

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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

For the Quarter Ended June 30, 2002  
OR

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

For the transition period from                      to

Commission File Number: 001-15749

**ALLIANCE DATA SYSTEMS CORPORATION**  
(Exact Name of Registrant as Specified in its Charter)

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

**31-1429215**  
(I.R.S. Employer  
Identification No.)

**17655 Waterview Parkway**  
**Dallas, Texas 75252**  
(Address of Principal Executive Office, including zip code)

**(972) 348-5100**  
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the Registrant (i) 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 (ii) has been subject to such filing requirements for the past 90 days. Yes  No

As of July 31, 2002, 74,742,149 shares of the registrant's common stock, par value \$0.01 per share, were outstanding.

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**ALLIANCE DATA SYSTEMS CORPORATION**

**INDEX**

**Part I:**

**FINANCIAL INFORMATION**

Item 1. Financial Statements (unaudited)

Condensed Consolidated Balance Sheets as of December 31, 2001 and June 30, 2002

Condensed Consolidated Statements of Operations for the three months ended June 30, 2001 (restated) and 2002 and for the six months ended June 30, 2001 (restated) and 2002

Condensed Consolidated Statements of Cash Flows for the six months ended June 30, 2001 and 2002

Notes to Condensed Consolidated Financial Statements

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Item 3. Quantitative and Qualitative Disclosures about Market Risk

**Part II:**

**OTHER INFORMATION**

Item 1. Legal Proceedings

<a href="#">Item 2.</a>	<a href="#">Changes in Securities and Use of Proceeds</a>
<a href="#">Item 3.</a>	<a href="#">Default Upon Senior Securities</a>
<a href="#">Item 4.</a>	<a href="#">Submission of Matters to a Vote of Security Holders</a>
<a href="#">Item 5.</a>	<a href="#">Other Information</a>
<a href="#">Item 6.</a>	<a href="#">Exhibits and Reports on Form 8-K</a>

## SIGNATURES

See accompanying notes to unaudited condensed consolidated financial statements.

2

**ALLIANCE DATA SYSTEMS CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS**  
(amounts in thousands, except per share amounts)

**Part I. - Financial Information**  
**Item 1. Financial Statements**

	<u>December 31, 2001</u>	<u>June 30, 2002</u>
<b>ASSETS</b>		
Cash and cash equivalents	\$ 117,535	\$ 80,995
Due from card associations	46,554	118,868
Trade receivables, net	88,444	86,816
Credit card receivables and seller's interest, net	128,793	131,354
Other current assets	82,177	89,827
<b>Total current assets</b>	<b>463,503</b>	<b>507,860</b>
Redemption settlement assets, restricted	150,330	162,411
Property and equipment, net	112,190	116,758
Other non-current assets	43,058	43,270
Due from securitizations	216,140	177,640
Intangible assets, net	491,997	514,259
<b>Total assets</b>	<b>\$ 1,477,218</b>	<b>\$ 1,522,198</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Accounts payable	\$ 82,290	\$ 84,215
Accrued expenses	73,135	61,755
Merchant settlement obligations	137,711	154,638
Other liabilities	25,268	32,568
Debt, current portion	111,325	153,826
<b>Total current liabilities</b>	<b>429,729</b>	<b>487,002</b>
Other liabilities	13,112	17,495
Deferred revenue	329,549	350,859
Long-term and subordinated debt	199,100	145,800
<b>Total liabilities</b>	<b>971,490</b>	<b>1,001,156</b>
Stockholders' equity:		
Common stock, \$0.01 par value; authorized 200,000 shares; issued and outstanding 73,987 shares as of December 31, 2001, 74,692 shares as of June 30, 2002	740	747
Additional paid-in capital	509,741	519,151
Treasury stock	(6,151)	(6,151)
Retained earnings	8,138	15,990
Accumulated other comprehensive loss	(6,740)	(8,695)
<b>Total stockholders' equity</b>	<b>505,728</b>	<b>521,042</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 1,477,218</b>	<b>\$ 1,522,198</b>

See accompanying notes to unaudited condensed consolidated financial statements.

3

**ALLIANCE DATA SYSTEMS CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(amounts in thousands, except per share amounts)

	For the three months ended		For the six months ended	
	June 30,		June 30,	
	2001	2002	2001	2002
	(as restated- see Note 9)		(as restated- see Note 9)	
<b>Revenues</b>				
Transaction and marketing services	\$ 119,061	\$ 126,518	\$ 226,204	\$ 247,477
Redemption revenue	28,336	32,442	50,679	65,119
Financing charges, net	34,700	43,376	80,666	95,049
Other income	1,582	3,205	7,310	8,235
Total revenue	183,679	205,541	364,859	415,880
<b>Operating expenses</b>				
Cost of operations	145,801	160,695	289,059	325,476
General and administrative	8,287	10,260	17,620	24,898
Depreciation and other amortization	7,015	9,895	13,382	19,166
Amortization of purchased intangibles	10,792	6,558	21,905	13,395
Total operating expenses	171,895	187,408	341,966	382,935
Operating income	11,784	18,133	22,893	32,945
Fair value loss on interest rate derivative	(390)	(5,647)	(5,821)	(5,260)
Interest expense	8,566	5,000	18,201	11,294
Income (loss) before extraordinary item and income taxes	2,828	7,486	(1,129)	16,391
Income tax expense	2,255	3,552	1,458	7,998
Income (loss) before extraordinary items	573	3,934	(2,587)	8,393
Extraordinary items, net of tax	(615)	(542)	(615)	(542)
Net income (loss)	\$ (42)	\$ 3,392	\$ (3,202)	\$ 7,851
Income (loss) per share before extraordinary items—basic and diluted	\$ (0.02)	\$ 0.05	\$ (0.12)	\$ 0.11
Net income (loss) per share—basic	\$ (0.03)	\$ 0.05	\$ (0.13)	\$ 0.11
Net income (loss) per share—diluted	\$ (0.03)	\$ 0.04	\$ (0.13)	\$ 0.10
Weighted average shares—basic	52,892	74,045	50,252	74,040
Weighted average shares—diluted	52,892	76,827	50,252	76,690

See accompanying notes to unaudited condensed consolidated financial statements.

**ALLIANCE DATA SYSTEMS CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(amounts in thousands)

	Six months ended	
	2001	2002
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Cash provided by operating activity before change in merchant settlement activity	\$ 15,531	\$ 43,188
Net change in merchant settlement activity	11,148	(55,386)
Net cash provided by (used in) operating activities	26,679	(12,198)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Change in redemption settlement assets	(5,758)	(12,082)
Net cash paid for corporate acquisitions	(18,750)	(26,019)
Change in seller's interest	75,107	(4,155)
Change in due from securitizations	(64,811)	39,669
Capital expenditures	(15,867)	(20,665)
Other investing activities	—	(723)
Net cash used in investing activities	(30,079)	(23,975)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Borrowings under debt agreements	176,200	311,100
Repayment of borrowings	(337,510)	(323,788)
Proceeds from issuance of common stock	161,917	6,469
Net cash provided by (used in) financing activities	607	(6,219)
Effect of exchange rate changes	(5,810)	5,852

Change in cash and cash equivalents	(8,603)	(36,540)
Cash and cash equivalents at beginning of period	116,941	117,535
Cash and cash equivalents at end of period	\$ 108,338	\$ 80,995
Supplemental cash flow disclosures:		
Interest paid	\$ 18,611	\$ 13,776
Income taxes paid	\$ 14,019	\$ 13,372

See accompanying notes to unaudited condensed consolidated financial statements.

5

**ALLIANCE DATA SYSTEMS CORPORATION**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**1. BASIS OF PRESENTATION**

The condensed consolidated financial statements included herein have been prepared by Alliance Data Systems Corporation (“ADSC” or, including its wholly owned subsidiaries, the “Company”), without audit, pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations. However, the Company believes that the disclosures are adequate to make the information presented not misleading. These unaudited condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and the notes thereto included in the Company’s annual report filed on Form 10-K.

The unaudited condensed consolidated financial statements included herein reflect all adjustments (which include only normal, recurring adjustments) which are, in the opinion of management, necessary to state fairly the results for the interim periods presented. The results of operations for the interim periods presented are not necessarily indicative of the operating results to be expected for any subsequent interim period or for the fiscal year.

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

Subsequent to the issuance of the Company’s interim financial statements for the three months ended June 30, 2001 and for the six months ended June 30, 2001 it was determined that an economic hedge on debt related to World Financial Network Credit Card Master Trust did not meet the criteria for hedge accounting under the provisions of Statement of Financial Accounting Standards (“SFAS”) No. 133, as amended. Accordingly, the previously reported financial information for the three months ended June 30, 2001 and for the six months ended June 30, 2001 have been restated. Such restatement is further discussed in Note 9 to the Company’s financial statements included herein.

**2. OTHER COMPREHENSIVE INCOME (LOSS)**

The components of other comprehensive income (loss), net of tax effect are as follows:

	Three months ended June 30,		Six months ended June 30,	
	2001 (as restated- see Note 9)	2002	2001 (as restated- see Note 9)	2002
	(dollars in thousands)			
Net income (loss)	\$ (42)	\$ 3,392	\$ (3,202)	\$ 7,851
Cumulative effect of change in accounting for derivatives	—	—	323	—
Change in fair value of derivatives	—	(1,825)	—	(1,015)
Reclassifications into earnings	2,775	1,427	5,056	1,296
Unrealized gain (loss) on securities available-for-sale	(1,503)	468	(1,500)	214
Foreign currency translation adjustments	6,507	(762)	(4,614)	(2,450)
Total comprehensive income (loss)	<u>\$ 7,737</u>	<u>\$ 2,700</u>	<u>\$ (3,937)</u>	<u>\$ 5,896</u>

Reclassifications into earnings arise from interest rate swaps, a foreign currency hedge, and amortization of amounts recorded in connection with the adoption of SFAS No. 133.

6

**3. EARNINGS PER SHARE**

Basic earnings per share is based on the weighted average number of common shares outstanding, excluding any dilutive effects of options or other dilutive securities. Diluted earnings per share is based on the weighted average number of common shares and potentially dilutive common shares, dilutive stock options and other dilutive securities outstanding during the year. However, as the Company generated net losses attributable to common stockholders for the three months ended June 30, 2001 and the six months ended June 30, 2001 presented below, the weighted average number of common shares including dilutive securities, composed of incremental common shares issuable upon exercise of stock options and warrants and upon conversion of Series A cumulative convertible preferred stock, is not used in determining diluted net income (loss) per share for the period because such shares are anti-dilutive.

Such potentially dilutive common shares were 9.2 million shares and 10.3 million shares, primarily related to the preferred stock, for the three and six months ended June 30, 2001, respectively. The following table sets forth the computation of basic and diluted net income (loss) per share for the periods indicated:

	Three months ended June 30,		Six months ended June 30,	
	2001	2002	2001	2002
	(as restated- see Note 9)		(as restated- see Note 9)	
(in thousands, except per share amounts)				
<b>NUMERATOR</b>				
Income (loss) before extraordinary item	\$ 573	\$ 3,934	\$ (2,587)	\$ 8,393
Preferred stock dividends	(1,440)	—	(3,240)	—
Income (loss) before extraordinary item attributable to common stockholders	(867)	3,934	(5,827)	8,393
Extraordinary item, net of tax	(615)	(542)	(615)	(542)
Net income (loss) attributable to common stockholders	\$ (1,482)	\$ 3,392	\$ (6,442)	\$ 7,851
<b>DENOMINATOR</b>				
Weighted average shares	52,892	74,045	50,252	74,040
Weighted average effect of dilutive securities:				
Net effect of dilutive stock options and warrants	—	2,782	—	2,650
Denominator for diluted calculations	52,892	76,827	50,252	76,690
<b>Income (loss) per share before extraordinary item</b>				
Basic	\$ (0.02)	\$ 0.05	\$ (0.12)	\$ 0.11
Diluted	\$ (0.02)	\$ 0.05	\$ (0.12)	\$ 0.11
<b>Net income (loss) per share</b>				
Basic	\$ (0.03)	\$ 0.05	\$ (0.13)	\$ 0.11
Diluted	\$ (0.03)	\$ 0.04	\$ (0.13)	\$ 0.10

7

#### 4. INTANGIBLE ASSETS, NET

On January 1, 2002, the Company adopted SFAS No. 142 "Goodwill and Other Intangible Assets." SFAS No. 142 requires that goodwill and intangible assets with indefinite useful lives no longer be amortized, but instead be tested for impairment at least annually. The Company has \$426.0 million of goodwill that is no longer being amortized. The Company has completed its transitional impairment test for goodwill and has determined that no impairment exists. Pro forma net income and net income per share for the three months ended June 30, 2001 and for the six months ended June 30, 2001, adjusted to eliminate historical amortization of goodwill, net of tax, and comparable amounts for the three months ended June 30, 2002 and for the six months ended June 30, 2002 are as follows (the weighted average diluted shares for the three and six months ended June 30, 2001 are 62.3 million and 60.7 million, respectively):

	Three months ended June 30,		Six months ended June 30,	
	2001	2002	2001	2002
	(as restated- see Note 9)		(as restated- see Note 9)	
(in thousands, except per share amounts)				
Reported net income (loss)	\$ (42)	\$ 3,392	\$ (3,202)	\$ 7,851
Add: goodwill amortization, net of tax	3,642	—	7,219	—
Pro forma net income	\$ 3,600	\$ 3,392	\$ 4,017	\$ 7,851
Reported net income (loss) per share:				
Basic	\$ (0.03)	\$ 0.05	\$ (0.13)	\$ 0.11
Diluted	\$ (0.03)	\$ 0.04	\$ (0.13)	\$ 0.10
Pro forma net income per share:				
Basic	\$ 0.07	\$ 0.05	\$ 0.08	\$ 0.11
Diluted	\$ 0.06	\$ 0.04	\$ 0.07	\$ 0.10

8

#### 5. SEGMENT INFORMATION

Consistent with prior periods, the Company continues to classify its businesses into three segments: Transaction Services, Credit Services and Marketing Services.

Transaction Services	Credit Services	Marketing Services	Other/ Elimination	Total
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(in thousands)										
<b>Three months ended June 30, 2001</b>										
Revenues	\$	117,225	\$	65,246	\$	52,215	\$	(51,007)	\$	183,679
Depreciation and amortization		10,780		538		6,489		—		17,807
Operating income		6,514		3,105		2,165		—		11,784
<b>Three months ended June 30, 2002</b>										
Revenues	\$	129,920	\$	77,287	\$	58,075	\$	(59,741)	\$	205,541
Depreciation and amortization		11,095		1,737		3,621		—		16,453
Operating income		9,152		2,547		6,434		—		18,133

		Transaction Services	Credit Services	Marketing Services	Other/ Elimination	Total				
(in thousands)										
<b>Six months ended June 30, 2001</b>										
Revenues	\$	234,688	\$	139,544	\$	96,506	\$	(105,879)	\$	364,859
Depreciation and amortization		20,752		940		13,595		—		35,287
Operating income		11,055		11,555		283		—		22,893
<b>Six months ended June 30, 2002</b>										
Revenues	\$	262,128	\$	159,358	\$	112,724	\$	(118,330)	\$	415,880
Depreciation and amortization		21,811		3,177		7,573		—		32,561
Operating income		13,856		10,122		8,967		—		32,945

## 6. ACQUISITION

In January 2002, the Company acquired Frequency Marketing, Inc., a small marketing services firm, adding new products for the Company's loyalty and one-to-one marketing offerings in the U.S. The preliminary purchase price allocation, which equals the total purchase price of \$26.0 million resulted in identifiable intangible assets of \$12.2 million, which are being amortized over a 2-5 year period, and goodwill of \$17.2 million, and net liabilities of \$3.4 million.

9

## 7. RECENT DEVELOPMENTS

On March 15, 2002, the Company reached agreement with its bankers to amend its credit agreement to add a short term \$50.0 million revolving loan facility, remove a requirement that Limited Brands, Inc. maintain ownership of a stated amount of the Company's common stock, and adjust certain other covenants related to leverage ratios, adjusted consolidated net worth, the interest coverage ratio, and allow for prepayment of certain subordinated debt owed to Limited Commerce Corp. and an affiliate of Welsh, Carson, Anderson & Stowe. The Company uses the credit agreement and free cash flow to support its working capital needs as well as potential acquisitions. The final agreement was signed on May 22, 2002.

During April 2002, the Company repaid \$50.0 million of its subordinated debt held by WCAS Capital Partners II, L.P., an affiliate of Welsh, Carson, Anderson & Stowe, and Limited Commerce Corp. As a result, Limited Commerce Corp. does not hold any of the Company's subordinated debt and an affiliate of Welsh, Carson, Anderson & Stowe holds the remaining \$52 million of the Company's subordinated debt.

## 8. RECENTLY ISSUED ACCOUNTING STANDARDS

In April 2002, the FASB issued SFAS No. 145 "Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Corrections," which is applicable for financial statements issued for fiscal years beginning after December 15, 2002. This omnibus statement (1) eliminates the automatic classification of debt extinguishment as extraordinary, (2) requires certain lease modification be accounted for in the same manner as sale-leaseback transactions and (3) provides for other corrections to the technical literature that are not substantive. The Company is in the process of determining the impact of adopting SFAS No. 145.

In June 2002, the FASB issued SFAS No. 146 "Accounting for Costs Associated with Exit or Disposal Activities," which is applicable for exit or disposal activities that are initiated after December 31, 2002, with early application encouraged. This statement nullifies EITF 94-3 and requires that a liability for a cost associated with an exit or disposal activity be recognized only when the liability is incurred. The Company is in the process of determining the impact, if any, of adopting SFAS No. 146.

10

## 9. RESTATEMENT

Subsequent to the issuance of the Company's condensed consolidated financial statements for the three months and six months ended June 30, 2001, the Company determined that an economic hedge on debt related to World Financial Network Credit Card Master Trust did not meet the criteria for hedge accounting under the provisions of SFAS No. 133, as amended, which was adopted on January 1, 2001. In its previously issued interim financial statements for 2001, the Company had designated an interest rate swap agreement as a hedge against its cash flow exposures and included the change in fair value of the interest rate swap in other comprehensive income. These changes should have been included in earnings. Accordingly, the condensed consolidated financial statements for the three months ended June 30, 2001 and the six months ended June 30, 2001 have been restated. A summary of the significant effects of the restatement is as follows (items that were not changed were not affected by the restatement).

For the three months ended June 30, 2001		For the six months ended June 30, 2001	
As originally reported	As restated	As originally reported	As restated

Revenue	\$ 182,565	\$ 183,679	\$ 363,257	\$ 364,859
Operating expenses	171,895	171,895	341,966	341,966
Fair value loss on interest rate derivative	—	(390)	—	(5,821)
Interest expense	8,566	8,566	18,201	18,201
Income (loss) before extraordinary item and income taxes	2,104	2,828	3,090	(1,129)
Income tax expense	2,002	2,255	2,935	1,458
Income (loss) before extraordinary item	102	573	155	(2,587)
Extraordinary item, net of tax	(615)	(615)	(615)	(615)
Net loss	\$ (513)	\$ (42)	\$ (460)	\$ (3,202)
Loss per share before extraordinary item-basic and diluted	\$ (0.03)	\$ (0.02)	\$ (0.06)	\$ (0.12)
Net loss per share-basic and diluted	\$ (0.04)	\$ (0.03)	\$ (0.07)	\$ (0.13)

11

## Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the unaudited condensed consolidated financial statements and related notes thereto presented elsewhere in this document. The Management's Discussion and Analysis of Financial Condition and Results of Operations presented below reflects the restatement of our condensed consolidated financial statements for the three months ended June 30, 2001 and for the six months ended June 30, 2001, as discussed in Note 9 to the condensed consolidated financial statements.

### Recent Developments

In January 2002, we acquired Frequency Marketing, Inc., a small marketing services firm, adding new products for our loyalty and one-to-one marketing offerings in the U.S. The preliminary purchase price allocation, which equals the total purchase price of \$26.0 million resulted in identifiable intangible assets of \$12.2 million, which are being amortized over a 2-5 year period, goodwill of \$17.2 million, and net liabilities of \$3.4 million.

On March 15, 2002, we reached agreement with our bankers to amend our credit agreement to add a short term \$50.0 million revolving loan facility, remove a requirement that The Limited maintain ownership of a stated amount of our common stock, and adjust certain other covenants related to leverage ratios, adjusted consolidated net worth, the interest coverage ratio, and allow for prepayment of certain subordinated debt owed to Limited Commerce Corp. and an affiliate of Welsh, Carson, Anderson & Stowe. We use the credit agreement and free cash flow to support our working capital needs as well as potential acquisitions. The final agreement was signed on May 22, 2002.

During April 2002, we repaid \$50.0 million of our subordinated debt held by WCAS Capital Partners II, L.P., an affiliate of Welsh, Carson, Anderson & Stowe, and Limited Commerce Corp. As a result, Limited Commerce Corp. does not hold any of our subordinated debt and an affiliate of Welsh, Carson, Anderson & Stowe holds the remaining \$52 million of our subordinated debt.

**Use of EBITDA.** We evaluate operating performance based on several factors of which the primary financial measure is operating income plus depreciation and amortization, or "EBITDA." EBITDA is presented because it is an integral part of our internal reporting and performance evaluation for senior management. EBITDA eliminates the uneven effect across all segments of considerable amounts of non-cash amortization of purchased intangibles recognized in business combinations accounted for under the purchase method. EBITDA is not intended to be a performance measure that should be regarded as an alternative to, or more meaningful than, either operating income or net income as an indicator of operating performance or to the statement of cash flows as a measure of liquidity. In addition, EBITDA is not intended to represent funds available for dividends, reinvestment or other discretionary uses, 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. The EBITDA measures presented may not be comparable to similarly titled measures presented by other companies.

12

### Results of Operations

#### Three months ended June 30, 2001 compared to the three months ended June 30, 2002

	Three months ended June 30,					
	Revenue		EBITDA		Operating income	
	2001	2002	2001	2002	2001	2002
	(amounts in thousands)					
Transaction Services	\$ 117,225	\$ 129,920	\$ 17,294	\$ 20,247	\$ 6,514	\$ 9,152
Credit Services	65,246	77,287	3,643	4,284	3,105	2,547
Marketing Services	52,215	58,075	8,654	10,055	2,165	6,434
Other/Eliminations	(51,007)	(59,741)	—	—	—	—
Total	\$ 183,679	\$ 205,541	\$ 29,591	\$ 34,586	\$ 11,784	\$ 18,133
	Three months ended June 30,					
	Percentage of revenue		EBITDA margin		Operating margin	
	2001	2002	2001	2002	2001	2002

Transaction Services	63.8%	63.2%	14.8%	15.6%	5.6%	7.0%
Credit Services	35.5	37.6	5.6	5.5	4.8	3.3
Marketing Services	28.4	28.3	16.6	17.3	4.1	11.1
Other/Eliminations	(27.7)	(29.1)	—	—	—	—
Total	100.0%	100.0%	16.1%	16.8%	6.4%	8.8%

**Revenue.** Total revenue increased \$21.8 million, or 11.9%, to \$205.5 million for the three months ended June 30, 2002 from \$183.7 million for the comparable period in 2001. The increase was due to a 10.8% increase in Transaction Services revenue, a 18.5% increase in Credit Services revenue and a 11.2% increase in Marketing Services revenue as follows:

- **Transaction Services.** Transaction Services revenue increased \$12.7 million, or 10.8%, due primarily to an increase in revenue per statement associated with Utility and Private Label clients, offset in part by the loss of certain low margin Transaction business.
- **Credit Services.** Credit Services revenue increased \$12.0 million, or 18.5%, primarily due to increases in finance charges, net, merchant fees increased and higher private label credit sales during the three months ended June 30, 2002. Finance charges, net increased \$8.9 million primarily as a result of an 11.2% increase in core accounts receivables and lower financing costs.
- **Marketing Services.** Marketing Services revenue increased \$5.9 million, or 11.2%, primarily due to an increase in reward revenue related to a 14.2% increase in the redemption of AIR MILES® Reward miles and an increase in the accretion of deferred services revenue. Our deferred revenue balance increased 6.5% to \$350.9 million at June 30, 2002 from the balance at December 31, 2001 primarily related to the 11.9% increase in AIR MILES Reward miles issued during the three months ended June 30, 2002.

**Operating Expenses.** Total operating expenses, excluding depreciation and amortization, increased \$16.9 million, or 10.9%, to \$171.0 million during the three months ended June 30, 2002 from \$154.1 million during the comparable period in 2001. Total EBITDA margin increased to 16.8% for the three months ended June 30, 2002 from 16.1% for the comparable period in 2001.

13

- **Transaction Services.** Transaction Services operating expenses, excluding depreciation and amortization, increased \$9.8 million, or 9.8%, to \$109.7 million for the three months ended June 30, 2002 from \$99.9 million for the comparable period in 2001, and EBITDA margin increased to 15.6% for the three months ended June 30, 2002 from 14.8% during the comparable period in 2001. The EBITDA margin improved primarily due to the increasing scale now benefiting our Utility services.
- **Credit Services.** Credit Services operating expenses, excluding depreciation and amortization, increased \$11.4 million, or 18.5%, to \$73.0 million for the three months ended June 30, 2002 from \$61.6 million for the comparable period in 2001, and while EBITDA increased 17.6%, the margin of 5.5% was flat to last year's comparable period as improvements in borrowing costs and net charge-offs were partially offset by a lower collected yield.
- **Marketing Services.** Marketing Services operating expenses, excluding depreciation and amortization, increased \$4.4 million, or 10.1%, to \$48.0 million for the three months ended June 30, 2002 from \$43.6 million for the comparable period in 2001, and EBITDA margin increased to 17.3% for the three months ended June 30, 2002 from 16.6% for the comparable period in 2001. The increase in EBITDA margin is being driven by the AIR MILES Reward miles program from the benefits of increased scale, as the program issued over 500 million AIR MILES Reward miles in the three months ended June 30, 2002.
- **Depreciation and Amortization.** Depreciation and amortization decreased \$1.3 million, or 7.3%, to \$16.5 million for the three months ended June 30, 2002 from \$17.8 million for the comparable period in 2001 due primarily to a \$4.3 million decrease in the amortization of goodwill relating to the implementation of SFAS No. 142, offset by an increase in depreciation and other amortization of \$2.9 million from capital spending and assets acquired from acquisitions and contracts.

**Operating Income.** Operating income increased \$6.3 million, or 53.4%, to \$18.1 million for the three months ended June 30, 2002 from \$11.8 million during the comparable period in 2001. Operating income increased due to the combination of growth in the business and adoption of SFAS No. 142, offset in part by higher depreciation and other amortization.

**Interest Expense.** Interest expense decreased \$3.6 million, or 41.9%, to \$5.0 million for the three months ended June 30, 2002 from \$8.6 million for the comparable period in 2001 due to a decrease in average debt outstanding, lower interest rates and reduced debt issuance amortization expense.

**Taxes.** Income tax expense increased \$1.3 million to \$3.6 million for the three months ended June 30, 2002 from \$2.3 million in 2001 due to an increase in taxable income, offset by a decrease in our effective tax rate. Our tax rate on taxable income of approximately 38% results in an effective book tax rate of approximately 47% due to the impact of non-deductible amortization expense.

**Extraordinary Items.** During the three months ended June 30, 2002, we repaid \$50.0 million of our subordinated debt resulting in a \$0.5 million, net of tax, charge. During the three months ended June 30, 2001, we repaid our outstanding term loan as part of our initial public offering, resulting in a \$0.6 million, net of tax, charge.

**Transactions with Limited Brands.** Revenue from Limited Brands and its affiliates, which includes merchant and database marketing fees remained constant at \$10.8 million for both the three months ended June 30, 2002 and for the comparable period in 2001, partially as a result of the sale of Lane Bryant by Limited Brands. Excluding the effect of the Lane Bryant sale, there would have been an increase of \$0.8 million. We generate a significant amount of additional revenue (finance charges, net) from our cardholders who are customers of Limited Brands and its affiliates.

14



Six months ended June 30, 2001 compared to the six months ended June 30, 2002

	Six months ended June 30,					
	Revenue		EBITDA		Operating income	
	2001	2002	2001	2002	2001	2002
	(amounts in thousands)					
Transaction Services	\$ 234,688	\$ 262,128	\$ 31,807	\$ 35,667	\$ 11,055	\$ 13,856
Credit Services	139,544	159,358	12,495	13,299	11,555	10,122
Marketing Services	96,506	112,724	13,878	16,540	283	8,967
Other/Eliminations	(105,879)	(118,330)	—	—	—	—
Total	\$ 364,859	\$ 415,880	\$ 58,180	\$ 65,506	\$ 22,893	\$ 32,945

	Six months ended June 30,					
	Percentage of revenue		EBITDA margin		Operating margin	
	2001	2002	2001	2002	2001	2002
Transaction Services	64.3%	63.0%	13.6%	13.6%	4.7%	5.3%
Credit Services	38.2	38.3	9.0	8.3	8.3	6.4
Marketing Services	26.5	27.1	14.4	14.7	0.3	8.0
Other/Eliminations	(29.0)	(28.4)	—	—	—	—
Total	100.0%	100.0%	15.9%	15.8%	6.3%	7.9%

**Revenue.** Total revenue increased \$51.0 million, or 14.0%, to \$415.9 million for the six months ended June 30, 2002 from \$364.9 million for the comparable period in 2001. The increase was due to an 11.7% increase in Transaction Services revenue, a 14.2% increase in Credit Services revenue and a 16.8% increase in Marketing Services revenue as follows:

- **Transaction Services.** Transaction Services revenue increased \$27.4 million, or 11.7%, due primarily to an increase in revenue per statement associated with Utility and Private Label clients, offset in part by the loss of certain low margin Transaction business.
- **Credit Services.** Credit Services revenue increased \$19.8 million, or 14.2%, primarily due to increases in finance charges, net during the six months ended June 30, 2002 over the comparable period in 2001. Merchant fees increased by \$3.7 million as a result of a 20.6% increase in private label credit sales. Finance charges, net increased \$13.4 million primarily as a result of a 9.9% increase in core accounts receivables and lower financing costs.
- **Marketing Services.** Marketing Services revenue increased \$16.2 million, or 16.8%, primarily due to an increase in reward revenue related to a 33.8% increase in the redemption of AIR MILES Reward miles and an increase in the accretion of deferred services revenue. The increase in the deferred revenue balance is primarily related to the 5.7% increase in AIR MILES Reward miles issued during the six months ended June 30, 2002.

