in the Parent Term Loan Documents as in effect on the Third Amendment Effective Date), which account shall contain all dividends, distributions, and interest and principal payments paid by the Borrower to the Parent at any time after the Agent has notified the Parent of its election to exercise the Agent's rights under Section 3(b) of the Pledge Agreement, and which security interest shall rank prior to the second-priority security interest in such Borrower Collateral Account in favor of the agent and lenders under the Parent Term Loan Documents and any Replacement Parent Term Debt; and

(viii) a second priority perfected security interest in all other assets of the Parent (other than those assets in which the Agent is required under this Agreement to have a first priority perfected security interest) that are subject from time to time to any security interest in favor of the agent and lenders under the Parent Term Loan Documents and any Replacement Parent Term Debt, which security interest (I) shall be junior to no liens other than the lien in favor of the agent and lenders under the Permitted Parent Term Debt and (II) shall, upon the release or termination of the lien in favor of such agent and lenders, be terminated and released, except that if the foregoing provision would otherwise cause the release of such security interest to occur during the continuance of a Default, such security interest in favor of the Agent for the benefit of the Lenders shall not terminate or be released and shall remain continuously perfected and become a first priority perfected security interest.

(b) Subordination.

(i) All existing and hereafter arising indebtedness of the Borrower and the Subsidiaries, if any, to Sellers which constitutes Permitted Seller Subordinated Debt shall be subordinated to any Indebtedness of the Companies to the Agent or the Lenders pursuant to subordination agreements substantially in the form of Schedule 2.01(b) with any material changes thereto to be satisfactory to the Agent and the Required Lenders, in their sole discretion (each, a "Seller Subordination Agreement", and collectively, the "Seller Subordination Agreements"). Notwithstanding the foregoing, the consent of the Agent (in its sole discretion) shall be sufficient (without further approval by the Lenders) to approve revisions to such form necessary (i) to permit the issuance to any subordinated Seller of Junior Reorganization Securities and (ii) to waive the requirement that the promissory notes evidencing such Seller's Permitted Seller Subordinated Debt be pledged and delivered to the Agent as security.

(ii) Without limiting the generality of Section 7.01, all existing and hereafter arising indebtedness of the Borrower and the Subsidiaries to the Parent and its other subsidiaries, including without limitation the Manager, shall be subordinated to any Indebtedness of the Companies to the Lenders pursuant to subordination agreements satisfactory in form and substance to the Required Lenders (each, an "Affiliate Subordination Agreement", and collectively, the "Affiliate Subordination Agreements").

(c) Security Documents. All agreements and instruments described or contemplated in this Section 2.01, including but not limited to the Parent Guaranty, the Parent Pledge Agreement, the Borrower Security Agreement, the Subsidiary Agreement, the Collateral Assignments, the Affiliate Subordination Agreement, the Intercreditor Agreement, the PSC Collateral Account Agreement and the Collateral Account Agreement, together with any and all other agreements and instruments heretofore or hereafter securing the Notes, the Rate Hedging Obligations and the other Obligations or otherwise executed in connection with this Agreement, as such agreements or instruments are amended, supplemented or otherwise modified from time to time in accordance with the terms hereof, are sometimes hereinafter referred to collectively as the "Security Documents" and each individually as a "Security Document". The Borrower agrees to execute and deliver any and all Security Documents, in form and substance satisfactory to the Agent, and take such action as the Lenders may reasonably request from time to time in order to cause the Agent and the Lenders to be secured at all times as described in this Section.

#### **Section 2.02. Use of Proceeds.**

On the Fourth Amendment Effective Date, the proceeds of the Tranche D Term Loans shall be used to prepay the Revolving Loans, Initial Term Loans and Incremental Term Loans as provided in Section 1.09A. Any such proceeds not required to be so applied may be used thereafter for working capital, Capital Expenditures and general corporate purposes of the Borrower.

### **III. CONDITIONS OF MAKING THE LOANS.**

#### **Section 3.01. Conditions to this Agreement.**

This Agreement shall be and become effective as of the date hereof (the "Fourth Amendment Effective Date") when all of the conditions set forth in this Section 3.01 shall have been satisfied (as determined by the Successor Agent):

- (a) The Successor Agent shall have received counterparts of:
  - (i) this Agreement, duly executed on behalf of each of the Borrower and the Required Lenders and the Tranche D Term Loan Lenders;
  - (ii) the Joinder, Acknowledgement and Consent of Guarantors and Reaffirmation of Guaranty attached hereto as Schedule 3.01(a)(ii) (the "Joinder"), duly executed on behalf of the Parent and each Subsidiary of the Borrower that is a party to the Subsidiary Agreement;
  - (iii) the Resignation and Assignment Agreement, duly executed on behalf of each of the Resigning Agent, the Successor Agent and the Borrower;
  - (iv) a certificate in the form of Schedule 3.01(a)(iv) attached hereto, duly executed on behalf of the Borrower;

(v) a certificate in the form of Schedule 3.01(a)(v) attached hereto, duly executed on behalf of the Borrower; and

(vi) the Agent Fee Letter, duly executed on behalf of the Borrower.