**Operating Expenses.** Total operating expenses, excluding depreciation and amortization, increased \$43.7 million, or 14.2%, to \$350.4 million during the six months ended June 30, 2002 from \$306.7 million during the comparable period in 2001. Total EBITDA margin for the six months ended June 30, 2002 of 15.8% was 0.1% lower than the prior year, primarily due to the lower collected yield on Credit Services.

15

- **Transaction Services.** Transaction Services operating expenses, excluding depreciation and amortization, increased \$23.6 million, or 11.6%, to \$226.5 million for the six months ended June 30, 2002 from \$202.9 million for the comparable period in 2001, and EBITDA margin of 13.6% remained unchanged for the six months ended June 30, 2002 from the comparable period in 2001, as higher margin accounts were offset by the wind down of a customer.
- **Credit Services.** Credit Services operating expenses, excluding depreciation and amortization, increased \$19.0 million, or 15.0%, to \$146.1 million for the six months ended June 30, 2002 from \$127.1 million for the comparable period in 2001, and EBITDA margin decreased to 8.3% for the six months ended June 30, 2002 from 9.0% during the comparable period in 2001. The decrease in EBITDA margin is attributed to a lower collected yield and higher charge-offs in the first quarter of 2002, as compared to the same quarter of the prior year.
- **Marketing Services.** Marketing Services operating expenses, excluding depreciation and amortization, increased \$13.6 million, or 16.4%, to \$96.2 million for the six months ended June 30, 2002 from \$82.6 million for the comparable period in 2001, and EBITDA margin increased to 14.7% for the six months ended June 30, 2002 from 14.4% during the comparable period in 2001 due to operating efficiencies as scale continues to increase.
- **Depreciation and Amortization.** Depreciation and amortization decreased \$2.7 million, or 7.7%, to \$32.6 million for the six months ended June 30, 2002 from \$35.3 million for the comparable period in 2001 due primarily to a \$8.5 million decrease in the amortization of goodwill relating to the implementation of SFAS No. 142, offset by an increase in depreciation and other amortization of \$5.8 million.

**Operating Income.** Operating income increased \$10.1 million, or 44.1%, to \$33.0 million for the six months ended June 30, 2002 from \$22.9 million during the comparable period in 2001. Operating income increased primarily from revenue gains and a decrease in depreciation and amortization.

**Interest Expense.** Interest expense decreased \$6.9 million, or 37.9%, to \$11.3 million for the six months ended June 30, 2002 from \$18.2 million for the comparable period in 2001 due to a decrease in average debt outstanding and lower interest rates.

**Taxes.** Income tax expense increased \$6.5 million to \$8.0 million for the six months ended June 30, 2002 from \$1.5 million in 2001 due to an increase in taxable income, offset by a decrease in our effective tax rate. Our tax rate on taxable income of approximately 38% results in an effective book tax rate of approximately 49% due to the impact of non-deductible amortization expense and other permanent differences.

*Extraordinary Items.* During the six months ended June 30, 2002, we repaid \$50.0 million of our subordinated debt resulting in a \$0.5 million, net of tax, charge. During the six months ended June 30, 2001, we repaid our outstanding term loan as part of our initial public offering, resulting in a \$0.6 million, net of tax, charge.

*Transactions with Limited Brands.* Revenue from Limited Brands and its affiliates, which includes merchant and database marketing fees, decreased \$405,000, or 2.0%, to \$20.0 million for the six months ended June 30, 2002 from \$20.4 million for the comparable period in 2001, partially as a result of the sale of Lane Bryant by Limited Brands. Excluding the effect of the Lane Bryant sale, there would have been an increase of \$1.4 million. We generate a significant amount of additional revenue (financing charges, net) from our cardholders who are customers of Limited Brands and its affiliates.

## Asset Quality

Our delinquency and net charge-off rates reflect, among other factors, the credit risk of credit card receivables, the average age of our various credit card account portfolios, the success of our collection and recovery efforts, and general economic conditions. The average age of our credit card portfolio affects the stability of delinquency and loss rates of the portfolio. We continue to focus our resources on refining our credit underwriting standards for new accounts and on collections and post charge-off recovery efforts to minimize net losses.

*Delinquencies.* A credit card account is contractually delinquent if we do not receive the minimum payment by the specified due date on the cardholder's statement. It is our policy to continue to accrue interest and fee income on all credit card accounts, except in limited circumstances, until the account balance and all related interest and other fees are charged off or paid. However, accrued interest and fee income is only recorded in our financial statements when the cash is actually received from the customer. When an account becomes delinquent, we print a message requesting payment on the cardholder's billing statement. After an account becomes 30 days past due, a proprietary collection scoring algorithm automatically scores the risk of the account rolling to a more delinquent status. The collection system then recommends a collection strategy for the past-due account based on the collection score and account balance, and dictates the contact schedule and collections priority for the account. If we are unable to make a collection after exhausting all in-house efforts, we engage collection agencies and outside attorneys to continue those efforts.

The following tables reflect statistics for our securitization trust as reported to the trustee for compliance reporting. Management also uses core receivables to manage and analyze the portfolios. Core receivables are defined as securitized receivables less those receivables whereby the Company does not assume any risk of loss. These losses are passed on to the respective client.

	December 31, 2001	% of total	June 30, 2002	% of total
	(dollars in thousands)			
Receivables outstanding	\$ 2,451,006	100.0%	\$ 2,355,007	100.0%
Loan balances contractually delinquent:				
31 to 60 days	59,657	2.4	54,796	2.3
61 to 90 days	34,370	1.4	32,290	1.4
91 or more days	64,175	2.6	57,379	2.4
<b>Total</b>	<b>\$ 158,202</b>	<b>6.4%</b>	<b>\$ 144,465</b>	<b>6.1%</b>

*Net Charge-Offs.* Net charge-offs comprise the principal amount of losses from cardholders unwilling or unable to pay their account balances, as well as bankrupt and deceased cardholders, less current period recoveries. Net charge-offs exclude accrued finance charges and fees. The following table presents our net charge-offs for the periods indicated on a securitized basis. Average credit card portfolio outstanding represents the average balance of the securitized receivables at the beginning of each month for the period indicated.

	Six months ended June 30,	
	2001	2002
	(dollars in thousands)	
Average credit card portfolio outstanding	\$ 2,181,329	\$ 2,356,521
Net charge-offs	89,116	87,043
Net charge-offs as a percentage of average loans outstanding (annualized)	8.2%	7.4%

We believe, consistent with our statistical models and other credit analyses, that our securitized net charge-off ratio will continue to fluctuate.

## Liquidity and Capital Resources

### Operating Activities.

	Six months ended June 30,	
	2001	2002
	(dollars in thousands)	
Cash provided by operating activity before change in merchant settlement activity	\$ 15,531	\$ 43,188
Net change in merchant settlement activity	11,148	(55,386)
<b>Cash provided (utilized) by operations</b>	<b>\$ 26,679</b>	<b>\$ (12,198)</b>

We generated cash flow from operating activities before change in merchant settlement activity of \$43.2 million for the six months ended June 30, 2002 compared to \$15.5 million for the comparable period in 2001. The increase in operating cash flows before change in merchant settlement activity is related to

improved operating results for the six months ended June 30, 2002, partially offset by working capital movements. Merchant settlement activity fluctuates significantly depending on the day in which the quarter ends. At December 31, 2001, we carried more days of merchant settlement float than at June 30, 2002. Additionally, the six months ended June 30, 2002 were impacted by the loss of merchant settlement activity for a client. We utilize our operating cash flow for ongoing business operations, acquisitions and capital expenditures

**Investing Activities.** We utilized cash flow for investing activities of \$24.0 million for the six months ended June 30, 2002 compared to the utilization of \$30.1 million for the comparable period in 2001. Significant components of investing activities are as follows:

- **Acquisitions.** Net cash outlays, net of cash received, for acquisitions for the six months ended June 30, 2002 were \$26.0 million compared to \$18.8 million in the comparable period in 2001. The outlay for acquisitions in 2002 relates to the January 2002 purchase of Frequency Marketing, Inc.
- **Securitized and Receivables Funding.** We generally fund all private label credit card receivables through a securitization program that provides us with both liquidity and lower borrowing costs. As of June 30, 2002, we had over \$2.3 billion of securitized credit card receivables. Securitizations require credit enhancements in the form of cash, spread accounts and additional receivables. The credit enhancements are principally based on the outstanding balances of the private label credit cards in the securitization trust and their related performance. Each year during the period from November to January, we are required to maintain a credit enhancement level of 5% to 6% as compared to 4% to 5% for the remainder of the year. Accordingly, at December 31, we typically have our highest balance of credit enhancement assets. The credit enhancement is funded through the use of Certificates of Deposit issued through our bank. We intend to utilize our securitization program for the foreseeable future.

**Financing Activities.** Net cash used in financing activities was \$6.2 million for the six months ended June 30, 2002 compared to \$0.6 million of net cash provided for the comparable period in 2001. Our financing activities relate primarily to funding working capital requirements and the securitization program.

**Liquidity Sources.** We have four main sources of liquidity: securitization program, certificates of deposit, credit facility and issuances of equity.

**Securitization Program.** As of June 30, 2002, we had over \$2.3 billion of securitized credit card receivables. Securitizations require credit enhancements in the form of cash, spread accounts and additional receivables. The credit enhancement is principally based on the outstanding balances of the private label credit cards in the securitization trust and their related performance. During the period from November to January, we are required to maintain a credit enhancement level of 5% to 6% as compared to 4% to 5% for the remainder of the year. Accordingly, at December 31, we typically have our highest balance of credit enhancement assets. We intend to utilize our securitization program for the foreseeable future.

**Certificates of Deposit.** We utilize certificates of deposit to finance the operating activities of our credit card bank subsidiary, World Financial Network National Bank, and to fund securitization requirements. World Financial Bank issues certificates of deposit in denominations of \$100,000 in various maturities ranging between three months and two years and with effective annual fixed rates ranging from 2.25% to 7.3%. As of June 30, 2002, we had \$85.0 million of certificates of deposit outstanding. Certificate of deposit borrowings are subject to regulatory capital requirements.

**Credit Facility.** At June 30, 2002, we had \$162.6 million outstanding under our credit facility, consisting of \$87.6 million

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of term loans and \$75.0 million of outstanding borrowings under our \$150.0 million revolving loan commitment. The term loans mature in installments through July 2005 and the revolving loan commitment matures in May and July 2003. Our credit facility allows us to borrow up to three times our trailing 12 months operating EBITDA. Our borrowing capacity at June 30, 2002 was approximately \$468.5 million. With total outstanding borrowings as of June 30, 2002 consisting of credit facility, certificates of deposit, and subordinated debt of \$300.0 million, we had remaining borrowing capacity of \$168.6 million. In addition, we had \$81.0 million of cash and cash equivalents as of June 30, 2002. During April 2002, we repaid \$50.0 million of our subordinated debt that was held by an affiliate of Welsh, Carson, Anderson & Stowe and Limited Commerce Corp. As a result, Limited Commerce Corp. does not hold any of our subordinated debt and an affiliate of Welsh, Carson, Anderson & Stowe holds the remaining \$52 million of our subordinated debt.

We believe that our current level of cash and financing capacity, along with future cash flows from operations, will provide sufficient liquidity to meet the needs of our existing businesses for the foreseeable future. However, we may from time to time seek longer-term financing to support additional cash needs, reduce short-term borrowings or raise funds for acquisitions.

### Recent Accounting Pronouncements

In April 2002, the FASB issued SFAS No. 145 "Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Corrections, which is applicable for financial statements issued for fiscal years beginning after December 15, 2002. This omnibus statement (1) eliminates the automatic classification of debt extinguishment as extraordinary, (2) requires certain lease modification be accounted for in the same manner as sale-leaseback transactions and (3) provides for other corrections to the technical literature that are not substantive. The company is in the process of determining the impact, if any, of adopting SFAS No. 145.

In June 2002, the FASB issued SFAS No. 146 "Accounting for Costs Associated with Exit or Disposal Activities," which is applicable for exit or disposal activities that are initiated after December 31, 2002, with early application encouraged. This statement nullifies EITF 94-3 and requires that a liability for a cost associated with an exit or disposal activity be recognized only when the liability is incurred. The Company is in the process of determining the impact, if any, of adopting SFAS No. 146.

### Item 3. Quantitative and Qualitative Disclosures About Market Risk Management

#### Market Risk

There has been no material change from our annual report on Form 10-K related to the Company's exposure to market risk from off-balance sheet risk, interest rate risk, credit risk, foreign currency exchange rate risk and redemption reward risk.

This Form 10-Q and the documents incorporated by reference herein contain 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. Such statements may use words such as “anticipate,” “believe,” “estimate,” “expect,” “intend,” “predict,” “project” and similar expressions as they relate to us or our management. When we make forward-looking statements, we are basing them on our management’s beliefs and assumptions, using information currently available to us. Although we believe that the expectations reflected in the forward-looking statements are reasonable, these forward-looking statements are subject to risks, uncertainties and assumptions, including those discussed in the “Risk Factors” section in our 2001 Annual Report on Form 10-K.

If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may vary materially from what we projected. Any forward-looking statements contained in this quarterly report reflect our current

views with respect to future events and are subject to these and other risks, uncertainties and assumptions relating to our operations, results of operations, growth strategy and liquidity. We have no intention, and disclaim any obligation, to update or revise any forward-looking statements, whether as a result of new information, future results or otherwise.

## PART II OTHER INFORMATION

### Item 1. Legal Proceedings.

From time to time, we are involved in various claims and lawsuits incidental to our business, including claims and lawsuits alleging breaches of contractual obligations.

On November 16, 2000, in the United States District Court, Southern District of Florida, Miami Division, a group of World Financial Bank cardholders filed a putative class action complaint against World Financial Bank. The plaintiffs, individually and on behalf of all others similarly situated, commenced the action alleging that World Financial Bank engaged in a systematic program of false, misleading, and deceptive practices to improperly bill and collect consumer debts from thousands of cardholders. The suit stems from World Financial Bank’s alleged practices involved in calculating finance charges and in crediting cardholder payments on the next business day if received after 6:30 a.m. The plaintiffs contend that such practices are deceptive and result in the imposition of excessive finance charges and other penalties to cardholders. The plaintiffs allege that World Financial Bank, through such practices, has violated the federal Fair Credit Billing Act, the federal Truth-In-Lending Act and breached cardholder contracts. The plaintiffs have not specified an amount of damages, but have requested, individually and on behalf of a putative class, monetary and punitive damages for the alleged stated claims and permanent injunctions for alleged statutory violations. The complaint was subsequently amended to include our subsidiary, ADS Alliance Data Systems, Inc., as a defendant. We believe these allegations are without merit, however, the parties are conducting settlement negotiations.

### Item 2. Changes in Securities and Use of Proceeds.

None

### Item 3. Defaults Upon Senior Securities.

None

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

On June 4, 2002 the annual meeting of stockholders was held in Dallas, Texas for stockholders of record on April 5, 2002. Three directors were reelected by a plurality of the stockholders at that meeting. The directors reelected were Bruce K. Anderson, Roger H. Ballou and Daniel P. Finkelman. No other matters were voted on by the stockholders.

### Item 5. Other Information.

None

### Item 6. Exhibits and Reports on Form 8-K.

(a) Exhibits:

#### EXHIBIT INDEX

Exhibit No.	Description
3.1	Second Amended and Restated Certificate of Incorporation of the Registrant. (Incorporated by reference to Exhibit 3.1 of the Company’s Registration Statement on Form S-1, as amended, Registration No. 333-94623)
3.2	Second Amended and Restated Bylaws of the Registrant. (Incorporated by reference to Exhibit 3.2 of the Company’s Registration Statement on Form S-1, as amended, Registration No. 333-94623)
3.3	First Amendment to the Second Amended and Restated Bylaws of the Registrant. (Incorporated by reference to Exhibit 3.3 of the Company’s Registration Statement on Form S-1, as amended, Registration No. 333-94623)
3.4	Second Amendment to the Second Amended and Restated Bylaws of the Registrant.(Incorporated by reference to Exhibit 3.4 of the Company’s 2001 Annual Report on Form 10-K)
* 10.1	Fifth Amendment to Amended and Restated Credit Agreement, entered into as of May 22, 2002, among the Company, Loyalty

Management Group Canada, Inc., the banks party thereto and Harris Trust and Savings Bank as a bank and in its capacity as the administrative agent and collateral agent

- \* 10.2 364-Day Credit Agreement, dated as of May 22, 2002, among the Company and Loyalty Management Group Canada, Inc., the guarantors party thereto, the banks party thereto and Harris Trust and Savings Bank, as administrative agent
- \* 99.1 Certification of Chief Executive Officer of Alliance Data Systems Corporation Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- \* 99.2 Certification of Chief Financial Officer of Alliance Data Systems Corporation Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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\* Filed herewith

(b) *Reports on Form 8-K:*

On April 2, 2002, the Company filed with the SEC a Current Report on Form 8-K, dated April 1, 2002. The Current Report on Form 8-K relates to the Company's upward adjustment to final revenue and EBITDA results for the year ended December 31, 2001.

On April 18, 2002, the Company filed with the SEC a Current Report on Form 8-K, dated April 17, 2002. The Current Report on Form 8-K relates to the Company's earnings for the first quarter of 2002.

On July 18, 2002, the Company filed with the SEC a Current Report on Form 8-K, dated July 17, 2002. The Current Report on Form 8-K relates to the Company's earnings for the second quarter of 2002.

21

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**ALLIANCE DATA SYSTEMS CORPORATION**

Date: August 9, 2002

By: /s/ Edward J. Heffernan

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Edward J. Heffernan  
Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)

Date: August 9, 2002

By: /s/ Michael D. Kubic

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Michael D. Kubic  
Senior Vice President and Corporate Controller  
(Principal Accounting Officer)

22

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**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
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3.2	Second Amended and Restated Bylaws of the Registrant. (Incorporated by reference to Exhibit 3.2 of the Company's Registration Statement on Form S-1, as amended, Registration No. 333-94623)
3.3	First Amendment to the Second Amended and Restated Bylaws of the Registrant. (Incorporated by reference to Exhibit 3.3 of the Company's Registration Statement on Form S-1, as amended, Registration No. 333-94623)
3.4	Second Amendment to the Second Amended and Restated Bylaws of the Registrant.(Incorporated by reference to Exhibit 3.4 of the Company's 2001 Annual Report on Form 10-K)
4	Specimen Certificate for shares of Common Stock of the Registrant. (Incorporated by reference to Exhibit 4 of the Company's Registration Statement on Form S-1, as amended, Registration No. 333-94623)
* 10.1	Fifth Amendment to Amended and Restated Credit Agreement, entered into as of May 22, 2002, among the Company, Loyalty Management Group Canada, Inc., the banks party thereto and Harris Trust and Savings Bank as a bank and in its capacity as the administrative agent and collateral agent

- \* 10.2 364-Day Credit Agreement, dated as of May 22, 2002, among the Company and Loyalty Management Group Canada, Inc., the guarantors party thereto, the banks party thereto and Harris Trust and Savings Bank, as administrative agent
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\* Filed herewith

**ALLIANCE DATA SYSTEMS CORPORATION  
LOYALTY MANAGEMENT GROUP CANADA INC.**

**FIFTH AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT**

This Fifth Amendment to Amended and Restated Credit Agreement (herein, the “*Amendment*”) is entered into as of May 22, 2002, among Alliance Data Systems Corporation, a Delaware corporation (the “*US Borrower*”), Loyalty Management Group Canada Inc., an Ontario corporation (the “*Canadian Borrower*”; the US Borrower and the Canadian Borrower being referred to herein individually as “*Borrower*” and collectively as the “*Borrowers*”), the Banks party to the Credit Agreement (as such term is defined below) and Harris Trust and Savings Bank, as a Bank and in its capacity as the Administrative Agent and Collateral Agent under the Credit Agreement (the “*Administrative Agent*”).

**PRELIMINARY STATEMENTS**

A. The Borrowers, the Administrative Agent, and the Banks are currently party to a certain Amended and Restated Credit Agreement, dated as of July 24, 1998, and amended and restated as of October 22, 1998 (as amended, restated, modified and supplemented from time to time, the “*Credit Agreement*”). All capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Credit Agreement.

B. The Borrowers have requested that the Administrative Agent and the Banks amend certain definitions and covenants, and make certain other modifications to the Credit Agreement, and the Administrative Agent and the Banks party hereto are willing to do so under the terms and conditions set forth in this Amendment.

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

**SECTION 1. AMENDMENTS.**

Upon the satisfaction of the conditions precedent set forth in Section 2 hereof, the Credit Agreement shall be and hereby is amended as follows:

1.1. The definitions of Adjusted Consolidated Net Worth, Excess Cash Flow, Guarantor, Material Debt, Senior Secured Leverage Ratio, Subsidiary, and Supplemental Pledge Agreement appearing in Section 1.1 of the Credit Agreement shall be amended and restated in their entirety to read as follows:

“*Adjusted Consolidated Net Worth*” of any Person means, at any date, the Consolidated Net Worth of such Person and its Consolidated Subsidiaries plus, in the case of the US Borrower, the then outstanding principal amount of the WCAS Subordinated Note (to the extent the WCAS Subordinated Note has a maturity

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not earlier than the date which is six months after the Final Maturity Date).

“*Debt*” of any Person means at any date, without duplication (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (iv) all obligations of such Person as lessee which are capitalized in accordance with generally accepted accounting principles, (v) all non-contingent obligations (and, for purposes of Section 6.9, Section 6.16 and the definitions of Material Debt and Material Financial Obligations, all contingent obligations) of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit or similar instrument, (vi) all Debt secured by a Lien on any asset of such Person, whether or not such Debt is otherwise an obligation of such Person, and (vii) all Debt of others Guaranteed by such Person.

“*Excess Cash Flow*” means, for any fiscal year of the US Borrower, (i) Consolidated Net Income for such period *plus* (minus) (ii) the amount of depreciation, depletion, amortization of intangibles, deferred taxes and other non-cash expenses (revenues) which, pursuant to generally accepted accounting principles, were deducted (added) in determining Consolidated Net Income for such period *minus* (plus) (iii) additions (reductions, other than reductions attributable solely to Asset Sales) to Working Capital for such period *minus* (iv) the amount of Consolidated Capital Expenditures made during such period (except to the extent financed through the incurrence of Debt (other than through the incurrence of Loans hereunder or loans under the 364-day Revolver) or with equity proceeds) *minus* (v) the amount of Scheduled Repayments of Term Loans, and the amount of voluntary payments of principal of outstanding Term Loans, in each case, actually made during such period *minus* (vi) regularly scheduled payments of principal or “rent” (other than capitalized interest) due in accordance with the terms of capital leases and not otherwise deducted in arriving at Consolidated Net Income to the extent actually made during such period *minus* (vii) the amount of mandatory payments of principal of outstanding Term Loans pursuant to Sections 2.11(A)(e) and (h) actually made, but only to the extent that the net proceeds from the transactions described in such clauses (e) and (h) were added to Consolidated Net Income during such period.

“*Guarantor*” means, (a) with respect to the Obligations of the US Borrower, (i) ADSC, ADSI, and ADSMB and (ii) each other direct and indirect Domestic Subsidiary of the US Borrower that becomes a Guarantor from time to time, after the Effective Date, pursuant to Section 6.19 and (b) with respect to Obligations of the Canadian Borrower, (i) LMG, the US Borrower, ADSC, ADSI, and ADSMB and (ii) each other direct and indirect Domestic Subsidiary of the US Borrower or Subsidiary of the Canadian Borrower that becomes a Guarantor from time to time, after the Effective Date, pursuant to Section 6.19; *provided* that (x) WFNB and ADS Reinsurance and their Subsidiaries shall not be required to be Guarantors and (y) one or more indirect Subsidiaries of the US Borrower need not be Guarantors hereunder to the extent the Consolidated Total Assets of all such indirect Subsidiaries not becoming a Guarantor hereunder do not exceed 5% of the Consolidated Total Assets of the US Borrower and its Subsidiaries taken as a whole.

“*Material Debt*” means Debt (other than the Loans and the reimbursement obligations hereunder): (i) of a Person and/or one or more of its Subsidiaries, arising in one or more related or unrelated transactions, in an aggregate principal or face amount exceeding U.S. \$25,000,000 and (ii) of a Person under the 364-day Revolver.

“*Senior Secured Leverage Ratio*” of any Person means, at any time, the ratio of (x) all amounts owing by such Person to the Administrative Agent, the Collateral Agent or any Bank pursuant to the terms of this Agreement or any other Credit Document and to the holders of the loans under the 364-day Revolver to (y) Consolidated EBITDA of such Person for the four fiscal quarters then most recently ended.

“*Subsidiary*” means, as to any Person, any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person; unless otherwise specified, “*Subsidiary*” means a Subsidiary of the US Borrower. Notwithstanding the foregoing, Subsidiaries of WFNB whose primary business purpose is to facilitate the sale and securitization of WFNB’s credit card receivables shall not constitute a Subsidiary for purposes of Sections 6.9 (Negative Pledge), 6.16 (Debt Limitation), 6.19 (Equity Ownership, Limitation on Creation of Subsidiaries), and 6.24 (Limitation on Voluntary Prepayments and Modifications of Indebtedness, Modifications of Certain Agreements, etc.) of this Agreement.

3

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“*Supplemental Pledge Agreement*” shall mean the Residual Pledge Agreement, dated as of July 24, 1998, between the US Borrower and the Administrative Agent.

1.2. Section 1.1 of the Credit Agreement shall be amended by adding the following new definition thereto in alphabetical order:

“*ADSC*” means ADS Commercial Services, Inc., a Delaware corporation.

“*ADSMB*” means ADS MB Corporation, a Delaware corporation.

“*ADS Reinsurance*” means ADS Reinsurance Ltd., a Bermuda corporation.

“*Consolidated Total Assets*” of any Person means total assets of such Person and its Subsidiaries, determined on a consolidated basis in accordance with generally accepted accounting principles.

1.3. Section 1.1 of the Credit Agreement shall be amended by deleting the definitions of “*Eligible IPO*”, “*Equity Issuance*”, “*Equity Issuance Documents*”, “*New Preferred Stock*”, and “*Year 2000 Problem*”.

1.4. Section 2.11(A)(e) of the Credit Agreement (mandatory prepayments arising out of asset sales) shall be amended by deleting the second proviso appearing at the end thereof and inserting the following proviso in lieu thereof:

*provided, further*, that the Net Cash Proceeds from an Asset Sale shall not be required to be used to so repay Term Loans to the extent the assets sold pursuant to such Asset Sale, at the time of such Asset Sale, secured Debt permitted pursuant to Section 6.16 (other than Debt outstanding under this Agreement and the 364-day Revolver) and such Net Cash Proceeds do not exceed the amount of Debt so secured.

1.5. Section 2.11(A)(f) of the Credit Agreement (mandatory prepayments arising out of issuance of Debt) shall be amended by striking the phrase “(other than Debt permitted by Section 6.16 as in effect on the Restatement Effective Date)” and inserting the phrase “(other than Debt permitted by Section 6.16)” in lieu thereof.

1.6. Section 2.11(A)(g) of the Credit Agreement (mandatory prepayments arising out of issuance of equity) shall be amended by inserting at the end thereof a proviso which shall read as follows:

; *provided, however*, that cash proceeds not exceeding U.S. \$52,000,000 from the US Borrower’s follow-on offering of its equity securities applied to repay the WCAS Subordinated Note on

4

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or before December 31, 2002, shall not be required to be applied as a mandatory prepayment hereunder.

1.7. Section 2.13 of the Credit Agreement (Funding Losses) shall be amended by striking the phrase “(pursuant to Article 2, 6 or 7 or otherwise)” appearing in the third line and inserting the phrase “(pursuant to Article 2, 7 or 9 or otherwise)” in lieu thereof, and such Section shall be further amended by striking the phrase “Section 2.2, 2.9, or 2.11” appearing in the sixth line and inserting the phrase “Section 2.2, 2.9 or 2.10” in lieu thereof.

1.8. Section 2.14 (Computation of Interest and Fees) shall be amended by striking the cross-reference to “Section 2.11(a)” appearing at the end thereof and inserting the cross-reference “Section 2.12(a)” in lieu thereof.

1.9. Section 3.2(g) of the Credit Agreement (Each Borrowing) shall be amended by inserting in the 3<sup>rd</sup> line thereof immediately following the phrase “purported to be covered thereby” the additional parenthetical phrase “(subject to the exceptions set forth therein and in Sections 6.19 and 10.1(a))”, and the parenthetical exceptions for Canadian Security Document filings appearing in lines 9 through 13 thereof shall be restated to read as follows: “(except, in respect of the Canadian Security Documents, such filings with (w) Quebec filing offices to the extent the value of Collateral located therein at any one time does not exceed U.S. \$2,000,000 in the aggregate, (x) the Ontario PPSA filing office to the extent the Ontario Public Service Employees’ Union strike prevents the filing thereof, (y) Canadian trademark authorities to the extent the filing thereof is separately contemplated by the undertaking dated the Effective Date, and (z) land registry offices in connection with leased premises with respect to which landlord consent has not been obtained).”

1.10. Section 4.13 of the Credit Agreement (Year 2000 Compliance) shall be deleted in its entirety.

1.11. Section 6.1(g) of the Credit Agreement shall be amended and restated to read as follows:

(g) promptly after the mailing thereof to the public shareholders of the US Borrower, copies of all financial statements, reports and proxy statements so mailed;

1.12. Section 6.7 of the Credit Agreement (Mergers and Sales of Assets) shall be amended and restated in its entirety to read as follows:

*Section 6.7. Mergers and Sales of Assets.* The Credit Parties will not (x) consolidate or merge with or into any other Person or (y) sell, lease or otherwise transfer, directly or indirectly, any substantial part of the assets of any Credit Party and its Subsidiaries, taken as a whole, to any other Person; except that the following shall be permitted: (a) (i) any Credit Party other than the Canadian Borrower may merge with the US Borrower or another Guarantor if after giving effect to such merger, no Default shall

5

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have occurred and be continuing and (ii) any Person may be merged with or into any Credit Party pursuant to an acquisition permitted by Section 6.22(b), *provided* that such Credit Party is the surviving corporation of such merger, (b) the sale of credit card receivables pursuant to securitizations of such credit card receivables, and (c) assets sold and leased back in the normal course of the Borrowers’ business.

1.13. Section 6.9(l) of the Credit Agreement (Negative Pledge) shall be amended by striking the cross-reference to “Section 6.16(vii)” appearing therein and inserting the cross-reference “Section 6.16(vi)” in lieu thereof.

1.14. Section 6.13 of the Credit Agreement (Adjusted Consolidated Net Worth) shall be amended and restated in its entirety to read as follows:

*Section 6.13 Adjusted Consolidated Net Worth.* The US Borrower will not permit its Adjusted Consolidated Net Worth at any time to be less than the sum of (i) U.S. \$500,000,000, plus (ii) an amount equal to 50% of the amount by which the US Borrower’s quarterly Consolidated Net Income (determined at the end of each fiscal quarter, commencing March 31, 2002) exceeds zero, plus (iii) 100% of any proceeds from equity issuances of capital stock of the US Borrower (other than (A) in connection with exercises of stock options of the officers, directors and employees of the US Borrower in the ordinary course of business and (B) proceeds of equity issuances of capital stock used to pay the WCAS Subordinated Note pursuant to Section 6.24 hereof).

1.15. Section 6.16 of the Credit Agreement (Debt Limitation) shall be amended and restated in its entirety to read as follows:

*Section 6.16. Debt Limitation.* The US Borrower shall not, and shall not permit any of its Subsidiaries, whether now existing or created in the future, to create or retain any Debt other than (i) any Debt created or retained by the US Borrower or such Subsidiary on or before May 2, 1998, (ii) any Debt created or retained by the US Borrower or such Subsidiary in connection with the funds made available to the Borrowers pursuant to this Agreement or the 364-day Revolver (including any intercompany loans of such funds), *provided* that such loans made by the US Borrower and its Subsidiaries to (x) the Canadian Borrower shall not exceed U.S. \$20,000,000 and (y) ADSNZ shall not exceed U.S. \$1,500,000 in aggregate principal amount outstanding at any time, and all such loans from the US Borrower to WFNB shall be made pursuant to and evidenced by the WFNB Note, (iii) issuances by WFNB of certificates of deposit to the extent no Default results therefrom pursuant to the other covenants contained in this

6

Article 6, (iv) intercompany loans not otherwise permitted by clause (ii) of this Section 6.16 made by the US Borrower to ADSI and WFNB, *provided* that any such intercompany loans to WFNB shall be made pursuant to and evidenced by the WFNB Note, (v) Debt of the US Borrower outstanding pursuant to the WCAS Subordinated Note in an aggregate principal amount not to exceed U.S. \$52,000,000, less all repayments of principal thereof, (vi) obligations of the US Borrower or its Subsidiaries as lessee in respect of leases of property which are capitalized in accordance with generally accepted accounting principles and shown on the balance sheet of the US Borrower and its Subsidiaries and which in the aggregate do not at any one time exceed 10% of the Adjusted Consolidated Net Worth of the US Borrower at such time, (vii) the loans outstanding from time to time under the 364-day Revolver in a principal amount not to exceed U.S. \$50,000,000 at any one time outstanding, and (viii) other unsecured Debt of the US Borrower and/or its Subsidiaries not to exceed U.S. \$10,000,000 in the aggregate outstanding at any time. Notwithstanding anything to the contrary above in this Section 6.16, the US Borrower may, subject to the applicability of the other covenants contained in this Agreement, issue Permitted Subordinated Debt.

1.16. Section 6.19 of the Credit Agreement (Equity Ownership; Limitation on Creation of Subsidiaries) shall be amended by (i) inserting the phrase “except as otherwise provided in the definition of Guarantor hereunder,” at the beginning of clause (A)(iii) thereof, (ii) striking the word “counterpart” appearing in clause (A)(iii) and inserting the word “supplement” in lieu thereof, and (iii) inserting the phrase “subject to the 65% limitation contained in clause (A) above for Foreign Subsidiaries” immediately at the end of clause (B)(y) thereof.

1.17. Subsection (a) of Section 6.21 of the Credit Agreement (Limitation on Issuance of Capital Stock) shall be amended and restated in its entirety to read as follows:

(a) The US Borrower will not, and will not permit any of its Subsidiaries to, issue (i) any preferred stock or (ii) any common stock redeemable at the option of the holder thereof.

1.18. Section 6.22 of the Credit Agreement (Investments; Restricted Acquisitions) shall be amended by striking the phrase “Domestic Subsidiaries” appearing in subsection (a)(i) thereof and inserting the word “Subsidiaries” in lieu thereof.

1.19. Section 6.24 of the Credit Agreement (Limitation on Voluntary Payments and Modifications of Indebtedness; Modifications of Certain Other Agreements; etc.) shall be amended and restated in its entirety to read as follows:

*Section 6.24 Limitation on Voluntary Payments and Modifications of Indebtedness, Modifications of Certain Other Agreements, etc.* The US Borrower will not, and will not permit

7

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any of its Subsidiaries to, (i) make (or give any notice in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or make any pre-payment or redemption as a result of any asset sale, change of control or similar event of (including, in each case, without limitation, by way of depositing with the trustee with respect thereto or any other Person, money or securities before due for the purpose of paying when due) the WCAS Subordinated Note or any Permitted Subordinated Debt or (ii) amend or modify, or permit the amendment or modification of, any provision of the WCAS Subordinated Note, the License Agreements or the WFNB Note; provided, however, the US Borrower may prepay the WCAS Subordinated Note in the aggregate principal amount not to exceed U.S. \$52,000,000, on or before December 31, 2002, if, and only if, the prepayment of the WCAS Subordinated Note is made directly or indirectly from the proceeds of the US Borrower’s follow-on equity offering.

1.20. Section 11.4 of the Credit Agreement (Sharing of Set-Offs) shall be amended by striking the phrase “in accordance with the provisions of Section 2.12(B)” and inserting the phrase “pro rata in accordance with their share of the outstanding Obligations” in lieu thereof.

1.21. The information for notices to the Credit Parties set forth on the signature page to the Original Credit Agreement shall be amended to read as follows:

Address: 800 Tech Center Drive  
Gahanna, OH 43230  
Attention: Treasurer  
Telephone: (614) 729-4900  
Facsimile: (614) 729-4949

With a copy to:

Address: 17655 Waterview Parkway  
Dallas, TX 75252  
Attention: General Counsel  
Telephone: (972) 348-5135  
Facsimile: (972) 348-5330

SECTION 2. CONDITIONS PRECEDENT.

The effectiveness of this Amendment shall be subject to the satisfaction of the following conditions precedent:

(b) All legal matters incident to the execution and delivery of this Amendment and the instruments and documents contemplated hereby shall be satisfactory to the Administrative Agent and its counsel.

SECTION 3. REPRESENTATIONS.

In order to induce the Banks to execute and deliver this Amendment, each Borrower hereby represents to each Bank that as of the date hereof, after giving effect to this Amendment, the representations and warranties set forth in Section 4 of the Credit Agreement are and shall be and remain true and correct (except that the representations contained in Section 4.4 shall be deemed to refer to the most recent financial statements of each Borrower delivered to the Administrative Agent) and, after giving effect to this Amendment, (i) each Borrower is in full compliance with all of the terms and conditions of the Credit Agreement and (ii) no Default or Event of Default has occurred and is continuing under the Credit Agreement.

SECTION 4. MISCELLANEOUS.

(a) Each Borrower and Guarantor has heretofore executed and delivered to the Administrative Agent and the Banks certain Security Documents and the other Credit Documents and each Borrower and Guarantor hereby acknowledges and agrees that, notwithstanding the execution and delivery of this Amendment, the Security Documents and the other Credit Documents remain in full force and effect and the rights and remedies of the Administrative Agent, the Collateral Agent and the Banks thereunder, the obligations of each Borrower and Guarantor thereunder, and the liens and security interests created and provided for thereunder remain in full force and effect and shall not be affected, impaired or discharged hereby. Nothing herein contained shall in any manner affect or impair the priority of the liens and security interests created and provided for by the Security Documents and the other Credit Documents as to the indebtedness which would be secured thereby prior to giving effect to this Amendment.

(b) Except as specifically amended herein or waived hereby, the Credit Agreement shall continue in full force and effect in accordance with its original terms. Reference to this specific Amendment need not be made in the Credit Agreement, the Notes, or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Credit Agreement, any reference in any of such items to the Credit Agreement being sufficient to refer to the Credit Agreement as amended hereby.

(c) The Borrowers agree to pay on demand all costs and expenses of or incurred by the Administrative Agent in connection with the negotiation, preparation, execution and delivery of this Amendment and otherwise relating to this credit facility.

(d) This Amendment may be executed in any number of counterparts, and by the different parties on different counterpart signature pages, all of which taken together shall constitute one and the same agreement. Any of the parties hereto may execute this Amendment by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. This Amendment shall be governed by the laws of the State of New York.

[SIGNATURE PAGES TO FOLLOW]

This Fifth Amendment to Amended and Restated Credit Agreement is entered into as of the date and year first above written.

ALLIANCE DATA SYSTEMS CORPORATION, as a Borrower and Guarantor

By /s/ Robert Armiak  
Name \_\_\_\_\_  
Title \_\_\_\_\_

LOYALTY MANAGEMENT GROUP CANADA INC., as a Borrower

By /s/ Robert Armiak  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Accepted and agreed to as of the date and year last above written.

HARRIS TRUST AND SAVINGS BANK, in its individual capacity as a Bank and as the Administrative Agent

By /s/Thad D. Rasche  
Name \_\_\_\_\_  
Title \_\_\_\_\_

JPMORGAN CHASE BANK

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

BANK ONE, NA

By /s/ Illegible  
Name \_\_\_\_\_  
Title Director \_\_\_\_\_

10

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UNION BANK OF CALIFORNIA, N.A.

By /s/ Clifford F. Cho  
Name \_\_\_\_\_  
Title \_\_\_\_\_

THE HUNTINGTON NATIONAL BANK

By /s/ Illegible  
Name \_\_\_\_\_  
Title Vice President \_\_\_\_\_

KZH ING-2 LLC

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

KZH ING-3 LLC

By /s/ Joyce Fraser-Bryant  
Name \_\_\_\_\_  
Title Authorized Agent \_\_\_\_\_

PILGRIM AMERICA HIGH INCOME INVESTMENTS,  
LTD.

By: ING Investments, Inc., as its Investment  
Manager

By /s/ Michel Prince  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ING PRIME RATE TRUST

By: ING Investments, Inc., as its Investment  
Manager

By /s/ Michel Prince  
Name \_\_\_\_\_  
Title \_\_\_\_\_

11

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PILGRIM CLO 1999-1 LTD.

By: ING Investments, Inc., as its Investment  
Manager

By /s/ Michel Prince  
Name \_\_\_\_\_  
Title \_\_\_\_\_

SUNTRUST BANK

By /s/ Brian K. Peters  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ARCHIMEDES FUNDING II, LTD.

By: ING Capital Advisors LLC, as Collateral  
Manager

By /s/ Gordon Cook  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ARCHIMEDES FUNDING III, LTD.

By: ING Capital Advisors LLC, as Collateral  
Manager

By /s/ Gordon Cook  
Name \_\_\_\_\_  
Title \_\_\_\_\_

SEQUILS-ING I (HBDGM), LTD.

By: ING Capital Advisors LLC, as Collateral  
Manager

By /s/ Gordon Cook  
Name \_\_\_\_\_  
Title \_\_\_\_\_

12

VAN KAMPEN PRIME RATE INCOME TRUST

By Van Kampen Investment Advisory Corp.

By /s/ Illegible  
Name \_\_\_\_\_  
Title Executive Director

WACHOVIA BANK, NATIONAL ASSOCIATION

By /s/ Laura B. Smith  
Name \_\_\_\_\_  
Title \_\_\_\_\_

BARCLAYS BANK PLC

By /s/ Alison A. McGuigan  
Name \_\_\_\_\_  
Title \_\_\_\_\_

13

### GUARANTORS' ACKNOWLEDGMENT AND CONSENT

By their execution of this Amendment, the undersigned each acknowledge and agree that they are Guarantors under the Credit Agreement and have guaranteed the Guaranteed Obligations under Article 10 of the Credit Agreement. Each of the undersigned hereby consents to the Amendment to the Credit Agreement as set forth above and confirms that all of each of the undersigned's obligations as a Guarantor remain in full force and effect. The undersigned further agree that the consent of the undersigned to any further amendments to the Credit Agreement shall not be required as a result of this consent having been obtained. The undersigned acknowledge that the Administrative Agent and the Banks are relying on these assurances in entering into the Amendment set forth above.

ADS ALLIANCE DATA SYSTEMS, INC., as a  
Guarantor

By /s/ Robert Armiak  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ADS COMMERCIAL SERVICES, INC., as a  
Guarantor

By /s/ Robert Armiak  
Name \_\_\_\_\_

Title \_\_\_\_\_

ADS MB CORPORATION, as Guarantor

By /s/ Robert Armiak \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

LMG TRAVEL SERVICES LIMITED, as a  
Guarantor

By /s/ Robert Armiak \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

U.S. \$50,000,000

364-DAY CREDIT AGREEMENT

dated as of May 22, 2002

among

ALLIANCE DATA SYSTEMS CORPORATION

and

LOYALTY MANAGEMENT GROUP CANADA INC.,  
as BORROWERS,

THE GUARANTORS PARTY HERETO,

THE BANKS PARTY HERETO,

and

HARRIS TRUST AND SAVINGS BANK,  
as Administrative Agent

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## Table of Contents

<u>SECTION</u>	<u>HEADING</u>
<u>ARTICLE I</u>	<u>DEFINITIONS</u>
<u>Section 1.1.</u>	<u>Definitions</u>
<u>Section 1.2.</u>	<u>Accounting Terms and Determinations</u>
<u>Section 1.3.</u>	<u>Types of Borrowings</u>
<u>ARTICLE 2.</u>	<u>THE CREDITS</u>
<u>Section 2.1.</u>	<u>Commitments to Lend</u>
<u>Section 2.2.</u>	<u>Notice of Borrowing</u>
<u>Section 2.3.</u>	<u>Notice to Banks Funding of Loans</u>
<u>Section 2.4.</u>	<u>Notes</u>
<u>Section 2.5.</u>	<u>Maturity of Loans</u>
<u>Section 2.6.</u>	<u>Interest Rates</u>
<u>Section 2.7.</u>	<u>Fees</u>
<u>Section 2.8.</u>	<u>Termination or Reduction of Commitments</u>
<u>Section 2.9.</u>	<u>Method of Electing Interest Rates for Loans</u>
<u>Section 2.10.</u>	<u>Optional Prepayments</u>
<u>Section 2.11.</u>	<u>Mandatory Prepayments</u>
<u>Section 2.12.</u>	<u>General Provisions as to Payments</u>
<u>Section 2.13.</u>	<u>Funding Losses</u>
<u>Section 2.14.</u>	<u>Computation of Interest and Fees</u>

[Section 2.15.](#)

[Regulation D Compensation](#)

## [ARTICLE 3](#)

### [CONDITIONS](#)

[Section 3.1.](#)

[Effectiveness](#)

[Section 3.2.](#)

[Each Borrowing](#)

## [ARTICLE 4](#)

### [REPRESENTATIONS AND WARRANTIES](#)

[Section 4.1.](#)

[Corporate Existence and Power](#)

[Section 4.2.](#)

[Corporate and Governmental Authorization; No Contravention](#)

[Section 4.3.](#)

[Binding Effect](#)

[Section 4.4.](#)

[Financial Information](#)

[Section 4.5.](#)

[Litigation](#)

[Section 4.6.](#)

[Compliance with ERISA](#)

[Section 4.7.](#)

[Environmental Matters](#)

[Section 4.8.](#)

[Taxes](#)

[Section 4.9.](#)

[Subsidiaries](#)

[Section 4.10.](#)

[Regulatory Restrictions on Borrowing](#)

[Section 4.11.](#)

[Full Disclosure](#)

[Section 4.12.](#)

[Intellectual Property](#)

## [ARTICLE 5](#)

### [REPRESENTATIONS AND WARRANTIES OF EACH GUARANTOR](#)

[Section 5.1.](#)

[Corporate Existence and Power](#)

[Section 5.2.](#)

[Corporate and Governmental Authorization; No Contravention](#)

[Section 5.3.](#)

[Binding Effect](#)

[Section 5.4.](#)

[Financial Information](#)

[Section 5.5.](#)

[Litigation](#)

[Section 5.6.](#)

[Compliance with ERISA](#)

[Section 5.7.](#)

[Environmental Matters](#)

[Section 5.8.](#)

[Taxes](#)

[Section 5.9.](#)

[Subsidiaries](#)

[Section 5.10.](#)

[Regulatory Restrictions on Borrowing](#)

[Section 5.11.](#)

[Full Disclosure](#)

## [ARTICLE 6](#)

### [COVENANTS](#)

[Section 6.1.](#)

[Information](#)

[Section 6.2.](#)

[Payment of Obligations](#)

[Section 6.3.](#)

[Maintenance of Property; Insurance](#)

[Section 6.4.](#)

[Conduct of Business and Maintenance of Existence](#)

[Section 6.5.](#)

[Compliance with Laws](#)

[Section 6.6.](#)

[Inspection of Property, Books and Records](#)

[Section 6.7.](#)

[Mergers and Sales of Assets](#)

[Section 6.8.](#)

[Use of Proceeds](#)

[Section 6.9.](#)

[Negative Pledge](#)

[Section 6.10.](#)

[End of Fiscal Years and Fiscal Quarters](#)

[Section 6.11.](#)

[Minimum Consolidated EBITDA](#)

[Section 6.12.](#)

[\(a\) Leverage Ratio](#)

[Section 6.13.](#)

[Adjusted Consolidated Net Worth](#)

[Section 6.14.](#)

[Capitalization of Insured Subsidiaries](#)

[Section 6.15.](#)

[Delinquency Ratio](#)

[Section 6.16.](#)

[Debt Limitation](#)

[Section 6.17.](#)

[Interest Coverage Ratio](#)

[Section 6.18.](#)

[Restricted Payments; Required Dividends](#)

[Section 6.19.](#)

[Equity Ownership, Limitation On Creation Of Subsidiaries](#)

[Section 6.20.](#)

[Change Of Business](#)

[Section 6.21.](#)

[Limitation On Issuance Of Capital Stock](#)

[Section 6.22.](#)

[Investments; Restricted Acquisition](#)

[Section 6.23.](#)

[Consolidated Capital Expenditures](#)

[Section 6.24.](#)

[Limitation on Voluntary Payments and Modifications of Indebtedness, Modifications of Certain Other Agreements, etc](#)

## [ARTICLE 7](#)

### [DEFAULTS](#)

[Section 7.1.](#)

[Events of Default](#)

[Section 7.2.](#)

[Notice of Default](#)



<a href="#">ARTICLE 8</a>	<a href="#">THE AGENT</a>
<a href="#">Section 8.1.</a>	<a href="#">Appointment and Authorization</a>
<a href="#">Section 8.2.</a>	<a href="#">Administrative Agent and Affiliates</a>
<a href="#">Section 8.3.</a>	<a href="#">Action By Administrative Agent</a>
<a href="#">Section 8.4.</a>	<a href="#">Consultation with Experts</a>
<a href="#">Section 8.5.</a>	<a href="#">Liability of Administrative Agent</a>
<a href="#">Section 8.6.</a>	<a href="#">Indemnification</a>
<a href="#">Section 8.7.</a>	<a href="#">Credit Decision</a>
<a href="#">Section 8.8.</a>	<a href="#">Successor Administrative Agent</a>
<a href="#">ARTICLE 9</a>	<a href="#">CHANGE IN CIRCUMSTANCES</a>
<a href="#">Section 9.1.</a>	<a href="#">Basis for Determining Interest Rate Inaccurate or Unfair</a>
<a href="#">Section 9.2.</a>	<a href="#">Illegality</a>
<a href="#">Section 9.3.</a>	<a href="#">Increased Cost and Reduced Return</a>
<a href="#">Section 9.4.</a>	<a href="#">Taxes</a>
<a href="#">Section 9.5.</a>	<a href="#">Base Rate Loans Substituted for Affected Fixed Rate Loans</a>
<a href="#">ARTICLE 10</a>	<a href="#">PERFORMANCE AND PAYMENT GUARANTY</a>
<a href="#">Section 10.1.</a>	<a href="#">Unconditional and Irrevocable Guaranty</a>
<a href="#">Section 10.2.</a>	<a href="#">Enforcement</a>
<a href="#">Section 10.3.</a>	<a href="#">Obligations Absolute</a>
<a href="#">Section 10.4.</a>	<a href="#">Waiver</a>
<a href="#">Section 10.5.</a>	<a href="#">Subrogation</a>
<a href="#">Section 10.6.</a>	<a href="#">Survival</a>
<a href="#">Section 10.7.</a>	<a href="#">Guarantors' Consent to Assigns</a>
<a href="#">Section 10.8.</a>	<a href="#">Continuing Agreement</a>
<a href="#">ARTICLE 11</a>	<a href="#">MISCELLANEOUS</a>
<a href="#">Section 11.1.</a>	<a href="#">Notices</a>
<a href="#">Section 11.2.</a>	<a href="#">No Waivers</a>
<a href="#">Section 11.3.</a>	<a href="#">Expenses; Indemnification</a>
<a href="#">Section 11.4.</a>	<a href="#">Sharing of Set-Offs</a>
<a href="#">Section 11.5.</a>	<a href="#">Amendment or Waiver, etc</a>
<a href="#">Section 11.6.</a>	<a href="#">Successors and Assigns</a>
<a href="#">Section 11.7.</a>	<a href="#">Collateral</a>
<a href="#">Section 11.8.</a>	<a href="#">Governing Law; Submission to Jurisdiction; Judgment Currency</a>
<a href="#">Section 11.9.</a>	<a href="#">Counterparts; Integration; Effectiveness</a>
<a href="#">Section 11.10.</a>	<a href="#">Waiver of Jury Trial</a>
<a href="#">SCHEDULE I</a>	— <a href="#">Commitments</a>
<a href="#">SCHEDULE II</a>	— <a href="#">Investment Plan</a>
<a href="#">SCHEDULE III</a>	— <a href="#">Community Reinvestment Act Requirements</a>

<a href="#">APPENDIX I</a>	— <a href="#">Pricing Schedule</a>
<a href="#">EXHIBIT A</a>	— <a href="#">Assignment and Assumption Agreement</a>
<a href="#">EXHIBIT B-1</a>	— <a href="#">US Borrower Note</a>
<a href="#">EXHIBIT B-2</a>	— <a href="#">Canadian Borrower Note</a>

This 364-DAY CREDIT AGREEMENT, dated as of May 22, 2002, is entered into by and among ALLIANCE DATA SYSTEMS CORPORATION, a Delaware corporation (the “US Borrower”), LOYALTY MANAGEMENT GROUP CANADA INC., an Ontario corporation (the “Canadian Borrower”), the GUARANTORS from time to time party hereto, the BANKS from time to time party hereto, and HARRIS TRUST AND SAVINGS BANK, as Administrative Agent.

WHEREAS, the US Borrower and the Canadian Borrower have requested that the Banks provide a 364-day credit facility to the Borrowers on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

*Section 1.1 Definitions.* The following terms, as used herein, have the following meanings:

“*Adjusted Consolidated Net Worth*” of any Person means, at any date, the Consolidated Net Worth of such Person and its Consolidated Subsidiaries plus, in the case of the US Borrower, the then outstanding principal amount of the WCAS Subordinated Note (to the extent the WCAS Subordinated Note has a maturity not earlier than the date which is six months after the Maturity Date).

“*Administrative Agent*” means Harris Trust and Savings Bank in its capacity as agent for the Banks hereunder, and its successors in such capacity.

“*ADSC*” means ADS Commercial Services, Inc., a Delaware corporation.

“*ADSI*” means ADS Alliance Data Systems, Inc., a Delaware corporation.

“*ADSMB*” means ADS MB Corporation, a Delaware corporation.

“*ADSNZ*” means ADSNZ Alliance Data Systems New Zealand, a New Zealand corporation.

“*ADS Reinsurance*” means ADS Reinsurance Ltd., a Bermuda corporation.

“*Affected Loans*” has the meaning provided in Section 2.11(B).

“*Affiliate*” means (i) any Person that directly, or indirectly through one or more intermediaries, controls the US Borrower (a “*Controlling Person*”) or (ii) any Person (other than the US Borrower or a Subsidiary thereof) which is controlled by or is under common control with a Controlling Person. As used herein, the term “control” means possession, directly or

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indirectly, of the power to vote 10% or more of any class of voting securities of a Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“*Agreement*” means this 364-Day Credit Agreement, as modified, supplemented, amended, restated (including any amendment and restatement hereof), extended, renewed or refinanced from time to time.

“*Applicable Commitment Fee Percentage*” shall mean a rate per annum equal to the applicable rate specified in the pricing schedule attached hereto as Appendix 1.

“*Applicable Lending Office*” means, with respect to any Bank, (i) in the case of its Domestic Loans, its Domestic Lending Office, (ii) in the case of its Canadian Loans, its Canadian Lending Office, (iii) in the case of its Euro-Dollar Loans, its Euro-Dollar Lending Office, and (iv) in the case of its Euro-Canadian Dollar Loans, its Euro-Canadian Dollar Lending Office.

“*Asset Sale*” means the sale, transfer or other disposition by the US Borrower or any Subsidiary of the US Borrower to any Person other than the US Borrower or any Guarantor of any asset (including, without limitation, any capital stock or other securities of, or equity interests in, another Person) of the US Borrower or such Subsidiary (other than sales, transfers or other dispositions of assets in the ordinary course of such business).

“*Assigned Collateral*” means, collectively, the “Assigned Collateral” as defined in the Security Agreement and the “Charged Premises” as defined in the Canadian Security Documents.

“*Assignment and Assumption Agreement*” means an appropriately completed Assignment and Assumption Agreement in the form of Exhibit A hereto.

“*Bank*” means each bank listed on the signature pages hereof, each Assignee which becomes a Bank pursuant to Section 11.6(c), and their respective successors.

“*Base Rate*” means, for any day, a rate per annum equal to the higher of (i) the Prime Rate for such day and (ii) the sum of 1/2 of 1% plus the Federal Funds Rate for such day.

“*Base Rate Loan*” means (i) a Loan which bears interest at the Base Rate pursuant to the provisions of Articles 2 or 9 hereof or (ii) an overdue amount which was a Base Rate Loan immediately before it became overdue.

“*Base Rate Margin*” means a percentage per annum equal to the applicable percentage specified in the pricing schedule attached hereto as Appendix 1.

“*Beneficiaries*” has the meaning set forth in Section 10.1.

“Benefit Arrangement” means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by any member of the ERISA Group.

“Borrowers” means, collectively, the US Borrower and the Canadian Borrower.

“Borrowing” has the meaning set forth in Section 1.3.

“Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in Chicago, Illinois, and Toronto, Ontario, are authorized by law to close and, if the applicable Business Day relates to an advance or continuation of, or conversion into, or payment of, a Euro-Dollar Loan or Euro-Canadian Dollar Loan, on which commercial banks are open for international business (including dealing in U.S. Dollar or Canadian Dollar deposits, as the case may be) in London, England.

“Canadian Base Rate” means for any day the greater of: (i) the floating annual rate of interest established by the Administrative Agent’s Affiliate, Bank of Montreal, from time to time as the reference rate it will use to determine rates of interest on Canadian dollar loans to customers in Canada and designated as its prime rate, as in effect on such day (it being acknowledged and agreed that such rate may not be Bank of Montreal’s best or lowest rate); and (ii) the CDOR Rate applicable on such day plus 1.0%.