(b) The Successor Agent shall have received the following items for each of the Parent, the Borrower and each other Subsidiary party to the Subsidiary Agreement, in each case dated the Fourth Amendment Effective Date unless otherwise indicated:

(i) copies of the articles or certificates of incorporation or other charter documents of such Person certified to be true, complete and correct as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation and/or certified by a secretary or assistant secretary of such Person to be true, complete and correct as of the Fourth Amendment Effective Date;

(ii) a copy of the bylaws, partnership or operating agreement of such Person, as applicable, certified by a secretary or assistant secretary of such Person to be true and correct as of the Fourth Amendment Effective Date;

(iii) resolutions of its Board of Directors or other authorizing body or Person approving and authorizing the execution, delivery and performance of this Agreement, certified as of the Fourth Amendment Effective Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment;

(iv) certificates of good standing issued as of a reasonably recent date to the Fourth Amendment Effective Date by such Person's state of organization or formation.

(v) signature and incumbency certificates of the officers of such Person executing this Agreement, any amendments to Security Documents and any other documents required to be delivered under subsection (a) of this Section 3.01 (collectively, the "Additional Documents"); and

(c) The Successor Agent shall have received have received an originally executed copy of a written opinion of Drinker Biddle & Reath LLP, counsel for the Parent and the Companies, dated as of the Fourth Amendment Effective Date, addressed to the Agent and the Lenders and in form and substance reasonably satisfactory to the Successor Agent.

(d) The Successor Agent shall have received payment from the Borrower, in Dollars and in immediately available funds, of the following:

(i) for the benefit of each Lender that shall have delivered both (i) an executed non-binding consent letter to BAS on or prior to 5:00 p.m. (New York time) on October 17, 2003 and (ii) an executed counterpart of this Agreement to

the Agent on or prior to 5:00 p.m. (New York time) on October 21, 2003, an amendment fee equal to 25 basis points on the amount equal to the sum of (i) the outstanding Initial Term Loans held by such Lender, plus (ii) the outstanding Incremental Term Loans held by such Lender, in each case after giving effect to the prepayments contemplated by Section 1.09A hereof;

(ii) for the account of each Lender making Tranche D Term Loans, an upfront fee equal to 1.5% based on each Lender's final allocation of the Tranche D Term Loans, and

(iii) for their own account, of all fees and expenses owing by the Borrower to the Successor Agent and/or Banc of America Securities LLC ("BAS"), including, without limitation, the fees and expenses of Moore & Van Allen PLLC, counsel for the Successor Agent and BAS.

(e) The Successor Agent shall have received copies of certificates of insurance of the Borrower and its Subsidiaries evidencing insurance coverage and policy provisions meeting the requirements set forth in Section 6.02 hereof and naming the Successor Agent as additional insured or loss payee, as the case may be, on behalf of the Lenders.

(f) The Successor Agent shall have received satisfactory evidence that the Borrower shall have delivered to the Term Loan Agent (as defined in the Parent Term Loan Agreement) a certificate of an Authorized Officer of the Borrower certifying that the Indebtedness represented by the Tranche D Term Loans is permitted to be incurred under Section 7.01(b)(ii) of the Parent Term Loan Agreement and qualifies as "Permitted Indebtedness" as defined in the Parent Term Loan Agreement, together with a copy of this Agreement.

(g) The representations and warranties of the Borrower contained in Article IV hereof shall be true and correct in all material respects on and as of the Fourth Amendment Effective Date.

(h) The Resignation and Assignment Agreement shall have become effective in accordance with the terms thereof.

**Section 3.02. [Intentionally Omitted].**

**Section 3.03. All Loans.**

The obligations of the Lenders to make any Loans (including Loans made on the Fourth Amendment Effective Date) are, in each case, subject to the following conditions:

(a) (i) All warranties and representations set forth in this Agreement shall be true and correct in all material respects as of the applicable Credit Extension Date, except to the extent they relate specifically to an earlier specified date or are affected by transactions or events occurring after the Fourth Amendment Effective Date and permitted or not prohibited hereunder;

(ii) No Default shall have occurred and be continuing; and