“Canadian Base Rate Loan” means (i) a Loan which bears interest at the Canadian Base Rate pursuant to Article 2 hereof or (ii) an overdue amount which was a Canadian Base Rate Loan immediately before it became overdue.

“Canadian Base Rate Margin” means a percentage per annum equal to the applicable percentage specified in the pricing schedule attached hereto as Appendix 1.

“Canadian Borrower” has the meaning provided in the first paragraph of this Agreement.

“Canadian Dollars” and “Cdn\$” each mean the lawful currency of Canada.

“Canadian Lending Office” means, as to each Bank, its office identified as such on the signature page hereof or such other office as such Bank may hereafter designate as its Canadian Lending Office by notice to the Borrowers and the Administrative Agent, which office shall be located in Canada.

“Canadian Loans” means Loans denominated in Canadian dollars.

“Canadian Scheme License” means the Amended and Restated License to Use and Exploit the Air Miles Scheme in Canada, made as of July 24, 1998, between Air Miles International Trading B.V. and the Canadian Borrower, as such agreement was in effect on the Original Effective Date.

“Canadian Security Documents” means the Debenture Delivery Agreement and the Demand Debenture and any undertakings or other security granted to the Collateral Agent or the Banks as security for the Obligations of the Canadian Borrower.

“Canadian Trademark License” means the Amended and Restated License to Use the Air Miles Trade Marks in Canada, dated July 24, 1998, between Air Miles International Holdings N.V. and Loyalty Management Group Canada Inc., as such agreement was in effect on the Original Effective Date.

“CDOR Rate” means on any day the annual rate of interest which is the rate determined as being the arithmetic average of the quotations of all institutions listed in respect of the “BA 1 Month” Rate for Canadian Dollar denominated bankers’ acceptances displayed and identified as such on the “Reuters Screen CDOR Page” (as defined in the International Swap Dealer Association, Inc. definitions, as modified and amended from time to time) as of 10:00 a.m. Toronto, Ontario local time on such day and, if such day is not a Business Day, then on the immediately preceding Business Day (as adjusted by the Administrative Agent after 10:00 a.m. Toronto, Ontario local time to reflect any error in a posted rate of interest or in the posted average annual rate of interest); and if such rates are not available on the Reuters Screen CDOR Page on any particular day, then the CDOR Rate on that day shall be calculated as the 30 day rate applicable to Canadian Dollar denominated bankers’ acceptances quoted by the Administrative Agent’s Affiliate, Bank of Montreal, as of 10:00 a.m. Toronto, Ontario local time on such day; or if such day is not a Business Day, then as quoted by the Administrative Agent’s Affiliate, Bank of Montreal, on the immediately preceding Business Day.

“Change of Control” means (i) the US Borrower shall cease to own 100% of the capital stock of the Canadian Borrower or (ii) the Welsh, Carson, Anderson & Stowe Partnerships in the aggregate, shall fail to own a majority of the outstanding common stock of the US Borrower; *provided*, that (x) common stock owned by employees (either individually or through employee stock ownership or other stock based benefit plans) of the US Borrower and (y) common stock of the US Borrower issued to the public pursuant to one or more public offerings shall not be included in the calculation of ownership interests for purposes of this definition or any “change of control”.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to the Code are to the Code, as in effect on the Effective Date and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

“Collateral” means, collectively, the Assigned Collateral and the Pledged Collateral.

“Collateral Agent” means Harris Trust and Savings Bank, acting as Collateral Agent on behalf of the Secured Creditors, and its successors in such capacity.

“Commitment” means, (i) with respect to each Bank listed on the signature pages hereof, the amount set forth opposite its name on Schedule I hereto under the heading “Commitment” and (ii) with respect to each Assignee that becomes a Bank pursuant to Section 11.6(c), the

amount of the Commitment thereby assumed by it, in each case as such amount may be increased or reduced from time to time pursuant to Section 11.6(c) or reduced from time to time pursuant to Section 2.8.

“Consolidated Capital Expenditures” of any Person means, for any period, the additions to property, plant and equipment and other capital expenditures of such Person and its Consolidated Subsidiaries for such period, as the same are or would be set forth in a consolidated statement of cash flows of such Person and its Consolidated Subsidiaries for such period.

“Consolidated Current Assets” means the current assets of the US Borrower and its Subsidiaries determined on a consolidated basis in accordance with generally accepted accounting principles, provided that Consolidated Current Assets shall in any event not include cash and cash equivalents other than Restricted Cash.

“Consolidated Current Liabilities” means the current liabilities of the US Borrower and its Subsidiaries determined on a consolidated basis in accordance with generally accepted accounting principles, but excluding in any event the current portion of, and accrued but unpaid interest on, any Debt of the US Borrower and its Subsidiaries.

“Consolidated Debt” of any Person means, at any date, the Debt of such Person and its Consolidated Subsidiaries, determined on a consolidated basis as of such date.

“Consolidated EBIT” of any Person means, for any period, Consolidated Net Income of such Person for such period, before total interest expense determined on a consolidated basis and before taxes based on income, and giving effect to gains and losses from sales of assets sold in the ordinary course of business all with respect to such period.

“Consolidated EBITDA” of any Person means, for any fiscal period, Consolidated EBIT for such Person for such period, adjusted by (i) adding thereto the amount of all depreciation and amortization expenses that were deducted in determining Consolidated EBIT, (ii) adding thereto the change from the prior period in the Deferred Revenue Account, and (iii) subtracting therefrom the change from the prior period in the Restricted Cash Account.

“Consolidated Interest Expense” of any Person means, for any period, the Total Interest Expense of such Person and its Consolidated Subsidiaries determined on a consolidated basis for such period.

“Consolidated Net Income” of any Person means, for any fiscal period, the net income of such Person and its Consolidated Subsidiaries, determined on a consolidated basis for such period, inclusive of the effect of any extraordinary or other nonrecurring gain and loss.

“Consolidated Net Worth” of any Person means at any date the consolidated stockholders’ equity of such Person and its Consolidated Subsidiaries.

“Consolidated Subsidiary” of any Person means, at any date, any Subsidiary or other entity the accounts of which would be consolidated with those of such Person in its consolidated financial statements if such statements were prepared as of such date.

“Consolidated Total Assets” of any Person means total assets of such Person and its Subsidiaries, determined on a consolidated basis in accordance with generally accepted accounting principles.

“Credit Document” means this Agreement, the Notes, the Pledge Agreement, the Security Agreement, the Canadian Security Documents, the WFNB Note and each other document (including any additional guarantees) executed or delivered in connection herewith or therewith.

“Credit Party” shall mean each Borrower, each Guarantor, and with respect to its obligations under the WFNB Note only, WFNB.

“Debenture Delivery Agreement” means the Debenture Delivery Agreement, made as of July 24, 1998, between the Canadian Borrower and the Collateral Agent, as amended, modified or supplemented from time to time.

“Debt” of any Person means at any date, without duplication (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (iv) all obligations of such Person as lessee which are capitalized in accordance with generally accepted accounting principles, (v) all non-contingent obligations (and, for purposes of Section 6.9, Section 6.16 and the definitions of Material Debt and Material Financial Obligations, all contingent obligations) of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit or similar instrument, (vi) all Debt secured by a Lien on any asset of such Person, whether or not such Debt is otherwise an obligation of such Person, and (vii) all Debt of others Guaranteed by such Person.

“Default” means any condition or event which constitutes an Event of Default or which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Deferred Revenue Account” means the account on the consolidating balance sheet of the Borrowers associated solely with the change in revenue recognition by the Canadian Borrower as required by the Securities and Exchange Commission of the United States of America.

“*Delinquency Ratio*” means, for any calendar month, the percentage equivalent of a fraction (a) the numerator of which is the aggregate amount of all Managed Receivables the minimum payments on which are more than 90 days contractually overdue and (b) the denominator of which is all Managed Receivables, in each case determined as of the last day of such calendar month.

“*Demand Debenture*” means the Demand Debenture, made as of July 21, 1998, between the Canadian Borrower and the Collateral Agent as amended, modified or supplemented from time to time.

“*Derivatives Obligations*” of any Person means all obligations of such Person in respect of any rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of the foregoing transactions), any transaction whose value is derived from another asset or security, or any combination of the foregoing transactions.

“*Domestic Lending Office*” means, as to each Bank, its office identified as such on the signature page hereto or such other office as such Bank may hereafter designate as its Domestic Lending Office by notice to the Borrowers and the Administrative Agent.

“*Domestic Loans*” means Loans denominated in U.S. Dollars.

“*Domestic Subsidiary*” means any Subsidiary of the US Borrower incorporated or organized in the United States or any state or territory thereof.

“*ECF Prepayment Amount*” has the meaning provided in Section 2.11(A).

“*ECF Prepayment Date*” has the meaning provided in Section 2.11(A).

“*ECF Prepayment Period*” has the meaning provided in Section 2.11(A).

“*Effective Date*” means May 22, 2002.

“*Eligible Transferee*” shall mean and include a commercial bank, insurance company, financial institution, fund or other Person which regularly purchases interests in loans or extensions of credit of the types made pursuant to this Agreement, any other Person which would constitute a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act as in effect on the Effective Date or other “accredited investor” (as defined in Regulation D of the Securities Act).

“*Environmental Laws*” means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to the environment, the effect of the environment on human health or to emissions, discharges or releases of pollutants, contaminants, 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, Hazardous Substances or wastes or the cleanup or other remediation thereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

“*ERISA Group*” of any Person means such Person, any Subsidiary and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the US Borrower or any Subsidiary, are treated as a single employer under Section 414 of the Code.

“*Euro-Canadian Dollar Lending Office*” means, as to each Bank, its office, branch or affiliate identified as such on the signature pages hereto or such other office, branch or affiliate of such Bank as it may hereafter designate as its Euro-Canadian Dollar Lending Office by notice to the Borrowers and the Administrative Agent, which office shall be located in Canada.

“*Euro-Canadian Dollar Loan*” means (i) a Loan which bears interest at a Euro-Canadian Dollar Rate or (ii) an overdue amount which was a Euro-Canadian Dollar Loan immediately before it became overdue.

“*Euro-Canadian Dollar Margin*” means a percentage per annum equal to the applicable percentage specified in the pricing schedule attached hereto as Appendix 1.

“*Euro-Canadian Dollar Rate*” means a rate of interest determined pursuant to Section 2.6 on the basis of the London Interbank Offered Rate.

“*Euro-Dollar Lending Office*” means, as to each Bank, its office, branch or affiliate identified as such on the signature pages hereto or such other office, branch or affiliate of such Bank as it may hereafter designate as its Euro-Dollar Lending Office by notice to the Borrowers and the Administrative Agent.

“*Euro-Dollar Loan*” means (i) a Loan which bears interest at a Euro-Dollar Rate or (ii) an overdue amount which was a Euro-Dollar Loan immediately before it became overdue.

“Euro-Dollar Margin” means a percentage per annum equal to the applicable percentage specified in the pricing schedule attached hereto as Appendix 1.

“Euro-Dollar Rate” means a rate of interest determined pursuant to Section 2.6 on the basis of the London Interbank Offered Rate.

“Event of Default” has the meaning set forth in Section 7.1.

“Excess Cash Flow” means, for any fiscal year of the US Borrower, (i) Consolidated Net Income for such period *plus* (minus) (ii) the amount of depreciation, depletion, amortization of intangibles, deferred taxes and other non-cash expenses (revenues) which, pursuant to generally accepted accounting principles, were deducted (added) in determining Consolidated Net Income for such period *minus* (plus) (iii) additions (reductions, other than reductions attributable solely to Asset Sales) to Working Capital for such period *minus* (iv) the amount of Consolidated Capital Expenditures made during such period (except to the extent financed through the

8

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incurrence of Debt (other than through the incurrence of Loans hereunder or loans under the Related Credit Agreement) or with equity proceeds) *minus* (v) the amount of Scheduled Repayments of Term Loans (as defined in the Related Credit Agreement), and the amount of voluntary payments of principal of outstanding Term Loans (as defined in the Related Credit Agreement), in each case, actually made during such period *minus* (vi) regularly scheduled payments of principal or “rent” (other than capitalized interest) due in accordance with the terms of capital leases and not otherwise deducted in arriving at Consolidated Net Income to the extent actually made during such period *minus* (vii) the amount of mandatory payments of principal of outstanding Term Loans (as defined in the Related Credit Agreement) pursuant to Sections 2.11(A)(e) and (h) of the Related Credit Agreement actually made, but only to the extent that the net proceeds from the transactions described in such clauses (e) and (h) were added to Consolidated Net Income during such period.

“Federal Funds Rate” means, for any day, the rate per annum (rounded upward, if necessary, to the nearest 1/100th 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 (i) 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 (ii) 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 quoted to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“Foreign Pension Plan” means any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States of America by the US Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the US Borrower or such Subsidiaries residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Foreign Subsidiary” means each Subsidiary of the US Borrower other than a Domestic Subsidiary.

“Guaranteed Obligations” has the meaning provided in Section 10.1.

“Guarantor” means, (a) with respect to the Obligations of the US Borrower, (i) ADSC, ADSI, and ADSMB and (ii) each other direct and indirect Domestic Subsidiary of the US Borrower that becomes a Guarantor from time to time, after the Effective Date, pursuant to Section 6.19 and (b) with respect to Obligations of the Canadian Borrower, (i) LMG, the US Borrower, ADSC, ADSI, and ADSMB and (ii) each other direct and indirect Domestic Subsidiary of the US Borrower or Subsidiary of the Canadian Borrower that becomes a Guarantor from time to time, after the Effective Date, pursuant to Section 6.19; *provided* that (x) WFNB and ADS Reinsurance and their Subsidiaries shall not be required to be Guarantors and (y) one or more indirect Subsidiaries of the US Borrower need not be Guarantors hereunder

9

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to the extent the Consolidated Total Assets of all such indirect Subsidiaries not becoming a Guarantor hereunder do not exceed 5% of the Consolidated Total Assets of the US Borrower and its Subsidiaries taken as a whole.

“Guaranty” by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (ii) entered into for the purpose of assuring in any other manner the holder of such Debt of the payment therefore to protect such holder against loss in respect thereof (in whole or in part), *provided*, that the term Guaranty shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guaranty” used as a verb has a corresponding meaning.

“Hazardous Substances” means any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics.

“Indemnitee” has the meaning set forth in Section 11.3(b).

“Insured Subsidiary” means a Subsidiary of the US Borrower which is an “insured depository institution” under and as defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(3)) or any successor statute.

“Intellectual Property” has the meaning provided in Section 4.12.

“*Intercreditor Agreement*” means the Second Amendment to Security Documents and Intercreditor Agreement dated as of May 22, 2002, among the Collateral Agent, the financial institutions party to the Related Credit Agreement, and the Banks party hereto.

“*Interest Coverage Ratio*” of any Person means, for any period, the ratio of Consolidated EBITDA of such Person for such period to Consolidated Interest Expense of such Person for such period.

“*Interest Period*” means with respect to each Euro-Dollar Loan or Euro-Canadian Dollar Loan, the period commencing on the date of borrowing specified in the applicable Notice of Borrowing or on the date specified in the applicable Notice of Interest Period Election and ending one, two, three or six months thereafter, as the respective Borrower may elect in the applicable notice; *provided that*:

(i) any Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

10

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(ii) any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c) below, end on the last Business Day of a calendar month; and

(iii) any Interest Period which would otherwise end after the Maturity Date shall end on the Maturity Date (unless such date is not a Business Day, in which case such Interest Period shall end on the latest Business Day to occur prior to the Maturity Date).

“*Investment*” means any investment in any Person, whether by means of share purchase, capital contribution, loan, Guaranty, time deposit or otherwise (but not including any demand deposit).

“*Leverage Ratio*” of any Person means, at any time, the ratio of (x) Consolidated Debt of such person at such time to (y) Consolidated EBITDA of such person for the four fiscal quarters then most recently ended.

“*License Agreements*” means the Canadian Trademark License, the US Trademark License, the Canadian Scheme License, and the US Scheme License.

“*Lien*” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset. For the purposes of this Agreement, the US Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“*LMG*” means LMG Travel Services Limited, an Ontario corporation, 100% of the capital stock of which is owned by the Canadian Borrower.

“*Loan*” means a loan made by a Bank pursuant to Section 2.1; *provided*, that if any such loan or loans (or portions thereof) are combined or subdivided pursuant to a Notice of Interest Rate Election, the term “*Loan*” shall refer to the combined principal amount resulting from such combination or to each of the separate principal amounts resulting from such subdivision, as the case may be.

“*London Interbank Offered Rate*” means, for any Interest Period, (a) with respect to any Euro-Dollar Loan, the rate per annum (rounded upward, if necessary, to the next higher 1/16 of it) at which deposits in dollars are offered to the Administrative Agent in the London interbank market at approximately 11:00 a.m. (London, England time) two Business Days before the first day of such Interest Period in an amount approximately equal to the principal amount of the Euro-Dollar Loans of the Administrative Agent to which such Interest Period is to apply and for a period of time comparable to such Interest Period and (b) with respect to any Euro-Canadian Dollar Loan, either (i) the rate per annum shown on “LIBOR 02 Page” (or any substitute therefor) of Reuters Monitor Money Rates Service or, if such LIBOR 02 Page is not available, at

11

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the rate per annum shown on page 3740 of the Telerate screen (or any successor page) as the composite offered rate for deposits in Canadian Dollars in the interbank Euro-Canadian Dollar market with a period comparable to the Interest Period for such Euro-Canadian Dollar Loan as at 11:00 a.m. (London, England time) two Business Days prior to the first day of such Interest Period or (ii) if the rate in clause (i) of this definition is not shown for any particular day, the average interest rate per annum (rounded upwards if necessary to the next 1/16<sup>th</sup> of 1%) offered to the Administrative Agent in the interbank Euro-Canadian Dollar market for Canadian Dollar deposits, for delivery in immediately available funds on the first day of such Interest Period, of amounts comparable to the principal amount of the Euro-Canadian Dollar Loan to which such rate is to apply with maturities comparable to the Interest Period for which such rate will apply as of approximately 11:00 a.m. (London, England time) two Business Days prior to the first day of such Interest Period.

“*Managed Receivables*” of any Person means for any date all credit card receivables of such Person as of such date regardless of whether such credit card receivables are determined, with respect to such Person’s financial statements, to be “on–balance sheet” or “off–balance sheet.”

“*Material Debt*” means Debt (other than the Loans hereunder) (i) of a Person and/or one or more of its Subsidiaries, arising in one or more related or unrelated transactions, in an aggregate principal or face amount exceeding U.S. \$25,000,000 and (ii) under the Related Credit Agreement.

“*Material Financial Obligations*” of any Person means a principal or face amount of Debt and/or payment or collateralization obligations in respect of Derivatives Obligations of such Person and/or one or more of its Subsidiaries, arising in one or more related or unrelated transactions, exceeding in the aggregate U.S. \$25,000,000.

“*Material Plan*” means at any time a Plan or Plans having aggregate Unfunded Liabilities in excess of U.S. \$10,000,000.

“*Maturity Date*” means May 21, 2003.

“*Multiemployer Plan*” means at any time an employee pension benefit plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such five year period.

“*Net Cash Proceeds*” means, with respect to any Asset Sale, the Cash Proceeds resulting therefrom net of expenses of sale (including payment of principal, premium and interest of other Debt secured by the assets the subject of the Asset Sale and required to be, and which is, repaid under the terms thereof as a result of such Asset Sale), and incremental taxes paid or payable as a result thereof, *provided* that Net Cash Proceeds shall not include cash deposited with the Administrative Agent pursuant to a cash collateral arrangement pursuant to this Agreement.

12

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“*Note*” has the meaning provided in Section 2.4.

“*Notice of Borrowing*” has the meaning set forth in Section 2.2.

“*Notice of Interest Period Election*” has the meaning set forth in Section 2.9.

“*Obligations*” means (i) all amounts owing to the Administrative Agent, the Collateral Agent or any Bank pursuant to the terms of this Agreement or any other Credit Document and (ii) Derivative Obligations of each “*Assignor*” (as such term is defined in the Security Agreement) from time to time owed to a Bank or an Affiliate of a Bank.

“*Original Effective Date*” shall mean July 24, 1998.

“*Parent*” means, with respect to any Bank, any Person controlling such Bank.

“*Participant*” has the meaning set forth in Section 11.6(b).

“*PBGC*” means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

“*Percentage*” shall mean at any time for each Bank with a Commitment, the percentage obtained by dividing such Bank’s Commitment by the Total Commitment, *provided* that if the Total Commitment has been terminated, the Percentage of each Bank shall be determined by dividing such Bank’s Commitment immediately prior to such termination by the Total Commitment immediately prior to such termination.

“*Permitted Subordinated Debt*” means subordinated Debt of the US Borrower, *provided* that (i) the US Borrower shall be in *pro forma* compliance with the Financial Covenants contained in Sections 6.12 and 6.17 after giving effect to such issuance of Debt, (ii) such Debt shall be expressly subordinated to the Obligations, (iii) such Debt shall be unsecured and unguaranteed, (iv) such Debt shall have a maturity not earlier than the date which is six months after the later of the Maturity Date hereunder or the final maturity of the loans outstanding under the Related Credit Agreement and no amortization or sinking fund payments shall be required in respect of such Debt prior to such date and (v) no covenant or default applicable to such debt shall be more restrictive than those contained in this Agreement and the subordination provisions, covenants and defaults pertaining to such Debt, taken as a whole, shall be no more restrictive, and no less favorable to the Banks, as those customarily applicable to publicly issued subordinated indebtedness.

“*Person*” means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“*Plan*” means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or contributed to, by any member of the

13

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ERISA Group for employees of any member of the ERISA Group or (ii) has at any time within the preceding five years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

“*Pledge Agreement*” means the Pledge Agreement, dated as of July 24, 1998, by and between the Borrowers, the Guarantors, and the Collateral Agent, as such agreement may be amended, modified or supplemented from time to time.

“*Pledge Agreements*” means the Pledge Agreement and the Supplemental Pledge Agreement.

“*Pledged Collateral*” means the “Collateral,” as defined in the Pledge Agreement.

“*Prime Rate*” means the rate of interest announced or otherwise established by the Administrative Agent from time to time as its Prime Rate.

“*Recovery Event*” means the receipt by the US Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable (i) by reason of theft, loss, physical destruction or damage or any other similar event with respect to any property or asset of the US Borrower or any of its Subsidiaries, or (ii) by reason of any condemnation, taking, seizing or similar event with respect to any property or asset of the US Borrower or any of its Subsidiaries.



“*Regulation U*” means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“*Reinvestment Assets*” means any assets to be employed in the business of the US Borrower and its Subsidiaries.

“*Reinvestment Election*” has the meaning provided in Section 2.8(B).

“*Reinvestment Notice*” means a written notice signed by an executive officer of the US Borrower stating that the US Borrower, in good faith, intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale to purchase, construct or otherwise acquire Reinvestment Assets.

“*Reinvestment Prepayment Amount*” means, with respect to any Reinvestment Election, the amount, if any, on the Reinvestment Prepayment Date relating thereto by which (a) the anticipated reinvestment amount in respect of such Reinvestment Election exceeds (b) the aggregate amount thereof expended by the US Borrower and its Subsidiaries to acquire Reinvestment Assets.

“*Reinvestment Prepayment Date*” means, with respect to any Reinvestment Election, the earliest of (i) the date, if any, upon which the Administrative Agent, on behalf of the Required Banks, shall have delivered a written termination notice to the US Borrower, *provided* that such notice may only be given while an Event of Default exists, (ii) the date occurring 180 days after

14

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such Reinvestment Election and (iii) the date on which the US Borrower shall have determined not to, or shall have otherwise ceased to, proceed with the purchase, construction or other acquisition of Reinvestment Assets with the related anticipated reinvestment amount.

“*Related Credit Agreement*” that certain Amended and Restated Credit Agreement dated as of July 24, 1998, as amended and restated as of October 22, 1998, by and among the Borrowers, the Guarantors party thereto, the financial institutions party thereto, and Harris Trust and Savings Bank, as Administrative Agent for such financial institutions, as the same may be amended, modified, and supplemented from time to time.

“*Required Banks*” means Banks the sum of whose outstanding Commitments (or after the termination thereof, outstanding Loans) represent an amount greater than 50% of the sum of the Total Commitment (or after the termination thereof, the sum of the total outstanding Loans at such time).

“*Reserve Percentage*” means for any day that percentage (expressed as a decimal) which is in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement for a member bank of the Federal Reserve System in New York City with deposits exceeding five billion dollars in respect of “Eurocurrency Liabilities” (or in respect of any other category of liabilities which includes deposits by reference to which the interest rate on Euro-Dollar Loans or Euro-Canadian Dollar Loans, as the case may be, is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of any Bank to United States residents).

“*Restatement Effective Date*” means October 22, 1998.

“*Restricted Acquisition*” means any acquisition, whether in a single transaction or series of related transactions, by the US Borrower or any one or more of its Subsidiaries, or any combination thereof, of (i) all or a substantial part of the assets, or all or any substantial part of a going business or division, of any Person, whether through purchase of assets or securities, by merger or otherwise, (ii) control of securities of an existing corporation or other Person having ordinary voting power (apart from rights accruing under special circumstances) to elect a majority of the board of directors of such corporation or other Person or (iii) control of a greater than 50% ownership interest in any existing partnership, joint venture or other Person.

“*Restricted Cash*” means cash required by the US Borrower and its Subsidiaries to fund securitization spread accounts, cash collateral accounts relating to securitization of credit card receivables, excess funding accounts relating to securitization of credit card receivables and cash restricted to fund future Air Miles redemptions.

“*Restricted Cash Account*” means the account on the consolidating balance sheet of the Borrower related solely to redemption settlement assets of the Canadian Borrower’s “Air Miles Program.”

“*Restricted Payment*” means (i) any dividend or other distribution on any shares of a Person’s capital stock (except dividends payable solely in shares of its capital stock) or (ii) any

15

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payment on account of the purchase, redemption, retirement or acquisition of (a) any shares of a Person’s capital stock or (b) any option, warrant or other right to acquire shares of a Person’s capital stock (but not including payments of principal, premium (if any) or interest made pursuant to the terms of convertible debt securities prior to conversion).

“*Secured Creditors*” has the meaning provided in the Security Documents.

“*Security Agreement*” means the Security Agreement, dated as of July 24, 1998, by and between the US Borrower, the other Guarantors which are Domestic Subsidiaries of the US Borrower and the Collateral Agent, as amended, modified or supplemented from time to time.

“*Security Documents*” shall mean the Pledge Agreements, the Security Agreement and the Canadian Security Documents.

“*Senior Secured Leverage Ratio*” of any Person means, at any time, the ratio of (x) all amounts owing by such Person to the Administrative Agent, the Collateral Agent or any Bank pursuant to the terms of this Agreement or any other Credit Document and to the holders of the loans and issuers of letters of credit under the Related Credit Agreement to (y) Consolidated EBITDA of such Person for the four fiscal quarters then most recently ended.

“*Subsidiary*” means, as to any Person, any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person; unless otherwise specified, “*Subsidiary*” means a Subsidiary of the US Borrower. Notwithstanding the foregoing, Subsidiaries of WFNB whose primary business purpose is to facilitate the sale and securitization of WFNB’s credit card receivables shall not constitute a Subsidiary for purposes of Sections 6.9 (Negative Pledge), 6.16 (Debt Limitation), 6.19 (Equity Ownership, Limitation on Creation of Subsidiaries), and 6.24 (Limitation on Voluntary Prepayments and Modifications of Indebtedness, Modifications of Certain Agreements, etc.) of this Agreement.

“*Supplemental Pledge Agreement*” shall mean the Residual Pledge Agreement, dated as of July 24, 1998, between the US Borrower and the Administrative Agent, as amended, modified, or supplemented from time to time.

“*The Community Reinvestment Act*” means The Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) as amended.

“*The Limited*” means The Limited Commerce Corporation, a Delaware corporation.

“*Total Commitment*” means the aggregate amount of the Commitments of each of the Banks.

“*Total Interest Expense*” means, for any Person, interest paid on a consolidated basis with respect to all outstanding indebtedness including, without limitation, capital leases (in accordance with GAAP), all commissions, discounts and other fees and charges owed in

connection with letters of credit or lines of credit, net costs or benefits under interest rate protection agreements, amortization of deferred financing costs, original issue discounts and any interest expense relating to deferred compensation arrangements.

“*Type*” means the type of Loan determined according to the interest option applicable thereto and the currency in which such Loan is denominated; *i.e.*, whether a Base Rate Loan, a Canadian Base Rate Loan, a Euro-Dollar Loan, or a Euro-Canadian Dollar Loan and whether advanced in U.S. Dollars or Canadian Dollars.

“*Unfunded Liabilities*” means, with respect to any Plan at any time, the amount (if any) by which (i) the value of all benefit liabilities under such Plan, determined on a plan termination basis using the assumptions prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds (ii) the fair market value of all Plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions), all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the ERISA Group to the PBGC or any other Person under Title IV of ERISA.

“*United States*” means the United States of America, including the States and the District of Columbia, but excluding its territories and possessions.

“*US Borrower*” has the meaning provided in the first paragraph of this Agreement.

“*U.S. Dollar Equivalent*” means, at any time, (a) with respect to any amount denominated in U.S. Dollars, such amount and (b) with respect to any amount denominated in Canadian Dollars, the amount of U.S. Dollars which would be realized by converting Canadian Dollars into U.S. Dollars at the exchange rate quoted to the Administrative Agent at approximately 11:00 a.m. (London, England time) two Business Days prior to the date on which a computation thereof is required to be made, by major banks in the interbank foreign exchange market for the purchase of U.S. Dollars for Canadian Dollars.

“*U.S. Dollars*” and “*U.S. \$*” shall mean freely transferable lawful money of the United States of America.

“*US Scheme License*” means the Amended and Restated License to Use and Exploit the Air Miles Scheme in the United States, dated July 24, 1998, between Air Miles International Trading B.V. and the US Borrower, as such agreement is in effect on the Original Effective Date.

“*US Trademark License*” means the Amended and Restated License to Use the Air Miles Trade Marks in the United States, dated July 24, 1998, between Air Miles International Holdings B.V. and the US Borrower, as such agreement is in effect on the Original Effective Date.

“*WCAS Subordinated Note*” means the 10% Subordinated Note due September 15, 2008, dated September 15, 1998, issued by the US Borrower to WCAS Capital Partners III, L.P. in the principal amount of U.S. \$52,000,000.

“*Welsh, Carson, Anderson & Stowe Partnerships*” means each Welsh, Carson, Anderson & Stowe limited partnership, as constituted on the Restatement Effective Date, as may be constituted in the future and any partner, partnership or affiliate of any of them.

“*WFNB*” means World Financial Network National Bank, a national banking association wholly owned by the US Borrower.

“*WFNB Note*” has the meaning provided in Section 3.2(h).

“*Wholly-Owned Subsidiary*” means, as to any Person, any corporation 100% of whose capital stock (other than director’s qualifying shares) is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person.

“*Working Capital*” means the excess of Consolidated Current Assets minus Consolidated Current Liabilities.

*Section 1.2. Accounting Terms and Determinations.* Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with generally accepted accounting principles in the United States as in effect from time to time, applied on a basis consistent (except for changes concurred in by the US Borrower's independent public accountants) with the most recent audited consolidated financial statements of the US Borrower and its Consolidated Subsidiaries delivered to the Banks; *provided* that, (i) all calculations of financial covenants and corresponding accounting terms shall include for all periods covered thereby *pro forma* adjustments for the (x) actual historical financial performance of and (y) identifiable cost savings associated with providing data processing services to any entities acquired as permitted under Section 6.22(b) and (ii) if a Borrower notifies the Administrative Agent that such Borrower wishes to amend any covenant in Article 6 to eliminate the effect of any change in generally accepted accounting principles on the operation of such covenant (or if the Administrative Agent notifies either Borrower that the Required Banks wish to amend Article 6 for such purpose), then the Borrowers' compliance with such covenant shall be determined on the basis of generally accepted accounting principles in effect immediately before the relevant change in generally accepted accounting principles became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrowers and the Required Banks.

*Section 1.3. Types of Borrowings.* The term "Borrowing" denotes the aggregation of Loans of one or more Banks to be made to a Borrower pursuant to Article 2 on the same date and in the same currency, all of which Loans are of the same Type (subject to Article 9) and, except in the case of Base Rate Loans, have the same initial Interest Period.

18

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## ARTICLE 2

### THE CREDITS

*Section 2.1. Commitments to Lend.* At any time on or after the Effective Date and prior to the Maturity Date, each Bank with a Commitment severally agrees, on the terms and conditions set forth in this Agreement, to make loans (each a "Loan" and, collectively, the "Loans") to the Borrowers pursuant to this Section from time to time in U.S. Dollars and in Canadian Dollars in amounts such that the U.S. Dollar Equivalent amount of all Loans made by such Bank to all of the Borrowers at any one time outstanding shall not exceed the amount of its Commitment. Each Borrowing under this Section shall be in the U.S. Dollar Equivalent amount of U.S. \$5,000,000 or any larger multiple of U.S. \$1,000,000 (except that any such Borrowing may be in the aggregate amount of the then unutilized Commitment) and shall be made from the several Banks ratably in proportion to their respective Commitments. U.S. Dollar Loans shall either be Base Rate Loans or Euro-Dollar Loans, and Canadian Dollar Loans shall either be Canadian Base Rate Loans or Euro-Canadian Dollar Loans. Within the foregoing limits, each Borrower may borrow under this Section, prepay Loans to the extent permitted by Section 2.11, and reborrow at any time prior to the Maturity Date.

*Section 2.2. Notice of Borrowing.* The respective Borrower shall give the Administrative Agent notice (a "Notice of Borrowing") in respect of the Borrowing of Loans not later than 10:00 a.m. (Chicago, Illinois, time) with respect to Borrowings in Canadian Dollars and 11:00 a.m. (Chicago, Illinois, time) with respect to Borrowings in U.S. Dollars on (x) the Business Day of the Borrowing if such Borrowing is to be a Base Rate Borrowing or a Canadian Base Rate Borrowing and (y) the third Business Day immediately preceding the date of the Borrowing if such Borrowing is to be a Euro-Dollar Borrowing or Euro-Canadian Dollar Borrowing, specifying:

(i) the date of such Borrowing, which shall be a Business Day;

(ii) what Type of Loans are to be borrowed and whether the Loans comprising such Borrowing are to (i) be denominated in U.S. Dollars or Canadian Dollars, and (ii) bear interest initially at the Base Rate or a Euro-Dollar Rate in the case of a U.S. Dollar Borrowing or the Canadian Base Rate or a Euro-Canadian Dollar Rate in the case of a Canadian Dollar Borrowing;

(iii) in the case of a Euro-Dollar Borrowing or a Euro-Canadian Dollar Borrowing, the duration of the initial Interest Period applicable thereto, subject to the provisions of the definition of Interest Period and (x) in the case of a Base Rate Borrowing, the date, if any, on which such loan will be converted to a Euro-Dollar Loan and (y) in the case of a Canadian Base Rate Borrowing, the date, if any, on which such loan will be converted to a Euro-Canadian Dollar Loan; and

(iv) the aggregate amount of such Borrowing.

19

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*Section 2.3. Notice to Banks Funding of Loans.* (a) Upon receipt of a Notice of Borrowing, the Administrative Agent shall promptly notify each Bank of the contents thereof and of such Bank's share of such Borrowing and such Notice of Borrowing shall not thereafter be revocable by the respective Borrower.

(b) Not later than 1:30 p.m. (Chicago, Illinois time) on the date of each Borrowing, each Bank shall make available its share of such Borrowing, in Federal or other funds immediately available in Chicago, Illinois, to the Administrative Agent at its address referred to in Section 11.1 (or, in the case of any Canadian Dollar Borrowing, at the offices of the Administrative Agent's Affiliate, Bank of Montreal, designated in writing to the Banks as set forth below). Unless the Administrative Agent determines that any applicable condition specified in Article 3 has not been satisfied, the Administrative Agent will make the funds so received from the Banks available to the respective Borrower at the Administrative Agent's aforesaid address, except that in the case of a Canadian Dollar Borrowing each Bank shall, subject to Article 3 hereof, make available its Loan comprising part of such Borrowing at the office of the Administrative Agent's Canadian Affiliate previously specified in a notice to each Bank, in Canadian Dollars no later than 2:30 p.m. (Toronto, Ontario, time)

(c) Unless the Administrative Agent shall have received notice from a Bank prior to the date of any Borrowing that such Bank will not make available to the Administrative Agent such Bank's share of such Borrowing, the Administrative Agent may assume that such Bank has made such share available to the Administrative Agent on the date of such Borrowing in accordance with subsection (b) of this Section and the Administrative Agent may, in

reliance upon such assumption, make available to the respective Borrower on such date a corresponding amount. If and to the extent that such Bank shall not have so made such share available to the Administrative Agent, such Bank and the respective Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to such Borrower until the date such amount is repaid to the Administrative Agent, at (i) in the case of such Borrower, a rate per annum equal to the higher of the Federal Funds Rate and the interest rate applicable thereto pursuant to Section 2.6, and (ii) in the case of such Bank, the Federal Funds Rate, or, in the case of a Loan denominated in Canadian Dollars, the cost to the Administrative Agent of funding the amount it advanced to fund such Bank's Loan, as determined by the Administrative Agent. If such Bank shall repay to the Administrative Agent such corresponding amount, such amount so repaid shall constitute such Bank's Loan included in such Borrowing for purposes of this Agreement.

*Section 2.4. Notes.* (a) The Borrowers' respective obligations to pay the principal of, and interest on, the Loans made by each Bank shall be evidenced by promissory notes duly executed and delivered by the US Borrower substantially in the form of Exhibit B-1 and by the Canadian Borrower substantially in the form of Exhibit B-2, with blanks appropriately completed (each a "Note" and, collectively, the "Notes").

(b) Upon receipt of each Bank's Notes pursuant to Section 3.1(a), the Administrative Agent shall forward such Notes to the appropriate Bank. Each Bank shall record the date and amount of the respective Loans made by it and the date and amount of each payment of principal

20

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made by the respective Borrower with respect thereto, and may, if such Bank so elects in connection with any transfer or enforcement of any of its Notes, endorse on the schedule forming a part thereof appropriate notations to evidence the foregoing information with respect to such Loans then outstanding under such Note; *provided*, that the failure of any Bank to make any such recordation or endorsement shall not affect the obligations of the respective Borrower hereunder or under the Notes. Each Bank is hereby irrevocably authorized by the Borrowers so to endorse its Notes and to attach to and make a part of its Notes a continuation of any such schedule as and when required.

*Section 2.5. Maturity of Loans.* Subject to the provisions of Section 2.8, the Commitment shall terminate and the principal amount of all then outstanding Loans, together with accrued interest thereon, shall be due and payable in full on the Maturity Date.

*Section 2.6. Interest Rates.* (a) Each Base Rate Loan shall bear interest on the outstanding principal amount thereof, for each day from the date such Loan is made (or converted pursuant to Article 9) until it becomes due, at a rate per annum equal to the Base Rate plus the Base Rate Margin for such day. Such interest shall be payable quarterly in arrears on the last day of each March, June, September, and December in each year and, with respect to the principal amount of any Base Rate Loan converted to a Euro-Dollar Loan, on each date a Base Rate Loan is so converted. Any overdue principal of or interest on any Base Rate Loan shall bear interest, payable on demand, for each day until paid at a rate per annum equal to the sum of 2% *plus* the rate otherwise applicable to Base Rate Loans for such day.

(b) Each Euro-Dollar Loan shall bear interest on the outstanding principal amount thereof, for each day during each Interest Period applicable thereto, at a rate per annum equal to the sum of the Euro-Dollar Margin for such day *plus* the London Interbank Offered Rate applicable to such Interest Period. Such interest shall be payable for each Interest Period on the last day thereof or, in the case of an Interest Period of six months, the date occurring three months after the first day of such Interest Period.

(c) Each Canadian Base Rate Loan shall bear interest on the outstanding principal amount thereof, for each day from the date such Loan is made (or converted pursuant to Article 9) until it becomes due, at a rate per annum equal to the Canadian Base Rate plus the Canadian Base Rate Margin for such day. Such interest shall be payable quarterly in arrears on the last day of each March, June, September, and December in each year and, with respect to the principal amount of any Canadian Base Rate Loan converted to a Euro-Canadian Dollar Loan, on each date a Canadian Base Rate Loan is so converted. Any overdue principal of or interest on any Canadian Base Rate Loan shall bear interest, payable on demand, for each day until paid at a rate per annum equal to the sum of 2% *plus* the rate otherwise applicable to Canadian Base Rate Loans for such day.

(d) Each Euro-Canadian Dollar Loan shall bear interest on the outstanding principal amount thereof, for each day during each Interest Period applicable thereto, at a rate per annum equal to the sum of the Euro-Canadian Dollar Margin for such day *plus* the London Interbank Offered Rate applicable to such Interest Period. Such interest shall be payable for each Interest

21

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Period on the last day thereof or, in the case of an Interest Period of six months, the date occurring three months after the first day of such Interest Period.

(e) Any overdue principal of, or interest on, any Euro-Dollar Loan shall bear interest, payable on demand, for each day until paid at a rate per annum equal to the higher of (i) the sum of 2% *plus* the Euro-Dollar Margin for such day *plus* the quotient obtained (rounded upward, if necessary, to the next higher 1/100 of it) by dividing (x) the average rate per annum (rounded upward, if necessary, to the next higher 1/16 of 1%) of the respective rates per annum at which one day (or, if such amount due remains unpaid more than three Business Days, then for such other period of time not longer than three months as the Administrative Agent may select) deposits in Dollars in an amount approximately equal to such overdue payment due to the Administrative Agent is offered to the Administrative Agent in the London interbank market for the applicable period determined as provided above by (y) one *minus* the Reserve Percentage (or, if the circumstances described in clause (a) or (b) of Section 9.1 shall exist, at a rate per annum equal to the sum of 2% *plus* the rate applicable to Base Rate Loans for such day) and (ii) the sum of 2% *plus* the Euro-Dollar Margin for such day *plus* the London Interbank Offered Rate applicable to such Loan at the date such payment was due.

(f) Any overdue principal of, or interest on, any Euro-Canadian Dollar Loan shall bear interest, payable on demand, for each day until paid at a rate per annum equal to the higher of (i) the sum of 2% *plus* the Euro-Canadian Dollar Margin for such day *plus* the quotient obtained (rounded upward, if necessary, to the next higher 1/100 of it) by dividing (x) the average rate per annum (rounded upward, if necessary, to the next higher 1/16 of 1%) of the respective rates per annum at which one day (or, if such amount due remains unpaid more than three Business Days, then for such other period of time not longer than three months as the Administrative Agent may select) deposits in Canadian Dollars in an amount approximately equal to such overdue payment due to the Administrative Agent is offered to the Administrative Agent in the London interbank market for the applicable period determined as provided

above by (y) one *minus* the Reserve Percentage (or, if the circumstances described in clause (a) or (b) of Section 9.1 shall exist, at a rate per annum equal to the sum of 2% *plus* the rate applicable to Canadian Base Rate Loans for such day) and (ii) the sum of 2% *plus* the Euro-Canadian Dollar Margin for such day plus the London Interbank Offered Rate applicable to such Loan at the date such payment was due.

(g) The Administrative Agent shall determine each interest rate applicable to the Loans hereunder. The Administrative Agent shall give prompt notice to the respective Borrower and the participating Banks of each rate of interest so determined, and its determination thereof shall be conclusive in the absence of manifest error.

(h) The Administrative Agent agrees to use its best efforts to furnish quotations as contemplated by this Section. If the Administrative Agent is unable to provide a quotation, the provisions of Section 9.1 shall apply.

*Section 2.7. Fees.* (a) During the period from and including the Effective Date to and including the date upon which the Total Commitment is terminated, the US Borrower shall pay to the Administrative Agent for the account of the Banks with Commitments, ratably in proportion to their respective Commitments, a commitment fee at the rate per annum equal to the

Applicable Commitment Fee Percentage on the daily amount by which the Total Commitment exceeds the aggregate principal amount of Loans to all Borrowers outstanding on such date. Such commitment fee shall accrue from and including the Effective Date to, but excluding the date of termination of, the Commitments in their entirety. Accrued commitment fees shall be payable quarterly in arrears on the last day of each March, June, September, and December in each year and on the date of termination of the Commitments in their entirety.

(b) On or before the Effective Date, the US Borrower shall pay to the Administrative Agent for the benefit of the Banks in proportion to their Commitments a closing fee of \$125,000 in the aggregate.

(c) The Borrowers shall pay to the Administrative Agent such amounts as are agreed to from time to time.

*Section 2.8. Termination or Reduction of Commitments.*

(A) *Optional Reduction of Commitments.* The Borrowers may, upon at least three Business Days' notice to the Administrative Agent, (i) terminate the Total Commitment at any time, if no Loans are outstanding at such time or (ii) ratably reduce from time to time by an aggregate amount of the U.S. Dollar Equivalent of \$5,000,000 or a larger multiple of the U.S. Dollar Equivalent of \$1,000,000 the aggregate amount of the Total Commitment in excess of the aggregate outstanding principal amount of the Loans. Upon receipt of a notice pursuant to this Section, the Administrative Agent shall promptly notify each Bank of the contents thereof.

(B) *Mandatory Reduction of Commitments.*

(a) In addition to any other mandatory commitment reductions pursuant to this Section 2.8(B), the Total Commitment (and the respective Commitment of each Bank) shall terminate on the earlier to occur of (x) the Maturity Date and (y) unless the Required Banks otherwise agree in writing, the date on which any Change of Control occurs.

(b) In addition to any other mandatory commitment reductions pursuant to this Section 2.8(B), after the Term Loans (as defined in the Related Credit Agreement) have been paid in full, the Total Commitment (and the respective Commitment of each Bank) shall be reduced as described in clauses (i)—(vi) below:

(i) On the date of the receipt thereof by the US Borrower and/or any of its Subsidiaries, the Total Commitment and the revolving loan commitment outstanding under the Related Credit Agreement shall be reduced in an aggregate amount equal to 100% of the proceeds (net of underwriting discounts, commissions and other reasonable costs associated therewith) of the incurrence of Debt for borrowed money by the US Borrower and/or any of its Subsidiaries (other than Debt permitted by Section 6.16), with such commitments to be reduced pro rata based on the amounts thereof.

(ii) On the date of the receipt thereof by the US Borrower, the Total Commitment and the revolving loan commitment outstanding under the Related Credit Agreement shall be reduced in an aggregate amount equal to 100% of the cash proceeds (net of underwriting discounts, commissions and other reasonable costs associated therewith) of any sale or issuance of its equity and 100% of any amount of cash received by the US Borrower in connection with any contribution to its capital, with such commitments to be reduced pro rata based on the amounts thereof; *provided, however*, that cash proceeds not exceeding U.S. \$52,000,000 from the US Borrower's follow-on offering of its equity securities applied to repay the WCAS Subordinated Note on or before December 31, 2002, shall not be required to be applied as a mandatory reduction of the Total Commitments hereunder.

(iii) Within 30 days following each date on which the US Borrower or any of its Subsidiaries receives any proceeds from any Recovery Event, the Total Commitment and the revolving loan commitment outstanding under the Related Credit Agreement shall be reduced in an aggregate amount equal to 100% of the cash proceeds of such Recovery Event (net of reasonable costs, expenses, taxes incurred in connection with such Recovery Event and amounts required to be paid to third parties), with such commitments to be reduced pro rata based on the amounts thereof, *provided* that so long as no Default then exists and such proceeds do not exceed U.S. \$2,500,000 in any fiscal year, such commitments shall not be required to be so reduced hereunder to the extent that the US Borrower has delivered a certificate to the Administrative Agent on or prior to such date stating that the proceeds from such Recovery Event shall be used or committed to be used to replace or restore any properties or assets in respect of which such proceeds were paid or otherwise acquire productive assets usable in the business of the US Borrower and its Subsidiaries within a period specified in such certificate not to exceed

180 days after the date of receipt of such proceeds with respect to such Recovery Event (which certificate shall set forth the estimates of the proceeds to be so expended); and *provided further*, that if all or any portion of such proceeds are not so used within the period specified in the relevant certificate furnished pursuant to the immediately preceding proviso, the Total Commitment and the revolving loan commitments outstanding under the Related Credit Agreement shall be reduced in an aggregate amount equal to such remaining portion of such proceeds, with such commitments to be reduced pro rata based on the amounts thereof.

(iv) On each date which is 90 days after the last day of each fiscal year of the US Borrower (such date, the “*ECF Prepayment Date*”), beginning with the fiscal year of the US Borrower ending on December 31, 2002, the Total Commitment and the revolving loan commitment outstanding under the Related Credit Agreement shall be reduced in an aggregate amount equal to 50% of Excess Cash Flow (such amount, the “*ECF Prepayment Amount*”) of the US Borrower and its Subsidiaries for the fiscal year of the US Borrower then last

24

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ended (such fiscal year, the “*ECF Prepayment Period*”), with such commitments to be reduced pro rata based on the amounts thereof.

(v) On the date of receipt thereof by the US Borrower and/or any of its Subsidiaries of Cash Proceeds from any Asset Sale, the Total Commitment and the revolving loan commitment outstanding under the Related Credit Agreement shall be reduced in an aggregate amount equal to 100% of the Net Cash Proceeds from such Asset Sale, with such commitments to be reduced pro rata based on the amounts thereof; *provided* that up to an aggregate of U.S. \$2,500,000 of the Total Commitment and the revolving loan commitment under the Related Credit Agreement during any fiscal year of the Borrower need not be reduced under this subsection (B)(v) to the extent the US Borrower elects, as hereinafter provided, to cause the Net Cash Proceeds from Asset Sales during such fiscal year to be reinvested in Reinvestment Assets (a “*Reinvestment Election*”). The US Borrower may exercise its Reinvestment Election (within the parameters specified in the preceding sentence) with respect to an Asset Sale if (x) no Default exists and (y) the US Borrower delivers a Reinvestment Notice to the Administrative Agent within three Business Days following the date of the consummation of the respective Asset Sale, with such Reinvestment Election being effective with respect to the Net Cash Proceeds of such Asset Sale equal to the anticipated reinvestment amount specified in such Reinvestment Notice, *provided further*, that the Total Commitment and the revolving loan commitment under the Related Credit Agreement need not be reduced under this subsection (B)(v) to the extent the assets sold pursuant to such Asset Sale, at the time of such Asset Sale, secured Debt permitted pursuant to Section 6.16 (other than Debt outstanding under this Agreement and the Related Credit Agreement) and the Net Cash Proceeds from such Asset Sale do not exceed the amount of Debt so secured.

(vi) On the Reinvestment Prepayment Date with respect to a Reinvestment Election, the Total Commitment and the revolving loan commitment outstanding under the Revolving Credit Agreement shall be reduced in an aggregate amount equal to the Reinvestment Prepayment Amount, if any, for such Reinvestment Election, with such commitments to be reduced pro rata based on the amounts thereof.

(c) Each reduction to the Total Commitment pursuant to this Section 2.8(B) shall be applied proportionately to reduce the Commitment of each Bank with such a Commitment.

(C) Notwithstanding anything to the contrary contained herein, any reduction of the Total Commitment made under Section 2.8(A) or Section 2.8(B) above, other than Section 2.8(B)(a) above, shall be made on a pro rata basis between this Agreement and the revolving loan commitments outstanding under the Related Credit Agreement based on the principal amounts of such commitments.

25

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*Section 2.9. Method of Electing Interest Rates for Loans.* (a) The Loans included in a Borrowing shall be the Type of Loan specified by the respective Borrower in the applicable Notice of Borrowing given pursuant to Section 2.2. Thereafter, the respective Borrower shall deliver a notice (a “*Notice of Interest Period Election*”) to the Administrative Agent not later than 10:00 a.m. (Chicago, Illinois, time) with respect to Borrowings in Canadian Dollars and 11:00 a.m. (Chicago, Illinois, time) with respect to Borrowings in U.S. Dollars, in each case on the third Business Day prior to (i) if such Borrowing was initially a Base Rate Borrowing, the commencement of the first Interest Period with respect to the conversion of such Base Rate Loan into a Euro-Dollar Loan specifying the duration of such Interest Period, (ii) if such Borrowing was initially a Canadian Base Rate Borrowing, the commencement of the first Interest Period with respect to the conversion of such Canadian Base Rate Loan into a Euro-Canadian Dollar Loan specifying the duration of such Interest Period, or (iii) at any other time, the last day of the current Interest Period specifying the duration of the additional Interest Period which is to commence. Each Interest Period specified in a Notice of Interest Period Election shall comply with the provisions of the definition of “Interest Period.” Notwithstanding the foregoing, the respective Borrower may not elect to convert any Loan into, or continue any Loan as, a Euro-Dollar Loan or a Euro-Canadian Dollar Loan pursuant to any Notice of Interest Rate Election if at the time such notice is delivered an Event of Default shall have occurred and be continuing.

(b) Each Notice of Interest Rate Election shall specify:

(i) the Borrowing of Loans (or portion thereof) to which such notice applies;

(ii) the date on which the conversion or continuation selected in such notice is to be effective, which shall comply with the applicable clause of subsection (a) above;

(iii) if the Loans comprising such Borrowing are to be converted, the new Type of Loans and, if the Loans being converted are to be Euro-Dollar Loans or Euro-Canadian Dollar Loans, the duration of the next succeeding Interest Period applicable thereto; and

(iv) if such Loans are to be continued as Euro-Dollar Loans or Euro-Canadian Dollar Loans for an additional Interest Period, the duration of such additional Interest Period.

(c) Upon receipt of a Notice of Interest Period Election from a Borrower pursuant to subsection (a) above, the Administrative Agent shall promptly notify each Bank of the contents thereof and such notice shall not thereafter be revocable by such Borrower. If no Notice of Interest Period Election is timely received prior to the end of an Interest Period, the respective Borrower shall be deemed to have elected that such Loan be continued as a Base Rate Loan or Canadian Base Rate Loan, as applicable.

(d) An election by the Borrower to change or continue the rate of interest applicable to any Borrowing of Loans pursuant to this Section shall not constitute a "Borrowing" subject to the provisions of Section 3.2.

26

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*Section 2.10. Optional Prepayments.* (a) Subject, in the case of Euro-Dollar Loans and Euro-Canadian Dollar Loans, to Section 2.13, the Borrowers may, upon at least one Business Day's notice to the Administrative Agent, prepay any Base Rate Loans or Canadian Base Rate Loans or, upon at least three Business Days' notice to the Administrative Agent, prepay any Euro-Dollar Loans or Euro-Canadian Dollar Loans, in each case in whole at any time, or from time to time in part in amounts aggregating U.S. \$5,000,000 (or if such Loan is denominated in Canadian Dollars, an amount for which the U.S. Dollar Equivalent is not less than U.S. \$5,000,000) or any larger multiple of U.S. \$1,000,000 (or, if such Loan is denominated in Canadian Dollars, an amount for which the U.S. Dollar Equivalent is not less than U.S. \$1,000,000), by paying the principal amount to be prepaid together with accrued interest thereon to the date of prepayment. Each such optional prepayment shall be applied to prepay ratably the Loans of the several Banks.

(b) Upon receipt of a notice of prepayment pursuant to this Section, the Administrative Agent shall promptly notify each Bank with Loans outstanding of the contents thereof and of such Bank's ratable share (if any) of such prepayment and such notice shall not thereafter be revocable by the respective Borrower.

*Section 2.11. Mandatory Prepayments.*

(A) *Requirements:*

(a) If on any date the sum of the aggregate outstanding U.S. Dollar Equivalent amount of Loans exceeds the Total Commitment as then in effect, the Borrowers shall repay on such date the principal of Loans in an aggregate amount equal to such excess; *provided* that, if such excess arises as a result of fluctuations in the value of the Canadian Dollar, the Borrower shall repay such excess on the date any Borrowing is advanced, continued, or converted into another Type of Loan hereunder, and in any event not less often than monthly within fifteen days of receipt by the Borrower of written notice from the Administrative Agent of such excess.

(b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, all then outstanding Loans shall be repaid in full on the Maturity Date.

(B) *Application.* With respect to each prepayment of Loans required by Section 2.11(A), the Borrowers may designate the Types of Loans which are to be prepaid and the specific Borrowing or Borrowings pursuant to which made, *provided* that (i) in the case of U.S. Dollar Borrowings, Euro-Dollar Loans may be so designated for prepayment pursuant to this Section 2.11 only on the last day of an Interest Period applicable thereto unless all Euro-Dollar Loans with Interest Periods ending on such date of required prepayment and all Base Rate Loans have been paid in full and, in the case of Canadian Dollar Borrowings, Euro-Canadian Dollar Loans may be so designated for prepayment pursuant to this Section 2.11 only on the last day of an Interest Period applicable thereto unless all Euro-Canadian Dollar Loans with Interest Periods ending on such date of required prepayment and all Canadian Base Rate Loans have been paid in full; (ii) if any prepayment of Euro-Dollar Loans or Euro-Canadian Dollar Loans made pursuant to a single Borrowing shall reduce the outstanding Loans made pursuant to such Borrowing to an

27

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amount less than the Minimum Borrowing Amount for such Borrowing, such Borrowing shall be immediately converted into Base Rate Loans or Canadian Base Rate Loans, as applicable; and (iii) each prepayment of Loans pursuant to a Borrowing shall be applied *pro rata* among such Loans. In the absence of a designation by the Borrowers as described in the preceding sentence, the Administrative Agent shall, subject to the above, make such designation in its sole discretion with a view, but no obligation, to minimize breakage costs. Notwithstanding the foregoing provisions of this Section 2.11(B), if at any time a mandatory or voluntary prepayment of Loans pursuant to Sections 2.10 or 2.11(A) above would result, after giving effect to the procedures set forth above, in a Borrower incurring breakage costs as a result of Euro-Dollar Loans or Euro-Canadian Dollar Loans being prepaid other than on the last day of an Interest Period applicable thereto (the "*Affected Loans*"), then such Borrower may in its sole discretion initially deposit a portion (up to 100%) of the amounts that otherwise would have been paid in respect of the Affected Loans with the Administrative Agent (which deposit must be equal in amount to the amount of the Affected Loans not immediately prepaid) to be held as security for the obligations of such Borrower hereunder pursuant to a cash collateral arrangement satisfactory to the Administrative Agent and shall provide for investments satisfactory to the Administrative Agent, with such cash collateral to be directly applied upon the first occurrence (or occurrences) thereafter of the last day of an Interest Period applicable to the relevant Loans (or such earlier date or dates as shall be requested by such Borrower), to repay an aggregate principal amount of such Loans equal to the Affected Loans not initially prepaid pursuant to this sentence. Notwithstanding anything to the contrary contained in the immediately preceding sentence, all amounts deposited as cash collateral pursuant to the immediately preceding sentence shall be held for the sole benefit of the Banks whose Loans would otherwise have been immediately prepaid with the amounts deposited and upon the taking of any action by the Administrative Agent or the Banks pursuant to the remedial provisions of Article 7, any amounts held as cash collateral pursuant to this Section 2.11(B) shall, subject to the requirements of applicable law, be immediately applied to repay Loans.

*Section 2.12. General Provisions as to Payments.* (a) The Borrowers shall make each payment of principal of, and interest on, the Loans and of fees hereunder (i) not later than 12:00 Noon (Chicago, Illinois time) on the date when due, in Federal or other funds immediately available in Chicago, Illinois, to the Administrative Agent at its address referred to in Section 11.1, or, if such payment is to be made in Canadian Dollars, no later than 12:00 Noon (Toronto, Ontario, time) to such office as the Administrative Agent has previously specified in a notice to the Borrowers for the benefit of the Bank or Banks entitled thereto and (ii) without any right to set-off, deduction or counterclaim by any Borrower. All payments made hereunder shall be made (i) in the case of Obligations denominated in U.S. Dollars, in U.S. Dollars in immediately available funds at the place of payment, or (ii) in the case of Obligations denominated in Canadian Dollars, in Canadian Dollars in immediately available funds at the place of payment. The Administrative Agent will promptly

distribute to each Bank its ratable share of each such payment received by the Administrative Agent for the account of the Banks. Whenever any payment of principal of, or interest on, the Base Rate Loans or the Canadian Base Rate Loans or of fees shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. Whenever any payment of principal of, or interest on, the Euro-Dollar Loans or Euro-Canadian Dollar Loans, as the case may be, shall be due on a day which is not a Business Day, the date for payment thereof shall be

extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case the date for payment thereof shall be the next preceding Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest thereon shall be payable for such extended time.

(b) Unless the Administrative Agent shall have received notice from any Borrower prior to the date on which any payment is due to the Banks hereunder that such Borrower will not make such payment in full, the Administrative Agent may assume that such Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Bank on such due date an amount equal to the amount then due such Bank. If and to the extent that such Borrower shall not have so made such payment, each Bank shall repay to the Administrative Agent forthwith on demand such amount distributed to such Bank together with interest thereon, for each day from the date such amount is distributed to such Bank until the date such Bank repays such amount to the Administrative Agent, at the Federal Funds Rate in the case of U.S. Dollar Loans or the CDOR Rate in the case of Canadian Dollar Loans.

*Section 2.13. Funding Losses.* If a Borrower makes any payment of principal with respect to any Euro-Dollar Loan or Euro-Canadian Dollar Loan or any Euro-Dollar Loan or Euro-Canadian Dollar Loan is prepaid, converted or becomes due (pursuant to Article 2, 7, or 9 or otherwise) on any day other than the last day of an Interest Period applicable thereto, or if a Borrower fails to borrow, prepay or continue any Euro-Dollar Loans or Euro-Canadian Dollar Loans after notice has been given to any Bank in accordance with Section 2.2, 2.9, or 2.10 such Borrower shall reimburse each Bank within 15 days after demand for any resulting loss or expense incurred by it (or by an existing or prospective Participant in the related Loan), including, without limitation, any loss incurred in obtaining, liquidating or employing deposits from third parties, but excluding loss of margin for the period after any such payment or conversion or failure to borrow, prepay, convert or continue, *provided* that such Bank shall have delivered to such Borrower a certificate as to the amount of such loss or expense, which certificate shall be conclusive in the absence of manifest error.

*Section 2.14. Computation of Interest and Fees.* (a) Interest based on the Prime Rate or the Canadian Base Rate hereunder shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and paid for the actual number of days elapsed (including the first day but excluding the last day). All other interest and fees shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day but excluding the last day if and only if such payment is made in accordance with the provisions of the first sentence of Section 2.12(a)).

(b) For purposes of the Interest Act (Canada), (i) whenever any interest or fee under this Agreement is calculated using a rate based on a year of 360 days or 365 days, as the case may be, the rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on a year of 360 or 365 days, as the case may be, (y) multiplied by the actual number of days in the relevant year of calculation and (z) divided by 360 or 365, as the case may be, (ii) the principle of deemed reinvestment of interest does not

apply to any interest calculation under this Agreement, and (iii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

*Section 2.15. Regulation D Compensation.* Each Bank may require a Borrower to pay, contemporaneously with each payment of interest on the Euro-Dollar Loans or the Euro-Canadian Dollar Loans, additional interest on the related Euro-Dollar Loan or Euro-Canadian Dollar Loan of such Bank at a rate per annum determined by such Bank up to but not exceeding the excess of (i) (A) the London Interbank Offered Rate then in effect for such Loan divided by (B) one minus the Reserve Percentage over (ii) such London Interbank Offered Rate. Any Bank wishing to require payment of such additional interest (x) shall so notify such Borrower and the Administrative Agent, in which case such additional interest on the Euro-Dollar Loan or Euro-Canadian Dollar Loan of such Bank shall be payable to such Bank at the place indicated in such notice with respect to each Interest Period commencing at least three Business Days after the giving of such notice and (y) shall notify such Borrower at least five Business Days prior to each date on which interest is payable on the Euro-Dollar Loans or the Euro-Canadian Dollar Loans of the amount then due it under this Section.

### ARTICLE 3

#### CONDITIONS

*Section 3.1. Effectiveness.* The Effective Date shall occur upon receipt by the Administrative Agent of the following documents:

(a) opinions of counsel for the Credit Parties, including Canadian counsel to the Credit Parties, each in a form reasonably acceptable to the Administrative Agent and covering such matters relating to the transactions contemplated hereby as the Administrative Agent or the Required Banks may reasonably request;

(b) all documents the Administrative Agent may reasonably request relating to the corporate authority of each Credit Party which is a party hereto and the validity of this Agreement, all in form and substance satisfactory to the Administrative Agent;

(c) copies of this Agreement executed by each of the Borrowers, each Guarantor and each of the Banks, and copies of the Notes executed by each of the Borrowers in favor of each of the Banks;



(d) the Security Documents shall have been amended in a manner reasonably satisfactory to the Administrative Agent and the Banks providing for the Obligations to be secured by the Collateral provided for therein on a *pari passu* basis with the holders of the loans and letters of credit outstanding under the Related Credit Agreement; all filings (including, without limitation, pursuant to the Uniform Commercial Code) and recordings shall have been accomplished with respect to the Security Documents in such jurisdictions as may be required by law to establish, perfect, protect and preserve the rights, titles, interests, remedies, powers, privileges, liens and security interests of the Collateral Agent in the Collateral covered by the Security Documents and any giving of

30

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notice or the taking of any other action to such end (whether similar or dissimilar) required by law shall have been given or taken. On or prior to the Effective Date, the Collateral Agent shall have received satisfactory evidence as to any such filing, recording, registration, giving of notice or other action so taken or made (except, in respect of the Canadian Security Documents, such filings with (w) Quebec filing offices to the extent the value of Collateral located therein at any one time does not exceed U.S. \$2,000,000 in the aggregate, (x) the Ontario PPSA filing office to the extent the Ontario Public Service Employees' Union strike prevents the filing thereof, (y) Canadian trademark authorities to the extent the filing thereof is separately contemplated by the undertaking dated the Effective Date, and (z) land registry offices in connection with leased premises with respect to which landlord consent has not been obtained); and the Banks and the holders of the loans and letters of credit outstanding under the Related Credit Agreement shall have entered into the Intercreditor Agreement, which shall be acknowledged and consented to by each of the Credit Parties party to the Security Documents;

(e) the Administrative Agent shall have received the full amount of the fees due from the Borrowers pursuant to Section 2.7;

(f) the Administrative Agent shall have received fully executed copies of the License Agreements;

(g) the Administrative Agent shall have received fully executed copies of the WCAS Subordinated Note;

(h) the Administrative Agent shall have received insurance certificates complying with the requirements of Section 6.3 for the business and properties of the Borrowers and their Subsidiaries naming the Collateral Agent as an additional insured and loss payee (except that, in the case of insurance policies covering property of the Canadian Borrower and LMG, the Collateral Agent shall not be named as an additional insured or loss payee) and stating that such insurance shall not be canceled without 30 days prior written notice to the Collateral Agent.

The Administrative Agent shall promptly notify the Borrowers and the Banks of the Effective Date, and such notice shall be conclusive and binding on all parties hereto.

*Section 3.2. Each Borrowing.* The obligation of the Banks to make each Loan hereunder is subject at the time of such Loan to the satisfaction of the following conditions:

(a) the fact that the Effective Date shall have occurred;

(b) receipt by the Administrative Agent of a Notice of Borrowing as required by Section 2.2;

31

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(c) the fact that, immediately after any Borrowing of Loans, the aggregate U.S. Dollar Equivalent amount of all Loans made hereunder will not exceed the aggregate amount of the Commitments in effect;

(d) the fact that, immediately before and after such Borrowing, no Default shall have occurred and be continuing;

(e) the fact that the representations and warranties of the Credit Parties contained in this Agreement shall be true and correct in all material respects on and as of the date of such Borrowing;

(f) with respect to the transactions contemplated by the Credit Agreement, the Pledge Agreements, the Security Agreement and the Canadian Security Documents, each Credit Party shall have obtained any necessary consents, waivers, approvals, authorizations, registrations, filings, licenses and notifications (including, if necessary, qualifying to do business in, and qualifying under the applicable consumer laws of, each jurisdiction where the applicable party is then doing business, or is in the process of obtaining such qualification in each jurisdiction where the applicable party is expected to be doing business utilizing the proceeds of such Loan) and the same shall be in full force and effect;

(g) the Security Documents shall be in full force and effect, the Collateral Agent shall have a first priority perfected security interest in all assets of the Borrowers and their respective Subsidiaries purported to be covered thereby (subject to the exceptions set forth therein and in Sections 6.19 and 10.1(a) hereof), and all filings (including, without limitation, pursuant to the Uniform Commercial Code or foreign equivalent) and recordings shall have been accomplished with respect to the Security Agreement and the Canadian Security Documents in such jurisdictions as may be required by law to establish, perfect, protect and preserve the rights, titles, interests, remedies, powers, privileges, liens and security interests of the Collateral Agent in the Assigned Collateral covered by the Security Agreement and the Canadian Security Documents (except, in respect of the Canadian Security Documents, such filings with (w) Quebec filing offices to the extent the value of Collateral located therein at any one time does not exceed U.S. \$2,000,000 in the aggregate, (x) the Ontario PPSA filing office to the extent the Ontario Public Service Employees' Union strike prevents the filing thereof, (y) Canadian trademark authorities to the extent the filing thereof is separately contemplated by the undertaking dated the Effective Date, and (z) land registry offices in connection with leased premises with respect to which landlord consent has not been obtained) and any giving of notice or the taking of any other action to such end (whether similar or dissimilar) required by law shall have been given or taken. The Administrative Agent and the Collateral Agent shall have received satisfactory evidence as to any such filing, recording, registration, giving of notice or other action so taken or made; and

(h) in the case of a Borrowing in U.S. Dollars, the revolving loan commitments outstanding under the Related Credit Agreement shall be fully drawn and there shall be no unused revolving loan commitments outstanding thereunder.

Each Borrowing hereunder shall be deemed to be a representation and warranty by the respective Borrowers on the date of such Borrowing as to the facts specified in clauses (c), (d), (e), (f), (g), and (h) of this Section.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

The Borrowers represent and warrant that:

*Section 4.1. Corporate Existence and Power.* Each Credit Party is a corporation, duly organized and validly existing and, where applicable, in good standing under the laws of the jurisdiction of its incorporation, and has all corporate powers and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

*Section 4.2. Corporate and Governmental Authorization; No Contravention.* The execution, delivery and performance by each Credit Party of the Credit Documents to which it is a party are within the corporate powers of such Credit Party, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official (other than a filing with the Canadian Federal Government in connection with the change of control of LMG, which filing has been made) and do not contravene, or constitute a default under, any provision of applicable law or regulation or of the articles of association, the organizational certificate or bylaws of such Credit Party or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Borrowers or any of their Subsidiaries or result in the creation or imposition of any Lien on any asset of either Borrower or any of their Subsidiaries (other than Liens granted pursuant hereto).

*Section 4.3. Binding Effect.* This Agreement and the other Credit Documents constitute valid and binding agreements of the Borrowers and each other Credit Party which is a party thereto, and each Note, when executed and delivered in accordance with this Agreement, will constitute a valid and binding obligation of the respective Borrower, in each case enforceable in accordance with its terms.

*Section 4.4. Financial Information.* (a) The consolidated balance sheet of the US Borrower and its Consolidated Subsidiaries as of December 31, 2001, and the related consolidated statements of income, retained earnings and cash flows for the fiscal year then ended, reported on by Deloitte & Touche LLP, a copy of which has been delivered to each of the Banks, fairly present the consolidated financial position of the US Borrower and its Consolidated Subsidiaries as of such date and their consolidated results of operations and cash flows for such fiscal year.

(b) Since December 31, 2001, there has been no material adverse change in the business, financial position, results of operations or prospects of the US Borrower and its Consolidated Subsidiaries, considered as a whole.

(c) On and as of the Effective Date, (a) the sum of the assets, at a fair valuation, of each of the Borrowers on a stand alone basis and of the US Borrower and its Subsidiaries taken as a whole will exceed its debts; (b) each of the Borrowers on a stand alone basis and the US Borrower and its Subsidiaries taken as a whole has not incurred and does not intend to incur debts beyond their ability to pay such debts as such debts mature; and (c) each of the Borrowers on a stand alone basis and the US Borrower and its Subsidiaries taken as a whole will have sufficient capital with which to conduct its business. For purposes of this Section 4.4(c), "debt" means any liability on a claim, and "claim" means (i) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured or (ii) right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

(d) Except as fully disclosed in the financial statements delivered pursuant to Section 4.4(a) there were as of the Effective Date no liabilities or obligations with respect to the US Borrower or any of its Subsidiaries of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due) which, either individually or in aggregate, could reasonably be expected to have a material and adverse effect on either Borrower or the US Borrower and its Subsidiaries taken as a whole. As of the Effective Date, neither Borrower knows of any basis for the assertion against it or any of its Subsidiaries of any liability or obligation of any nature whatsoever that is not fully disclosed in the financial statements delivered pursuant to Section 4.4(a) which, either individually or in the aggregate, could reasonably be expected to be material to either Borrower or the U.S. Borrower and its Subsidiaries taken as a whole.

*Section 4.5. Litigation.* There is no action, suit or proceeding pending against, or to the knowledge of either Borrower threatened against or affecting, either Borrower or any of their respective Subsidiaries before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business, consolidated financial position or consolidated results of operations of either Borrower and its Consolidated Subsidiaries, considered as a whole, or which in any manner draws into question the validity or enforceability of any Credit Document.

*Section 4.6. Compliance with ERISA.* (a) To the best of the Borrowers' knowledge, after reasonable investigation, each member of the ERISA Group has fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to each Plan and is in compliance in all material respects with the presently applicable provisions of ERISA and the Code with respect to each Plan. No member of the ERISA Group has (i) sought a waiver of the minimum funding standard under Section 412 of the Code in respect of any Plan, (ii) failed to make any contribution or payment to any Plan or Multiemployer Plan or in respect of any Benefit Arrangement, or made any amendment to any Plan or Benefit Arrangement, which has resulted or could result in the imposition of a Lien or the posting of a bond or other security under ERISA or the Code or (iii) incurred any liability under Title IV of ERISA other than a liability to the PBGC for premiums under Section 4007 of ERISA.

(b) To the best of the Borrowers' knowledge, each Foreign Pension Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities. All material contributions required to be made with respect to a Foreign Pension Plan have been timely made. Neither the Borrowers nor any of their Subsidiaries has incurred any material obligation in connection with the termination of or withdrawal from any Foreign Pension Plan. The Borrowers and their Subsidiaries do not maintain or contribute to any Foreign Pension Plan the obligations with respect to which could reasonably be expected to have a material adverse effect on the ability of either Borrower or either Borrower and its Subsidiaries taken as a whole to perform their obligations under the Credit Documents.

*Section 4.7. Environmental Matters.* To the best of the Borrowers' knowledge, after reasonable investigation, each of the Borrowers and their Subsidiaries has obtained all environmental, health and safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business as now being or as proposed to be conducted. Each of such permits, licenses and authorizations is in full force and effect and each of the Borrowers and their Subsidiaries is in material compliance with the terms and conditions thereof, and is also in material compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder. In addition, no notice, notification, demand, request for information, citations, summons or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or threatened by any governmental or other entity with respect to any alleged failure by either Borrower or any of their Subsidiaries to have any environmental, health or safety permit, license or other authorization required under any Environmental Law in connection with the conduct of the business of either Borrower or any of their Subsidiaries or with respect to any generation, treatment, storage, recycling, transportation, discharge or disposal, or any release of any Hazardous Substance generated or handled by either Borrower or any of their Subsidiaries. There have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted by or that are in the possession of either Borrower or any of their Subsidiaries in relation to any site or facility now or previously owned, operated or leased by either Borrower or any of their Subsidiaries which have not been made available to the Administrative Agent and the Banks.

*Section 4.8. Taxes.* Each Borrower and its Subsidiaries have filed all United States Federal and Canadian income tax returns and all other material tax returns which are required to be filed by them and have paid all taxes due pursuant to such returns or pursuant to any assessment received by such Borrower or any Subsidiary. The charges, accruals and reserves on the books of the Borrowers and their Subsidiaries in respect of taxes or other governmental charges are, in the opinion of the respective Borrowers, adequate.

*Section 4.9. Subsidiaries.* Each of the Borrowers' corporate Subsidiaries, if any, is a corporation duly incorporated, validly existing and, where applicable, and in good standing under the laws of its jurisdiction of incorporation, and has all corporate powers and all material

governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

*Section 4.10. Regulatory Restrictions on Borrowing.* Neither Borrower is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or otherwise subject to any regulatory scheme which restricts its ability to incur debt.

*Section 4.11. Full Disclosure.* All information heretofore furnished by either Borrower to the Administrative Agent or any Bank for purposes of or in connection with this Agreement or any transaction contemplated hereby is, and all such information hereafter furnished by either Borrower to the Administrative Agent or any Bank will be, true and accurate in all material respects on the date as of which such information is stated or certified. Each Borrower has disclosed to the Banks in writing any and all facts which materially and adversely affect or may affect (to the extent such Borrower can now reasonably foresee), the business, operations or financial condition of such Borrower and its Consolidated Subsidiaries, taken as a whole, or the ability of such Borrower to perform its obligations under this Agreement or the other Credit Documents.

*Section 4.12. Intellectual Property.* The US Borrower and its Subsidiaries own or have the exclusive right in the United States and Canada to use and to license the patents, trade names, registered or unregistered trademarks, registered or unregistered service marks, and registered copyrights, all pending applications therefor and all know-how required to operate their respective businesses (collectively, the "Intellectual Property"), and each item constituting part of the Intellectual Property has been duly registered with, filed with or issued by, as the case may be, the appropriate authorities in the United States and Canada and, to the knowledge of the Credit Parties, such registrations, filings and issuances remain in full force and effect. To the knowledge of the Credit Parties, there are no infringements of any proprietary rights (including, without limitation, the Intellectual Property, the License Agreements and any inventions and know-how owned or licensed by the US Borrower or its Subsidiaries) owned or licensed by the US Borrower or its Subsidiaries which could reasonably be expected to have a material adverse effect on the business, property, assets, liabilities, condition (financial or otherwise) or prospects of either Borrower taken individually or the US Borrower and its Subsidiaries taken as a whole. To the knowledge of the Credit Parties, the trademarks, service marks and trade names owned or licensed by the US Borrower or its Subsidiaries are enforceable by such entities and all patents (if any) comprising the Intellectual Property are believed valid and enforceable by the Credit Parties. No consent of third parties will be required for the use of any Intellectual Property as a consequence of the consummation of the transactions contemplated hereby. To the knowledge of any Credit Party, no claims are currently being asserted by any Person to the use of any of the Intellectual Property or challenging or questioning the validity or effectiveness of any License Agreement, and the use of the Intellectual Property by the US Borrower or any of its Subsidiaries does not infringe on the rights of any Person and no suits or proceedings are pending or threatened against the Seller, the US Borrower or any of their respective Subsidiaries with respect to the foregoing; and (ii) no claims are currently being asserted, and no conditions exist upon which such claims could be based, that the US Borrower or any of its Subsidiaries is in default or is not in full compliance with any License Agreement.

**REPRESENTATIONS AND WARRANTIES OF EACH GUARANTOR**

Each Guarantor represents and warrants for itself that:

*Section 5.1. Corporate Existence and Power.* The applicable Guarantor is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and has all corporate powers and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

*Section 5.2. Corporate and Governmental Authorization; No Contravention.* The execution, delivery and performance by the applicable Guarantor of this Agreement and each other Credit Document to which it is a party is within the corporate powers of the applicable Guarantor, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not contravene, or constitute a default under, any provision of applicable law or regulation or of the certificate of incorporation or by-laws of the Guarantor or of any agreement, judgment, injunction, order, decree or other instrument binding upon the applicable Guarantor or any of its Subsidiaries or result in the creation or imposition of any Lien on any asset of the applicable Guarantor or any of its Subsidiaries (other than Liens granted pursuant hereto).

*Section 5.3. Binding Effect.* This Agreement and each other Credit Document to which it is a party constitutes a valid and binding agreement of the applicable Guarantor enforceable in accordance with its terms.

*Section 5.4. Financial Information.* (a) The consolidated balance sheets of the applicable Guarantor and its Consolidated Subsidiaries as of December 31, 2001, and the related unaudited consolidated statements of income, changes in common stockholders' equity and cash flows for the fiscal year then ended, a copy of which has been delivered to each of the Banks, fairly present the consolidated financial position of the applicable Guarantor and its Consolidated Subsidiaries as of such date and their consolidated results of operations and cash flows for such fiscal year.

(b) Since December 31, 2001, there has been no material adverse change in the business, financial position, results of operations or prospects of the applicable Guarantor and its Consolidated Subsidiaries, considered as a whole.

*Section 5.5. Litigation.* There is no action, suit or proceeding pending against, or to the knowledge of the applicable Guarantor threatened against or affecting, the applicable Guarantor or any of its Subsidiaries before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business, consolidated financial position or consolidated results of operations of the applicable Guarantor and its Consolidated Subsidiaries, considered as a whole, or which in any manner draws into question the validity or enforceability of this Agreement or the Notes.

37

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*Section 5.6. Compliance with ERISA.* To the best of the applicable Guarantor's knowledge, after reasonable investigation, each member of the ERISA Group has fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to each Plan and is in compliance in all material respects with the presently applicable provisions of ERISA and the Code with respect to each Plan. No member of the ERISA Group has (i) sought a waiver of the minimum funding standard under Section 412 of the Code in respect of any Plan, (ii) failed to make any contribution or payment to any Plan or Multiemployer Plan or in respect of any Benefit Arrangement, or made any amendment to any Plan or Benefit Arrangement, which has resulted or could result in the imposition of a Lien or the posting of a bond or other security under ERISA or the Code or (iii) incurred any liability under Title IV of ERISA other than a liability to the PBGC for premiums under Section 4007 of ERISA.

*Section 5.7. Environmental Matters.* Each of the applicable Guarantor and its Subsidiaries has obtained all environmental, health and safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business as now being or as proposed to be conducted. Each of such permits, licenses and authorizations is in full force and effect and each of the applicable Guarantor and its Subsidiaries is in material compliance with the terms and conditions thereof, and is also in material compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder. In addition, no notice, notification, demand, request for information, citations, summons or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or threatened by any governmental or other entity with respect to any alleged failure by the applicable Guarantor or any of its Subsidiaries to have any environmental, health or safety permit, license or other authorization required under any Environmental Law in connection with the conduct of the business of the applicable Guarantor or any of its Subsidiaries or with respect to any generation, treatment, storage, recycling, transportation, discharge or disposal, or any release of any Hazardous Substance generated or handled by the applicable Guarantor or any of its Subsidiaries. There have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted by or that are in the possession of the applicable Guarantor or any of its Subsidiaries in relation to any site or facility now or previously owned, operated or leased by the applicable Guarantor or any of its Subsidiaries which have not been made available to the Administrative Agent and the Banks.

*Section 5.8. Taxes.* The applicable Guarantor and its Subsidiaries have filed all United States Federal income tax returns and all other material tax returns which are required to be filed by them and have paid all taxes due pursuant to such returns or pursuant to any assessment received by the applicable Guarantor or any Subsidiary. The charges, accruals and reserves on the books of the applicable Guarantor and its Subsidiaries in respect of taxes or other governmental charges are, in the opinion of the applicable Guarantor, adequate.

*Section 5.9. Subsidiaries.* Each of the applicable Guarantor's corporate Subsidiaries is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation, and has all corporate powers and all material governmental

licenses, authorizations, consents and approvals required to carry on its business as now conducted.

*Section 5.10. Regulatory Restrictions on Borrowing.* The applicable Guarantor is not an “investment company” within the meaning of the Investment Company Act of 1940, as amended, a “holding company” within the meaning of the Public Utility Holding Company Act of 1935, as amended, or otherwise subject to any regulatory scheme which restricts its ability to incur debt.

*Section 5.11. Full Disclosure.* All information heretofore furnished by the applicable Guarantor to the Administrative Agent or any Bank for purposes of or in connection with this Agreement or any transaction contemplated hereby is, and all such information hereafter furnished by the applicable Guarantor to the Administrative Agent or any Bank will be, true and accurate in all material respects on the date as of which such information is stated or certified. The applicable Guarantor has disclosed to the Banks in writing any and all facts which materially and adversely affect or may affect (to the extent the applicable Guarantor can now reasonably foresee), the business, operations or financial condition of the applicable Guarantor and its Consolidated Subsidiaries, taken as a whole, or the ability of the applicable Guarantor to perform its obligations under this Agreement.

## ARTICLE 6

### COVENANTS

The Borrowers and each Guarantor, as the case may be, agree that, so long as any Bank has any Commitment hereunder or any amount payable hereunder or under any Note remains unpaid:

*Section 6.1. Information.* The US Borrower will deliver to each of the Banks:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the US Borrower, consolidated and consolidating balance sheets of the US Borrower and its Consolidated Subsidiaries as of the end of such fiscal year and the related consolidating statements of income cash flows, changes in common stockholders’ equity and retained earnings, each for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year and certified by Deloitte & Touche LLP or another independent public accounting firm of nationally recognized standing;

(b) as soon as available and in any event within 45 days after the end of each of the first three fiscal quarters of the US Borrower, consolidated and consolidating balance sheets of the US Borrower and its Consolidated Subsidiaries as of the end of such quarter and the related consolidated and consolidating statements of income, changes in common stockholders’ equity and cash flows for such quarter and for the portion of the US Borrower’s fiscal year ended at the end of such quarter, setting forth in each case, in comparative form the figures for the corresponding quarter and the corresponding portion

39

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of the US Borrower’s previous fiscal year, all certified (subject to normal year–end adjustments) as to fairness of presentation, generally accepted accounting principles and consistency by the treasurer or chief financial officer of the US Borrower;

(c) simultaneously with the delivery of each set of financial statements referred to in clauses (a) and (b) above, (x) a certificate of the treasurer or chief financial officer of the US Borrower, (i) setting forth in reasonable detail the calculations required to establish whether the US Borrower was in compliance with the requirements of Sections 6.11, 6.12, 6.13, 6.14, 6.15 and 6.17 on the date of such financial statements, (ii) comparing such results to the comparable period of the prior fiscal year and the budgeted figures previously delivered for such period and (iii) stating whether any Default exists on the date of such certificate and, if any Default then exists, setting forth the details thereof and the action which the US Borrower is taking or proposes to take with respect thereto and (y) management’s discussion and analysis of the important operational and financial developments during such quarterly and year–to–date periods;

(d) simultaneously with the delivery of each set of financial statements referred to in clause (a) above, a statement of the accounting firm which reported on such statements (i) as to whether anything has come to their attention to cause them to believe that any Default existed on the date of such statements and (ii) confirming the calculations set forth in the officer’s certificate delivered simultaneously therewith pursuant to clause (c) above;

(e) within 45 days of the end of each fiscal year of the US Borrower, a budget in form reasonably satisfactory to the Administrative Agent (including budgeted statements of income and balance sheets) prepared by the US Borrower for each of the four quarters of such fiscal year, accompanied by a statement of the treasurer or chief financial officer of the US Borrower to the effect that, to the best of such officer’s knowledge, the budget is a reasonable estimate for the period covered thereby;

(f) within five days after any officer of any Credit Party obtains knowledge of any Default, if such Default is then continuing, a certificate of the treasurer or chief financial officer of the US Borrower setting forth the details thereof and the action which the US Borrower or such Credit Party is taking or proposes to take with respect thereto;

(g) promptly after the mailing thereof to the public shareholders of the US Borrower, copies of all financial statements, reports and proxy statements so mailed;

(h) promptly upon the filing thereof, copies of all registration statements (other than the exhibits thereto and any registration statements on Form S–8 or its equivalent) and reports on Forms 10–K, 10–Q and 8–K (or their equivalents) which the US Borrower or any other Credit Party shall have filed with the Securities and Exchange Commission;

(i) immediately upon discovery of the fact that any member of the ERISA Group (i) gives or is required to give notice to the PBGC of any “reportable event” (as

defined in Section 4043 of ERISA) with respect to any Plan which might constitute grounds for a termination of such Plan under Title IV of ERISA, or knows that the plan administrator of any Plan has given or is required to give notice of any such reportable event, a copy of the notice of such reportable event given or required to be given to the PBGC; (ii) receives notice of complete or partial withdrawal liability under Title IV of ERISA or notice that any Multiemployer Plan is in reorganization, is insolvent or has been terminated, a copy of such notice; (iii) receives notice from the PBGC under Title IV of ERISA of an intent to terminate, impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or appoint a trustee to administer any Plan, a copy of such notice; (iv) applies for a waiver of the minimum funding standard under Section 412 of the Code, a copy of such application; (v) gives notice of intent to terminate any Plan under Section 4041(c) of ERISA, a copy of such notice and other information filed with the PBGC; (vi) gives notice of withdrawal from any Plan pursuant to Section 4063 of ERISA, a copy of such notice; or (vii) fails to make any payment or contribution to any Plan, Foreign Pension Plan or Multiemployer Plan or in respect of any Benefit Arrangement or makes any amendment to any Plan, Foreign Pension Plan or Benefit Arrangement which has resulted or could result in the imposition of a Lien or the posting of a bond or other security, a certificate of the treasurer of the US Borrower setting forth details as to such occurrence and action, if any, which the US Borrower, the applicable Credit Party or the applicable member of the ERISA Group is required or proposes to take; and

(j) from time to time such additional information regarding the financial position or business of the Credit Parties and their Subsidiaries as the Administrative Agent, at the request of any Bank, may reasonably request.

*Section 6.2. Payment of Obligations.* Each Credit Party will pay and discharge, and will cause each Subsidiary to pay and discharge, at or before maturity, all their respective material obligations and liabilities (including, without limitation, tax liabilities and claims of materialmen, warehousemen and the like which if unpaid might by law give rise to a Lien), except where the same may be contested in good faith by appropriate proceedings, and will maintain, and will cause each Subsidiary to maintain, in accordance with generally accepted accounting principles, appropriate reserves for the accrual of any of the same.

*Section 6.3. Maintenance of Property; Insurance.* (a) Each Credit Party will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(b) Each Credit Party will, and will cause each Subsidiary to, maintain (either in the name of the US Borrower or in its own name) with financially sound and responsible insurance companies, insurance on all their respective properties in at least such amounts, against at least such risks and with such risk retention as are usually maintained, insured against or retained, as the case may be, in the same general area by companies of established repute engaged in the same or a similar business and will furnish to the Banks, upon request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried.

(c) Each Credit Party will at all times keep its property insured, with the Collateral Agent named as additional insured and loss payee (except that in the case of insurance policies covering property of the Canadian Borrower or LMG, the Collateral Agent shall not be named as an additional insured or loss payee) and all policies or certificates shall name the Collateral Agent as such (except that in the case of insurance policies covering property of the Canadian Borrower or LMG, the Collateral Agent shall not be named as an additional insured or loss payee) and state that such insurance policy may not be canceled without at least 30 days' prior written notice to the Collateral Agent (or such shorter period as a particular insurance company policy generally provides).

*Section 6.4. Conduct of Business and Maintenance of Existence.* Each Credit Party will continue, and will cause each Subsidiary to continue, to engage in business of the same general type as now conducted by such Credit Party, and will preserve, renew and keep in full force and effect, and will cause each Subsidiary to preserve, renew and keep in full force and effect their respective corporate existence and their respective rights, privileges and franchises necessary or desirable in the normal conduct of business; *provided*, that nothing in this Section 6.4 shall prohibit (i) a merger or consolidation which is otherwise permitted by Section 6.7 or (ii) the termination of the corporate existence of any Subsidiary if the US Borrower in good faith determines that such termination is in the best interest of the Borrowers and is not materially disadvantageous to the Banks.

*Section 6.5. Compliance with Laws.* Each Credit Party will comply, and cause each Subsidiary to comply, in all respects with all applicable laws, ordinances, rules, regulations, and requirements of governmental authorities (including, without limitation, Environmental Laws and ERISA and the rules and regulations thereunder) except (i) where the necessity of compliance therewith is contested in good faith by appropriate proceedings or (ii) to the extent that failure to comply therewith would not have a material adverse effect on (a) the property, business, operations, financial condition, prospects, liabilities or capitalization of any Credit Party and its Subsidiaries taken as a whole, (b) the ability of any Credit Party to perform its obligations under any of the Credit Documents to which it is a party, (c) the validity or enforceability of any of the Credit Documents, (d) the rights and remedies of the Banks and the Administrative Agent under any of the Credit Documents or (e) the timely payment of the principal of or interest on the Loans or the payment obligations of the Credit Parties under the Credit Documents.

*Section 6.6. Inspection of Property, Books and Records.* The Credit Parties will keep, and will cause each Subsidiary to keep, proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, representatives of any Bank, at such Bank's expense, to visit and inspect any of their respective properties, to examine and make abstracts from any of their respective books and records and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants, all at such reasonable times and as often as may reasonably be desired.

*Section 6.7. Mergers and Sales of Assets.* The Credit Parties will not (x) consolidate or merge with or into any other Person or (y) sell, lease or otherwise transfer, directly or indirectly,

any substantial part of the assets of any Credit Party and its Subsidiaries, taken as a whole, to any other Person; except that the following shall be permitted: (a) (i) any Credit Party other than the Canadian Borrower may merge with the US Borrower or another Guarantor if after giving effect to such merger, no Default shall have occurred and be continuing and (ii) any Person may be merged with or into any Credit Party pursuant to an acquisition permitted by Section 6.22(b), *provided* that such Credit Party is the surviving corporation of such merger, (b) the sale of credit card receivables pursuant to securitizations of such credit card receivables, and (c) assets sold and leased back in the normal course of the Borrowers' business.

**Section 6.8. Use of Proceeds.** The proceeds of the Loans made under this Agreement will be used by the US Borrower to finance the general corporate and working capital needs of the US Borrower and its Subsidiaries. None of the proceeds of any Loan made hereunder will be used, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of buying or carrying any "margin stock" within the meaning of Regulation U.

**Section 6.9. Negative Pledge.** Neither a Credit Party nor any Subsidiary will create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except:

(a) Liens pursuant to the Security Documents;

(b) Liens existing on the Original Effective Date securing Debt outstanding on the Original Effective Date in an aggregate principal or face amount not exceeding U.S. \$5,000,000;

(c) any Lien existing on any asset of any person at the time such person becomes a Subsidiary and not created in contemplation of such event;

(d) any Lien on any asset securing Debt incurred or assumed for the purpose of financing all or any part of the cost of acquiring such asset, *provided* that such Lien attaches only to such asset acquired and attaches concurrently with or within 90 days after the acquisition thereof;

(e) any Lien on any asset of any Person existing at the time such Person is merged or consolidated with or into a Credit Party or its Subsidiary and not created in contemplation of such event, so long as such Lien does not attach to any other asset of such Credit Party or its Subsidiaries;

(f) any Lien existing on any asset prior to the acquisition thereof by a Credit Party or a Subsidiary and not created in contemplation of such acquisition;

(g) any Lien arising out of the refinancing, extension, renewal or refunding of any Debt secured by any Lien permitted by any of the foregoing clauses of this Section, *provided* that the amount of such Debt is not increased and is not secured by any additional assets;

43

(h) Liens arising in the ordinary course of its business which (i) do not secure Debt or Derivatives obligations, (ii) do not secure any obligation in an amount exceeding U.S. \$5,000,000 or (iii) do not in the aggregate materially detract from the value of the assets secured or materially impair the use thereof in the operation of such Credit Party or Subsidiary's business;

(i) any Lien on any credit card receivable subject to a sale of credit card receivables pursuant to securitizations of such credit card receivables;

(j) Liens not otherwise permitted by the foregoing clauses of this Section securing Debt in an aggregate principal or face amount at any date not to exceed 2% of Consolidated Net Worth of the US Borrower;

(k) Liens securing the Related Credit Agreement ranking *pari passu* with the Obligations hereunder; and

(l) Liens securing Indebtedness permitted under Section 6.16(vi) hereof.

**Section 6.10. End of Fiscal Years and Fiscal Quarters.** The US Borrower shall cause its fiscal year, and shall cause each of its Subsidiaries' fiscal years, to end on December 31 and shall cause its and each of its Subsidiaries' fiscal quarters to coincide with calendar quarters.

**Section 6.11. Minimum Consolidated EBITDA.** The US Borrower will not permit its Consolidated EBITDA for any period of four consecutive fiscal quarters of the US Borrower, as determined for such four-quarter period ending on the last day of any fiscal quarter, to be less than U.S. \$125,000,000.

**Section 6.12. (a) Leverage Ratio.** The US Borrower shall not permit its Leverage Ratio at any time during any fiscal quarter of the US Borrower to exceed 3.0 to 1.0.

(b) **Senior Secured Leverage Ratio.** The US Borrower shall not permit its Senior Secured Leverage Ratio at any time to exceed the ratio set forth below opposite such fiscal quarter below:

Fiscal Quarter Ended	Maximum Senior Secured Leverage Ratio
March 31, 2002	1.75 to 1.0
June 30, 2002	1.75 to 1.0
Each fiscal quarter ended thereafter	1.50 to 1.0.

*Section 6.13. Adjusted Consolidated Net Worth.* The US Borrower will not permit its Adjusted Consolidated Net Worth at any time to be less than the sum of (i) U.S. \$500,000,000, plus (ii) an amount equal to 50% of the amount by which the US Borrower's quarterly Consolidated Net Income (determined at the end of each fiscal quarter, commencing March 31,

44

2002) exceeds zero, plus (iii) 100% of any proceeds from equity issuances of capital stock of the US Borrower (other than (A) in connection with exercises of stock options of the officers, directors and employees of the US Borrower in the ordinary course of business and (B) proceeds of equity issuances of capital stock used to pay the WCAS Subordinated Note pursuant to Section 6.24 hereof).

*Section 6.14 Capitalization of Insured Subsidiaries.* The US Borrower shall, at all times, cause all Insured Subsidiaries to be "well capitalized" within the meaning of 12 C.F.R. 208.33(b)(1) or any successor regulation and such Insured Subsidiaries at no time be reclassified by any relevant agency as anything other than "well capitalized."

*Section 6.15. Delinquency Ratio.* The US Borrower shall not permit the average of the Delinquency Ratios for WFNB for the most recently ended three consecutive calendar months to exceed 4.5%.

*Section 6.16. Debt Limitation.* The US Borrower shall not, and shall not permit any of its Subsidiaries, whether now existing or created in the future, to create or retain any Debt other than (i) any Debt created or retained by the US Borrower or such Subsidiary on or before May 2, 1998, (ii) any Debt created or retained by the US Borrower or such Subsidiary in connection with the funds made available to the Borrowers pursuant to this Agreement or the Related Credit Agreement (including any intercompany loans of such funds), *provided* that such loans made by the US Borrower and its Subsidiaries to (x) the Canadian Borrower shall not exceed U.S. \$20,000,000 and (y) ADSNZ shall not exceed U.S. \$1,500,000 in aggregate principal amount outstanding at any time, and all such loans from the US Borrower to WFNB shall be made pursuant to and evidenced by the WFNB Note, (iii) issuances by WFNB of certificates of deposit to the extent no Default results therefrom pursuant to the other covenants contained in this Article 6, (iv) intercompany loans not otherwise permitted by clause (ii) of this Section 6.16 made by the US Borrower to ADSI and WFNB, *provided* that any such intercompany loans to WFNB shall be made pursuant to and evidenced by the WFNB Note, (v) Debt of the US Borrower outstanding pursuant to the WCAS Subordinated Note in an aggregate principal amount not to exceed U.S. \$52,000,000, less all repayments of principal thereof, (vi) obligations of the US Borrower or its Subsidiaries as lessee in respect of leases of property which are capitalized in accordance with generally accepted accounting principles and shown on the balance sheet of the US Borrower and its Subsidiaries and which in the aggregate do not at any one time exceed 10% of the Adjusted Consolidated Net Worth of the US Borrower at such time, (vii) the loans and letters of credit outstanding from time to time under the Related Credit Agreement in a principal amount not to exceed U.S. \$187,625,000 at any one time outstanding, less repayments of the term loans thereunder, and (viii) other unsecured Debt of the US Borrower and/or its Subsidiaries not to exceed U.S. \$10,000,000 in the aggregate outstanding at any time. Notwithstanding anything to the contrary above in this Section 6.16, the US Borrower may, subject to the applicability of the other covenants contained in this Agreement, issue Permitted Subordinated Debt.

*Section 6.17. Interest Coverage Ratio.* The US Borrower will not permit its Interest Coverage Ratio for any period of four consecutive fiscal quarters, as determined for such four-quarter period ending on the last day of any fiscal quarter, to be less than 3.5:1.0.

45

*Section 6.18. Restricted Payments; Required Dividends.* (a) Other than payments made in accordance with the terms of subsection (b) below, neither the US Borrower nor any of its Subsidiaries will declare or make any Restricted Payment unless, after giving effect thereto, the aggregate of all Restricted Payments declared or made does not exceed the sum of (i) U.S. \$20,000,000 plus (ii) 25% of the amount by which the Consolidated Net Income of the US Borrower exceeds zero (or minus 100% of the amount by which the Consolidated Net Income of the US Borrower is less than zero) for the period from January 30, 1999 through the end of the US Borrowers then most recent fiscal quarter (treated for this purpose as a single accounting period).

(b) The US Borrower shall cause each Domestic Subsidiary (to the extent permitted under any applicable law, rule or regulation, judgment, injunction, order or decree of any governmental authority) to take all such necessary corporate actions to declare cash dividends, payable to the shareholder of such Subsidiary, in an aggregate amount, if any, equal to all amounts that are then due and owing and remain outstanding after the date of payment therefor pursuant to the terms of this Agreement.

*Section 6.19. Equity Ownership, Limitation on Creation of Subsidiaries.* Notwithstanding anything to the contrary contained in this Agreement, the US Borrower will not, and will not permit any of its Subsidiaries to, establish, create or acquire after the Effective Date any Subsidiary; *provided* that (A) the US Borrower and its Wholly-Owned Subsidiaries shall be permitted to establish or create Wholly-Owned Subsidiaries so long as, in each case, (i) at least 30 days' prior written notice thereof is given to the Administrative Agent (or such shorter period of time as is acceptable to the Administrative Agent), (ii) all of the capital stock of such new Subsidiary (or 65% of the outstanding capital stock of a Foreign Subsidiary) is promptly pledged pursuant to, and to the extent required by, this Agreement and the Pledge Agreement and the certificates, if any, representing such stock, together with stock powers duly executed in blank, are delivered to the Collateral Agent and (iii) except as otherwise provided in the definition of Guarantor hereunder, such new Subsidiary (except, with respect to the Obligations of the US Borrower, a Foreign Subsidiary) promptly executes a supplement to this Agreement in form and substance reasonably acceptable to the Administrative Agent to become a Guarantor pursuant to Article 10, and becomes a party to the Pledge Agreement and the Security Agreement (or similar documents satisfactory to the Administrative Agent) and (B) Subsidiaries may be acquired to the extent such acquisition does not give rise to a Default hereunder so long as (x) in each such case involving the acquisition of a Wholly-Owned Subsidiary, the actions specified in preceding clause (A) shall be taken and (y) in each such case involving the acquisition of a non-Wholly-Owned Subsidiary, the stock of such Subsidiary held by the Credit Parties shall be pledged to the extent required by the Pledge Agreement subject to the 65% limitation contained in clause (A) above for Foreign Subsidiaries. In addition, each new Subsidiary that is required to execute any Credit Document shall execute and deliver, or cause to be executed and delivered, all other relevant documentation of the type described in Section 3.1 as such new Subsidiary would have had to deliver if such new Subsidiary were a Credit Party on the Effective Date.

*Section 6.20. Change of Business.* The US Borrower will not, and will not permit any of its Subsidiaries to, materially alter the character of the business of the US Borrower and its Subsidiaries from that conducted on the Effective Date.

46



*Section 6.21. Limitation on Issuance of Capital Stock.* (a) The US Borrower will not, and will not permit any of its Subsidiaries to, issue (i) any preferred stock or (ii) any common stock redeemable at the option of the holder thereof.

(b) The US Borrower will not permit any of its Subsidiaries to issue any capital stock (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, capital stock, except (i) for transfers and replacements of then outstanding shares of capital stock, (ii) for stock splits, stock dividends and issuances which do not decrease the percentage ownership of the US Borrower or any of its Subsidiaries in any class of the capital stock of such Subsidiary, (iii) to qualify directors to the extent required by applicable law and (iv) for issuances by newly created or acquired Subsidiaries in accordance with the terms of this Agreement.

*Section 6.22. Investments; Restricted Acquisition.* (a) The US Borrower shall not, and shall not permit any Subsidiary to hold, make or acquire any Investment in any Person other than:

(i) Investments by the US Borrower or its Subsidiaries in Persons which are Subsidiaries on the Effective Date, *provided that* (x) in the case of any Investment in Foreign Subsidiaries of the US Borrower, such Investment shall not exceed 5% of Adjusted Consolidated Net Worth plus the amount invested on the Effective Date and (y) any Investments by the US Borrower in WFNB which are in the form of intercompany loans shall be made pursuant to and evidenced by the WFNB Note;

(ii) Investments consistent with the investment policy attached hereto as Schedule II;

(iii) Investments currently held by WFNB to comply with the provisions of the Community Reinvestment Act as such Investments are set forth on Schedule III attached hereto;

(iv) Investments consisting of credit card loans made by WFNB pursuant to the terms of any applicable credit card accounts owned by WFNB; and

(v) any Investment not otherwise permitted by the foregoing clauses of this Section if, immediately after such Investment is made or acquired, the aggregate net book value of all Investments permitted by this clause (v) does not exceed 5% of Adjusted Consolidated Net Worth of the US Borrower.

(b) The US Borrower and its Subsidiaries may make Restricted Acquisitions so long as:

(i) the US Borrower and its Subsidiaries shall be in compliance with all provisions of this Agreement, including all financial covenants, both before and after giving effect thereto, with such financial covenants to be calculated on a *pro forma* basis as if such Restricted Acquisition had been consummated on the first day of the then most recently ended period of four consecutive fiscal quarters and giving effect to (x) the

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actual historical financial performance (including EBITDA) of such acquired entity (y) identifiable cost savings associated with providing data processing services to such acquired entities; and

(ii) the total consideration paid (including equity issued and Debt assumed) in connection with any Restricted Acquisition of a Person which as a result thereof does not become a Wholly-Owned Subsidiary shall not exceed 10% of Adjusted Consolidated Net Worth.

*Section 6.23. Consolidated Capital Expenditures.* The US Borrower shall not, and shall not permit its Subsidiaries to make Consolidated Capital Expenditures in any fiscal year exceeding 50% of the US Borrower's previous fiscal year's Consolidated EBITDA.

*Section 6.24. Limitation on Voluntary Payments and Modifications of Indebtedness, Modifications of Certain Other Agreements, etc.* The US Borrower will not, and will not permit any of its Subsidiaries to, (i) make (or give any notice in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or make any pre-payment or redemption as a result of any asset sale, change of control or similar event of (including, in each case, without limitation, by way of depositing with the trustee with respect thereto or any other Person, money or securities before due for the purpose of paying when due) the WCAS Subordinated Note or any Permitted Subordinated Debt or (ii) amend or modify, or permit the amendment or modification of, any provision of the WCAS Subordinated Note, the License Agreements or the WFNB Note; *provided, however,* the US Borrower may prepay the WCAS Subordinated Note in the aggregate principal amount not to exceed U.S. \$52,000,000, on or before December 31, 2002, if, and only if, the prepayment of the WCAS Subordinated Note is made directly or indirectly from the proceeds of the US Borrower's follow-on equity offering.

## ARTICLE 7

### DEFAULTS

*Section 7.1. Events of Default.* If one or more of the following events ("*Events of Default*") shall have occurred and be continuing:

(a) either Borrower shall fail to pay when due any principal of any Loan or shall fail to pay within 3 Business Days from the date due any interest, any fees or any other amount payable hereunder;

(b) any Credit Party shall fail to observe or perform any covenant contained in Article 6 (other than those contained in Sections 6.1 through 6.3 inclusive, Section 6.5 or Section 6.6) or contained in subsection 3.02(d)(i) or (ii) of the Security Agreement (to the extent such provisions contain ongoing obligations of the Credit Parties) or Section 12.01 of the Security Agreement;

(c) any Credit Party shall fail to observe or perform any covenant or agreement contained in this Agreement, the Pledge Agreements, the Security Agreement

48

and the Canadian Security Documents (other than those covered by clause (a) or (b) above) for 30 days after notice thereof has been given to the applicable Credit Party by the Administrative Agent at the request of the Required Banks;

(d) any representation, warranty, certification or statement made by any Credit Party in any Credit Document or in any certificate, financial statement or other document delivered pursuant to this Agreement shall prove to have been incorrect in any material respect when made (or deemed made);

(e) any Credit Party or any Subsidiary of any of them shall fail to make any payment in respect of any Material Financial Obligations when due or within any applicable grace period;

(f) any event or condition shall occur which results in the acceleration of the maturity of any Material Debt of any Credit Party or any Subsidiary of a Credit Party or enables (or, with the giving of notice or lapse of time or both, would enable) the holder of such Debt or any Person acting on such holder's behalf to accelerate the maturity thereof;

(g) any Credit Party or any Subsidiary of any of them shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of, or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(h) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of any of them seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against any Credit Party or any Subsidiary of either of them under the federal bankruptcy laws as now or hereafter in effect;

(i) any member of the ERISA Group shall fail to pay when due an amount or amounts aggregating in excess of U.S. \$5,000,000 which it shall have become liable to pay under Title IV of ERISA; or notice of intent to terminate a Material Plan shall be filed under Title IV of ERISA by any member of the ERISA Group, any plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate, to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer any Material Plan; or a condition shall exist by reason of which

49

the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated; or there shall occur a complete or partial withdrawal from, or a default, within the meaning of Section 4219(c)(5) of ERISA, with respect to, one or more Multiemployer Plans which could cause one or more members of the ERISA Group to incur a current payment obligation in excess of U.S. \$5,000,000;

(j) judgments or orders for the payment of money aggregating in excess of U.S. \$5,000,000 shall be rendered against the US Borrower or any of its Subsidiaries and such judgments or orders shall continue unsatisfied and unstayed for a period of 30 days;

(k) a Change of Control shall occur;

(l) any Credit Party shall assert any claim that the security interest in the Collateral granted by such Credit Party to the Collateral Agent pursuant to the Security Agreement, the Canadian Security Documents or the Pledge Agreements is unenforceable, is other than first-priority or is otherwise invalid;

(m) any Guarantor shall revoke its guaranty provided for in Article 10 of this Agreement or assert that its guaranty provided for in Article 10 of this Agreement is unenforceable or otherwise invalid;

(n) at any time, the Collateral is transferred by either Borrower in violation of the terms of the Pledge Agreements, Security Agreement or the Canadian Security Documents; and

(o) any License Agreement shall terminate or any arbitration or litigation shall be commenced in respect thereof (except that any litigation or arbitration commenced by a Person who is not a party to such License Agreement shall not result in an Event of Default hereunder unless such action is not stayed or dismissed within 60 days of the commencement thereof), or any party shall assert that any termination thereof, or any party to any License Agreement shall default in any of its obligations thereunder beyond the period of grace (if any) therein provided;

then, and in every such event, the Administrative Agent shall (i) if requested by Banks having more than 50% in aggregate amount of the Commitments, by notice to the Borrowers terminate the Commitments and they shall thereupon terminate, (ii) if requested by Banks holding more than 50% of the aggregate principal amount of the Loans, by notice to the Borrowers declare the Loans (together with accrued interest thereon and any commitment fee) to be, and the Loans shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers; *provided*, that in the case of any of the Events of Default specified in clause 7.1(g) or 7.1(h) above with respect to the Borrowers, without any notice to the Borrowers or any other act by the Administrative Agent or the Banks, the Commitments shall thereupon terminate and the Loans

(together with accrued interest thereon and any commitment fee) shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers and (iii) if requested by the Required Banks enforce, as Collateral Agent, any or all of

the Liens and security interests created pursuant to the Security Documents and apply any cash collateral held pursuant to this Agreement to repay the Obligations.

*Section 7.2. Notice of Default.* (a) Promptly upon becoming aware that any Default exists, the Borrowers shall provide notice thereof to the Administrative Agent and each of the Banks stating the nature of the Default, setting forth the details thereof and the action which the respective Borrower is taking or proposes to take with respect thereto.

(b) The Administrative Agent shall give notice to the Borrowers under Section 7.1(c) promptly upon being requested to do so by the Banks and shall thereupon notify all the Banks thereof.

## ARTICLE 8

### THE AGENT

*Section 8.1. Appointment and Authorization.* (a) Each Bank irrevocably appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the Notes as are delegated to the Administrative Agent by the terms hereof or thereof, together with all such powers as are reasonably incidental thereto. For greater certainty, and without limiting the powers of the Administrative Agent hereunder or under any of the Security Documents, the Borrowers hereby acknowledge that the Administrative Agent shall be, for purposes of holding any security granted by the Borrowers on the Borrowers' property pursuant to the laws of the Province of Quebec, the holder of an irrevocable power of attorney (within the meaning of the Civil Code of Quebec) for all present and future Banks. Each of the Banks hereby irrevocably constitutes, to the extent necessary, the Administrative Agent, in its capacity as Collateral Agent, as the holder of an irrevocable power of attorney (within the meaning of Article 2692 of the Civil Code of Quebec) in order to hold security granted by the Borrowers in the Province of Quebec. Any assignee shall be deemed to have confirmed and ratified the constitution of the Administrative Agent as the holder of such irrevocable power of attorney by execution of the relevant assignment and assumption agreement substantially in the form of Exhibit A. Notwithstanding the provisions of Section 32 of the Special Corporate Powers Act (Quebec), the Administrative Agent may acquire and be the holder of any debenture issued by a Borrower as contemplated under any of the Security Documents at any time and from time to time. The Borrowers hereby acknowledge that any such debenture constitutes a title of indebtedness, as such term is used in Article 2692 of the Civil Code of Quebec.

*Section 8.2. Administrative Agent and Affiliates.* The Administrative Agent shall have the same rights and powers under this Agreement as any other Bank and may exercise or refrain from exercising the same as though it were not the Administrative Agent, and the Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrowers or any Subsidiary or affiliate of the respective Borrower as if it were not the Administrative Agent.

*Section 8.3. Action by Administrative Agent.* The obligations of the Administrative Agent hereunder are only those expressly set forth herein. Without limiting the generality of the foregoing, the Administrative Agent shall not be required to take any action with respect to any Default, except as expressly provided in Article 7.

*Section 8.4. Consultation with Experts.* The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers and/or any Guarantor), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

*Section 8.5. Liability of Administrative Agent.* Neither the Administrative Agent nor any of its affiliates nor any of their respective directors, officers, agents or employees shall be liable for any action taken or not taken by it in connection herewith (i) with the consent or at the request of the Required Banks (or, when expressly required hereby, such different number of Banks required to consent to or request such action or inaction) or (ii) in the absence of its own gross negligence or willful misconduct. Neither the Administrative Agent nor any of its affiliates nor any of their respective directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify (i) any statement, warranty or representation made in connection with this Agreement or any Borrowing hereunder; (ii) the performance or observance of any of the covenants or agreements of the Borrowers or any Guarantor; (iii) the satisfaction of any condition specified in Article 3, except receipt of items required to be delivered to the Administrative Agent; or (iv) the validity, effectiveness or genuineness of this Agreement, the Notes or any other instrument or writing furnished in connection herewith. The Administrative Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

*Section 8.6. Indemnification.* Each Bank shall, ratably in accordance with its Commitment, indemnify the Administrative Agent, its affiliates and their respective directors, officers, agents and employees (to the extent not reimbursed by the Borrowers) against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such indemnities, gross negligence or willful misconduct) that such indemnities may suffer or incur in connection with this Agreement or any action taken or omitted by such indemnities hereunder.

*Section 8.7. Credit Decision.* Each Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Bank, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this

information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under this Agreement.

*Section 8.8. Successor Administrative Agent.* The Administrative Agent may resign at any time by giving notice thereof to the Banks and the Borrower. Upon any such resignation, the Required Banks shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Banks, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent gives notice of resignation, then the retiring Administrative Agent may, on behalf of the Banks, appoint a successor Administrative Agent, which shall be a commercial bank organized or Licensed under the laws of the United States of America or of any State thereof and having a combined capital and surplus of at least U.S. \$100,000,000. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent.

## ARTICLE 9

### CHANGE IN CIRCUMSTANCES

*Section 9.1. Basis for Determining Interest Rate Inaccurate or Unfair.* If on, or prior to, the first day of any Interest Period for a Euro-Dollar Loan or Euro-Canadian Dollar Loan:

- (a) the Administrative Agent determines that deposits in dollars (in the applicable amounts) are not being offered to the Administrative Agent in the Euro-Dollar or Euro-Canadian Dollar market, as the case may be, for such Interest Period, or
- (b) in the case of Euro-Dollar Loans or Euro-Canadian Dollar Loans, Banks having 50% or more of the aggregate principal amount of the affected Loans advise the Administrative Agent that the London Interbank Offered Rate, as determined by the Administrative Agent, will not adequately and fairly reflect the cost to such Banks of funding their Euro-Dollar Loans or Euro-Canadian Dollar Loans, as the case may be, for such Interest Period,

the Administrative Agent shall forthwith give notice thereof to the Borrowers and the Banks, whereupon until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, (i) the obligations of the Banks to make Euro-Dollar Loans or Euro-Canadian Dollar Loans or to continue or convert outstanding Loans as or into Euro-Dollar Loans or Euro-Canadian Dollar Loans shall be suspended and (ii) each outstanding Euro-Dollar Loan or Euro-Canadian Dollar Loan shall be converted into a Base Rate Loan or Canadian Base Rate Loan, as relevant, on the last day of the then current Interest Period applicable thereto. Should either of the events set forth in subclause (a) or (b) above occur, unless the Borrowers notify the Administrative Agent at least two Business Days before the date

of any Borrowing of Euro-Dollar Loans or Euro-Canadian Dollar Loans for which a Notice of Borrowing has previously been given that it elects not to borrow on such date, such Borrowing shall instead be made as a Base Rate Borrowing or Canadian Base Rate Borrowing, as relevant.

*Section 9.2. Illegality.* If, on or after the Effective Date, 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 Bank (or its Euro-Dollar Lending Office or Euro-Canadian Dollar Lending Office) with any request or directive (whether or not having the force of law) of any such authority, central Bank or comparable agency shall make it unlawful or impossible for any Bank (or its Euro-Dollar Lending Office or Euro-Canadian Dollar Lending Office) to make, maintain or fund its Euro-Dollar Loans or Euro-Canadian Dollar Loans, as the case may be, and such Bank shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Banks and the Borrowers, whereupon until such Bank notifies the Borrowers and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Bank to make Euro-Dollar Loans or Euro-Canadian Dollar Loans, as the case may be, or to convert outstanding Loans into Euro-Dollar Loans or Euro-Canadian Dollar Loans, as the case may be, shall be suspended. Before giving any notice to the Administrative Agent pursuant to this Section, such Bank shall designate a different Euro-Dollar Lending Office or Euro-Canadian Dollar Lending Office if such designation will avoid the need for giving such notice and will not, in the judgment of such Bank, be otherwise disadvantageous to such Bank. If such notice is given, each Euro-Dollar Loan or Euro-Canadian Dollar Loan, as the case may be, of such Bank then outstanding shall be converted to a Base Rate Loan or Canadian Base Rate Loan, as relevant, (a) on the last day of the then current Interest Period applicable to such Loan if such Bank may lawfully continue to maintain and fund such Loan to such day or (b) immediately if such Bank shall determine that it may not lawfully continue to maintain and fund such Loan to such day.

*Section 9.3. Increased Cost and Reduced Return.* (a) If on or after the Effective Date, 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 Bank (or its Applicable Lending Office) with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall impose, modify or deem applicable any reserve (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System, but excluding with respect to any Euro-Dollar Loan or Euro-Canadian Dollar Loan any such requirement with respect to which such Bank is entitled to compensation during the relevant Interest Period under Section 2.15), special deposit, insurance assessment or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Bank (or its Applicable Lending Office) or shall impose on any Bank (or its Applicable Lending Office) or the London interbank market any other condition affecting its Loans, its Note or its obligation to make Loans and the result of any of the foregoing is to increase the cost

Agreement or under its Note with respect thereto, by an amount deemed by such Bank to be material, then, within 15 days after demand by such Bank (with a copy to the Administrative Agent), the Borrowers shall pay to such Bank such additional amount or amounts as will compensate such Bank for such increased cost or reduction.

(b) If any Bank shall have determined that after the Effective Date, the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change in any such 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 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 capital of such Bank (or its Parent) as a consequence of such Bank's obligations hereunder to a level below that which such Bank (or its Parent) could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy) by an amount deemed by such Bank to be material, then from time to time, within 15 days after demand by such Bank (with a copy to the Administrative Agent), the Borrower shall pay to such Bank such additional amount or amounts as will compensate such Bank (or its Parent) for such reduction.

(c) Each Bank will promptly notify the Borrowers and the Administrative Agent of any event of which it has knowledge, occurring after the Effective Date, which will entitle such Bank to compensation pursuant to this Section 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 Bank, be otherwise disadvantageous to such Bank. A certificate of any Bank claiming compensation under this Section and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, such Bank may use any reasonable averaging and attribution methods.

*Section 9.4. Taxes.* (a) For the purposes of this Section 9.4, the following terms have the following meanings:

"*Taxes*" means any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings with respect to any payment by a Borrower or the applicable Guarantor, as the case may be, pursuant to this Agreement or under any Note, and all liabilities with respect thereto, *excluding* (i) in the case of each Bank and the Administrative Agent, taxes imposed on its income, and franchise or similar taxes imposed on it, by a jurisdiction under the laws of which such Bank or the Administrative Agent (as the case may be) is organized or in which its principal executive office is located or, in the case of each Bank, in which its Applicable Lending Office is located and (ii) in the case of each Bank, any United States withholding tax imposed on such payments but only to the extent that such Bank is subject to United States withholding tax at the time such Bank first becomes a party to this Agreement.

"*Other Taxes*" means any present or future stamp or documentary taxes and any other excise or property taxes, or similar charges or levies, which arise from any payment

made pursuant to this Agreement or under any Note or from the execution or delivery of, or otherwise with respect to, this Agreement or any Note.

(b) Any and all payments by a Borrower or the applicable Guarantor, as the case may be, to or for the account of any Bank or the Administrative Agent hereunder or under any Note shall be made without deduction for any Taxes or Other Taxes; *provided*, that, if a Borrower or the applicable Guarantor, as the case may be, shall be required by law to deduct any Taxes or Other Taxes from any such payments (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) such Bank or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower or the applicable Guarantor, as the case may be, shall make such deductions, (iii) such Borrower or the applicable Guarantor, as the case may be, shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law and (iv) such Borrower or the applicable Guarantor, as the case may be, shall furnish to the Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof

(c) The Borrowers agree to indemnify each Bank and the Administrative Agent for the full amount of Taxes or other Taxes (including, without limitation, any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section) paid by such Bank or the Administrative Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be paid within 15 days after such Bank or the Administrative Agent (as the case may be) makes demand therefor.

(d) Each Bank organized under the laws of a jurisdiction outside the United States, on or prior to the date of its execution and delivery of this Agreement in the case of each Bank listed on the signature pages hereof and on or prior to the date on which it becomes a Bank in the case of each other Bank, and from time to time thereafter if requested in writing by a Borrower (but only so long as such Bank remains lawfully able to do so), shall provide such Borrower and the Administrative Agent with 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 Bank is entitled to benefits under an income tax treaty to which the United States is a party which exempts the Bank from United States withholding tax or reduces the rate of withholding tax on payments of interest for the account of such Bank or certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States.

(e) For any period with respect to which a Bank has failed to provide a Borrower or the Administrative Agent with the appropriate form pursuant to Section 9.4(d) (unless such failure is due to a change in treaty, law or regulation occurring subsequent to the date on which such form originally was required to be provided), such Bank shall not be entitled to indemnification under Section 9.4(b) or (c) with respect to Taxes imposed by the United States; *provided* that if a Bank, which is otherwise exempt from or subject to a reduced rate of withholding tax, becomes subject

to Taxes because of its failure to deliver a form required hereunder, the Borrowers shall take such steps as such Bank shall reasonably request to assist such Bank to recover such Taxes.

(f) If a Borrower is required to pay additional amounts to or for the account of any Bank pursuant to this Section, then such Bank will change the jurisdiction of its Applicable Lending office if, in the judgment of such Bank, such change (i) will eliminate or reduce any such additional payment which may thereafter accrue and (ii) is not otherwise disadvantageous to such Bank.

*Section 9.5. Base Rate Loans Substituted for Affected Fixed Rate Loans.* If (i) the obligation of any Bank to make, or convert outstanding Loans to, Euro-Dollar Loans or Euro-Canadian Dollar Loans has been suspended pursuant to Section 9.2 or (ii) any Bank has demanded compensation under Section 9.3 or 9.4 with respect to its Euro-Dollar Loans or Euro-Canadian Dollar Loans and a Borrower shall, by at least five Business Days' prior notice to such Bank through the Administrative Agent, have elected that the provisions of this Section shall apply to such Bank, then, unless and until such Bank notifies such Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist:

(a) all Loans which would otherwise be made by such Bank as (or continued as or converted into) Euro-Dollar Loans or Euro-Canadian Dollar Loans shall instead be Base Rate Loans or Canadian Base Rate Loans, as relevant (on which interest and principal shall be payable contemporaneously with the related Euro-Dollar Loans or Euro-Canadian Dollar Loans of the other Banks); and

(b) after each of its Euro-Dollar Loans or Euro-Canadian Dollar Loans has been repaid (or converted to a Base Rate Loan or Canadian Base Rate Loan, as relevant), all payments of principal which would otherwise be applied to repay such Euro-Dollar Loans or Euro-Canadian Dollar Loans shall be applied to repay its Base Rate Loans or Canadian Base Rate Loans, as relevant, instead.

If such Bank notifies a Borrower that the circumstances giving rise to such notice no longer apply, the principal amount of each such Base Rate Loan or Canadian Base Rate Loan shall be converted into a Euro-Dollar Loan or Euro-Canadian Dollar Loan, as the case may be, on the first day of the next succeeding Interest Period applicable to the related Euro-Dollar Loans or Euro-Canadian Dollar Loans, as the case may be, of the other Banks.

## ARTICLE 10

### PERFORMANCE AND PAYMENT GUARANTY

*Section 10.1. Unconditional and Irrevocable Guaranty.* (a) The Guarantors hereby jointly and severally, unconditionally and irrevocably undertake and agree with and for the benefit of the Administrative Agent and the Banks and each of their respective permitted assignees (collectively, the "Beneficiaries") to cause the due payment, performance and observance by the Borrowers and their assigns of all of the Obligations, terms, covenants, conditions, agreements and undertakings on the part of the Borrowers, to be paid, performed or

57

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observed under any Credit Document in accordance with the terms thereof including, without limitation, any agreement of a Borrower to pay any amounts due with respect to the Loans, under this Agreement or any other amounts due and owing under any Credit Document (all such Obligations, terms, covenants, conditions, agreements and undertakings on the part of the Borrowers to be paid, performed or observed by the Borrowers being collectively called the "Guaranteed Obligations" provided that with respect to any Foreign Subsidiary, "Guaranteed Obligations" shall not be deemed to include any Obligations of the US Borrower). In the event that the Borrowers shall fail in any manner whatsoever to pay, perform or observe any of the Guaranteed Obligations when the same shall be required to be paid, performed or observed under such Credit Document (after giving effect to any cure period), then each of the Guarantors (provided that it is expressly understood that no Foreign Subsidiary shall be deemed to be a Guarantor in respect of the Obligations of the US Borrower) will itself jointly and severally duly pay, perform or observe, or cause to be duly paid, performed or observed, such Guaranteed Obligation, and it shall not be a condition to the accrual of the obligation of any Guarantor hereunder to pay, perform or observe any Guaranteed Obligation (or to cause the same to be paid, performed or observed) that the Administrative Agent, the Banks or any of their permitted assignees shall have first made any request of or demand upon or given any notice to any Guarantor or to the Borrower or its successors or assigns, or have instituted any action or proceeding against any Guarantor or the Borrower or its successors or assigns in respect thereof. Notwithstanding anything to the contrary contained in this Section 10.1 the obligations of the respective Guarantors hereunder in respect of the Borrowers are expressly limited to the Guaranteed Obligations.

(b) *Irrevocability.* The Guarantors each agree that its obligations under this Agreement shall be joint and several and irrevocable. In the event that under applicable law (notwithstanding the Guarantors' agreement regarding the joint and several and irrevocable nature of its obligations hereunder) any Guarantor shall have the right to revoke its guaranty under this Agreement, this Agreement shall continue in full force and effect as to such Guarantor until a written revocation hereof specifically referring hereto, signed by such Guarantor, is actually received by the Administrative Agent, delivered as provided in Section 11.1 hereof. Any such revocation shall not affect the right of the Administrative Agent or any other Beneficiary to enforce their respective rights under this Agreement with respect to (i) any Guaranteed Obligation (including any Guaranteed Obligation that is contingent or unmatured) which arose on or prior to the date the aforementioned revocation was received by the Administrative Agent, (ii) any Assigned Collateral in which a security interest was acquired by the Administrative Agent or its permitted assignees on or prior to the date the aforementioned revocation was received by the Administrative Agent or (iii) any other Guarantor. If the Administrative Agent, or its permitted assignees takes any action in reliance on this Agreement after any such revocation by a Guarantor but prior to the receipt by the Administrative Agent of said written notice, the rights of the Administrative Agent, any other Beneficiary or such permitted assignee with respect thereto shall be the same as if such revocation had not occurred.

*Section 10.2. Enforcement.* The Administrative Agent and its permitted assignees may proceed to enforce the obligations of the Guarantors under this Agreement without first pursuing or exhausting any right or remedy which the Administrative Agent or its permitted assignees may have against the respective Borrower, any other Person or the Assigned Collateral.

58

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*Section 10.3. Obligations Absolute.* To the extent permitted by law, the applicable Guarantor will perform its obligations under this Agreement regardless of any law now or hereafter in effect in any jurisdiction affecting any of the terms of this Agreement or any document delivered in connection with this Agreement or the rights of the Administrative Agent or its permitted assignees with respect thereto. The obligations of each Guarantor under this Agreement shall be absolute and unconditional irrespective of:

- (a) any lack of validity or enforceability or the discharge or disaffirmance (by any Person, including a trustee in bankruptcy) of the Guaranteed Obligations, the Loans, any Credit Document or any Assigned Collateral or any document, or any other agreement or instrument relating thereto;
- (b) any exchange, release or non-perfection of any Assigned Collateral or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;
- (c) any failure to obtain any authorization or approval from or other action by, or to notify or file with, any governmental authority or regulatory body required in connection with the performance of such obligations by the Borrowers or any Guarantor; or
- (d) any impossibility or impracticality of performance, illegality, force majeure, any act of any government or any other circumstance which might constitute a legal or equitable defense available to, or a discharge of, a Borrower or any Guarantor, or any other circumstance, event or happening whatsoever, whether foreseen or unforeseen and whether similar or dissimilar to anything referred to above in this Section 10.3.

Each Guarantor further agrees that its obligations under this Agreement shall not be limited by any valuation or estimation made in connection with any proceedings involving a Borrower or any Guarantor filed under the Bankruptcy Code of 1978, as amended (the "*Bankruptcy Code*"), whether pursuant to Section 502 of the Bankruptcy Code or any other Section thereof. Each Guarantor further agrees that the Administrative Agent shall be under no obligation to marshal any assets in favor of or against or in payment of any or all of the Guaranteed Obligations. Each Guarantor further agrees that, to the extent that a payment or payments are made by or on behalf of a Borrower to the Administrative Agent, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to such Borrower, the estate, trustee, receiver or any other party relating to such Borrower, including, without limitation, any Guarantor, under any bankruptcy law, state or federal law, common law or equitable cause then, to the extent of such payment or repayment, the Guaranteed Obligations or part thereof which had been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the date such initial payment, reduction or satisfaction occurred. The obligations of any Guarantor under this Agreement shall not be discharged except by performance as provided herein.

*Section 10.4. Waiver.* Each Guarantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and any

59

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Credit Document and any requirement that the Administrative Agent or its permitted assignees exhaust any right or take any action against a Borrower, any other Person or any Assigned Collateral.

*Section 10.5. Subrogation.* No Guarantor will exercise or assert any rights which it may acquire by way of subrogation under this Agreement unless and until all of the Guaranteed Obligations shall have been paid and performed in full. If any payment shall be made to any Guarantor on account of any subrogation rights at any time when all of the Guaranteed Obligations shall not have been paid and performed in full each and every amount so paid will be held in trust for the benefit of the Beneficiaries and forthwith be paid to the appropriate Beneficiary in accordance with this Agreement and the appropriate Credit Document, to be credited and applied to the Guaranteed Obligations to the extent then unsatisfied, in accordance with the terms of this Agreement or any document delivered in connection with this Agreement, as the case may be. In the event (i) the Guarantors shall have satisfied any of the Guaranteed Obligations and (ii) all of the Guaranteed Obligations shall have been paid and performed in full, the Administrative Agent will, at the Guarantors' request and expense, execute and deliver to the Guarantors appropriate documents, without recourse and without representation or warranty of any kind, necessary to evidence or confirm the transfer by way of subrogation to the Guarantors of the rights of the Beneficiaries or any permitted assignee, as the case may be, with respect to the Guaranteed Obligations to which the Guarantors shall have become entitled by way of subrogation, and thereafter the Beneficiaries and their respective permitted assignees shall have no responsibility to the Guarantors or any other person with respect thereof.

*Section 10.6. Survival.* All covenants made by the Guarantors herein shall be considered to have been relied upon by the Administrative Agent and the Banks and shall survive regardless of any investigation made by the Administrative Agent or any Bank or on the Administrative Agent's behalf.

*Section 10.7. Guarantors' Consent to Assigns.* Each Bank may assign or participate out all or any portion of its Commitment or the Loans in accordance with Section 11.6 of this Agreement, and each Guarantor agrees to recognize any such Assignee or participant as a successor and assignee of such Bank hereunder, with all rights of such Bank hereunder.

*Section 10.8. Continuing Agreement.* Article 10 under this Agreement is a continuing agreement and shall remain in full force and effect until all of the Borrowers' Obligations have been satisfied in full.

## ARTICLE 11

### MISCELLANEOUS

*Section 11.1. Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including bank wire, facsimile transmission or similar writing) and shall be given to such party: (a) in the case of a Credit Party or the Administrative Agent, at its address or facsimile number set forth on the signature pages hereof, (b) in the case of any Bank, at its address or facsimile number set forth on the signature pages hereof or (c) in the case of any

60

party, such other address or facsimile number as such party may hereafter specify for the purpose by notice to the Administrative Agent and the Borrowers. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified in this Section and confirmation of receipt is received, (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified in this Section; *provided* that notices to the Administrative Agent under Article 2 or Article 9 shall not be effective until received.

*Section 11.2. No Waivers.* No failure or delay by the Administrative Agent or any Bank in exercising any right, power or privilege hereunder or under any Note shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

*Section 11.3. Expenses; Indemnification.* (a) The Borrowers shall pay (i) all out-of-pocket expenses of the Administrative Agent, including fees and disbursements of counsel for the Administrative Agent, in connection with the preparation and administration of this Agreement and the other Credit Documents, any waiver or consent hereunder or any amendment hereof or any Default or alleged Default hereunder and (ii) if an Event of Default occurs, all out-of-pocket expenses incurred by the Administrative Agent and each Bank, including (without duplication) the fees and disbursements of outside counsel and the allocated cost of inside counsel, in connection with such Event of Default and collection, bankruptcy, insolvency and other enforcement proceedings resulting therefrom.

(b) The Borrowers agree to indemnify the Administrative Agent and each Bank, their respective affiliates and the respective directors, officers, agents and employees of the foregoing (each an “*Indemnitee*”) and hold each Indemnitee harmless from and against any and all liabilities, losses, damages, costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by such Indemnitee in connection with any investigative, administrative or judicial proceeding (whether or not such Indemnitee shall be designated a party thereto) brought or threatened relating to or arising out of this Agreement or any actual or proposed use of proceeds of Loans hereunder; *provided*, that no Indemnitee shall have the right to be indemnified hereunder for such Indemnitee’s own gross negligence or willful misconduct as determined by a court of competent jurisdiction.

*Section 11.4. Sharing of Set-Offs.* Each Bank agrees that if it shall, by exercising any right of set-off or counterclaim or otherwise, receive payment of a proportion of the aggregate amount of principal and interest due with respect to any Note held by it which is greater than the proportion received by any other Bank in respect of the aggregate amount of principal and interest due with respect to any Note held by such other Bank, the Bank receiving such proportionately greater payment shall purchase such participations in the Notes held by the other Banks, and such other adjustments shall be made, as may be required so that all such payments of principal and interest with respect to the Notes held by the Banks shall be shared by the Banks in accordance with their Percentages; *provided*, that nothing in this Section shall impair the right of any Bank to exercise any right of set-off or counterclaim it may have and to apply the amount

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subject to such exercise to the payment of indebtedness of a Borrower other than its indebtedness hereunder. Each Borrower agrees, to the fullest extent it may effectively do so under applicable law, that any holder of a participation in a Note, whether or not acquired pursuant to the foregoing arrangements, may exercise rights of set-off or counterclaim and other rights with respect to such participation as fully as if such holder of a participation were a direct creditor of such Borrower in the amount of such participation.

*Section 11.5. Amendment or Waiver, etc.* Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the respective Credit Parties party thereto and the Required Banks, *provided* that no such change, waiver, discharge or termination shall, without the consent of each Bank (with Obligations being directly affected in the case of following clauses (i) and (ii)), (i) extend the final scheduled maturity of any Loan or Note, or reduce the rate of interest or fees or extend the time of payment of interest or fees, or reduce the principal amount thereof (except to the extent repaid in cash) (*provided* that any amendment or modification to the financial definitions in this Agreement or to Section 2.14 shall not constitute a reduction in the rate of interest or any fees for purposes of this clause (i)), (ii) release all or substantially all of the Collateral, (iii) release a Guarantor from its Guaranty of the Obligations of the Borrowers (except in connection with the sale of a Subsidiary which is a Guarantor in accordance with the terms of this Agreement), (iv) amend, modify or waive any provision of this Section 11.5, (v) reduce the percentage specified in the definition of Required Banks (it being understood that, with the consent of the Required Banks, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Banks on substantially the same basis as the extensions of Commitments are included on the Effective Date) or (vi) consent to the assignment or transfer by a Borrower of any of its rights and obligations under this Agreement; *provided, further*, that no such change, waiver, discharge or termination shall (x) increase the Commitments of any Bank over the amount thereof then in effect without the consent of such Bank (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or of a mandatory reduction in the Total Commitments shall not constitute an increase of the Commitment of any Bank, and that an increase in the available portion of any Commitment of any Bank shall not constitute an increase of the Commitment of such Bank), (y) without the consent of the Administrative Agent, amend, modify or waive any provision of Article 8 or any other provision as the same relates to the rights or obligations of the Administrative Agent, or (z) without the consent of the Collateral Agent, amend, modify or waive any provision relating to the rights or obligations of the Collateral Agent.

*Section 11.6. Successors and Assigns.* (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that neither the Borrowers nor any Guarantor may assign or otherwise transfer any of their respective rights under this Agreement without the prior written consent of all Banks.

(b) Any Bank may at any time grant to one or more banks or other institutions (each a “*Participant*”) participating interests in its Commitment or any or all of its Loans. In the event of any such grant by a Bank of a participating interest to a Participant, whether or not upon



notice to the respective Borrower and the Administrative Agent, such Bank shall remain responsible for the performance of its obligations hereunder, and the Borrowers and the Administrative Agent shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement. Any agreement pursuant to which any Bank may grant such a participating interest shall provide that such Bank shall retain the sole right and responsibility to enforce the obligations of the Borrowers hereunder, including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement except to the extent such amendment or waiver would (i) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or of a mandatory reduction in the Total Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by the respective Borrower of any of its rights and obligations under this Agreement or (iii) release all or substantially all of the Collateral under the Security Documents (except as expressly provided in the Credit Documents). In the case of any such participation, the participant shall not have any rights under this Agreement or any of the other Credit Documents (the participant's rights against such Bank in respect of such participation to be those set forth in the agreement executed by such Bank in favor of the participant relating thereto) and all amounts payable by the Borrowers hereunder shall be determined as if such Bank had not sold such participation. The Borrowers agree that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of Article 9 with respect to its participating interest. An assignment or other transfer which is not permitted by subsection (c) or (d) below shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this subsection (b).

(c) Any Bank (or any Bank together with one or more other Banks) may (A) assign all or a portion of its Commitments and related outstanding Obligations hereunder to (i) its parent company and/or any affiliate of such Bank which is at least 50% owned by such Bank or its parent company, (ii) to one or more Banks or (iii) in the case of a Bank that is a fund that invests in bank loans, any other fund that invests in bank loans and is managed or advised by the same investment advisor of such Bank or by an Affiliate of such investment advisor or (B) assign all, or, if less than all, a portion equal to at least \$5,000,000 in the aggregate for the assigning Bank or assigning Banks, of such Commitments and related outstanding Obligations hereunder to one or more Eligible Transferees, each of which assignees shall become a party to this Agreement as a Bank by execution of an Assignment and Assumption Agreement, *provided that*, (i) at such time Schedule I shall be deemed modified to reflect the Commitments of such new Bank and of the existing Banks, (ii) upon the surrender of the relevant Notes by the assigning Bank (or, upon such assigning Bank's indemnifying the Borrower for any lost Note pursuant to a customary indemnification agreement) new Notes will be issued, at the respective Borrower's expense, to such new Bank and to the assigning Bank upon the request of such new Bank or assigning Bank, such new Notes to be in conformity with the requirements of Section 2.4 (with appropriate modifications) to the extent needed to reflect the revised Commitments, (iii) the consent of the

63

Administrative Agent shall be required in connection with any assignment to an Eligible Transferee pursuant to clause (B) above (which consent shall not be unreasonably withheld or delayed), (iv) so long as no Default or Event of Default exists, the consent of the Borrowers shall be required in connection with any assignment to an Eligible Transferee pursuant to clause (B) above (which consent shall not be unreasonably withheld or delayed), (v) the Administrative Agent shall receive at the time of each such assignment, from the assigning or assignee Bank, the payment of a non-refundable assignment fee of \$3,500, which fee shall not be subject to reimbursement from the respective Borrower and (vi) no such transfer or assignment will be effective until recorded by the Administrative Agent. To the extent of any assignment pursuant to this Section 11.6(c), the assigning Bank shall be relieved of its obligations hereunder with respect to its assigned Commitments. At the time of each assignment pursuant to this Section 11.6(c) to a Person which is not already a Bank hereunder and which is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for Federal income tax purposes, the respective assignee Bank shall, to the extent legally entitled to do so, provide to the respective Borrower the appropriate Internal Revenue Service forms described in Section 9.4(b).

(d) Any Bank may at any time assign all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank. No such assignment shall release the transferor Bank from its obligations hereunder.

(e) Notwithstanding anything to the contrary contained herein, any Bank (a "Granting Bank") may grant to a special purpose funding vehicle (a "SPC"), identified as such in writing from time to time by the Granting Bank to the Administrative Agent and the Borrowers, the option to provide to the Borrowers all or any part of any Loan that such Granting Bank would otherwise be obligated to make to the Borrowers pursuant to this Agreement; *provided that* (i) nothing herein shall constitute a commitment by any SPC to make any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Bank shall be obligated to make such Loan pursuant to the terms hereof, and (iii) in the case of any Loan made to the Canadian Borrower, the SPC is a resident of Canada. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Bank to the same extent, and as if, such Loan were made by such Granting Bank. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Bank). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof relating to claims, if any, under this Agreement. In addition, notwithstanding anything to the contrary contained in this subsection (e), any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Bank or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of

64

any surety, guarantee or credit or liquidity enhancement to such SPC. This section may not be amended without the written consent of the SPC.

(f) No Assignee, Participant or other transferee of any Bank's rights shall be entitled to receive any greater payment under Section 9.3 or 9.4 than such Bank would have been entitled to receive with respect to the rights transferred, unless such transfer is made (i) with the respective Borrower's prior written consent or (ii) by reason of the provisions of Section 9.2, 9.3 or 9.4 requiring such Bank to designate a different Applicable Lending Office under certain circumstances or (iii) at a time when the circumstances giving rise to such greater payment did not exist.

Section 11.7. *Collateral.* Each of the Banks represents to the Administrative Agent and each of the other Banks that it in good faith is not relying upon any "margin stock" (as defined in Regulation U) as collateral in the extension or maintenance of the credit provided for in this Agreement.

Section 11.8. *Governing Law; Submission to Jurisdiction; Judgment Currency.* (a) THIS AGREEMENT AND EACH NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. The Borrowers hereby submit to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in New York City for purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. The Borrowers irrevocably waive, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

(b) (i) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due to a Bank in any currency (the "Original Currency") into another currency (the "Other Currency"), the parties agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, such Bank could purchase the Original Currency with the Other Currency on the Business Day preceding the day on which final judgment is given or, if permitted by applicable law, on the day on which the judgment is paid or satisfied.

(ii) The obligations of the Borrowers in respect of any sum due in the Original Currency from it to the Banks under any of the Credit documents shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Banks of any sum adjudged to be so due in the Other Currency, the Banks may, in accordance with normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Banks in the Original Currency, the Borrowers agree, as a separate obligation and notwithstanding the judgment, to indemnify the Banks against any loss, and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Banks in the Original Currency, the Banks shall remit such excess to the respective Borrower.

65

Section 11.9. *Counterparts; Integration; Effectiveness.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective upon receipt by the Administrative Agent of counterparts hereof signed by each of the parties hereto (or, in the case of any party as to which an executed counterpart shall not have been received, receipt by the Administrative Agent in form satisfactory to it of telegraphic, facsimile or other written confirmation from such party of execution of a counterpart hereof by such party) and each of the other conditions specified in Section 3.1 have been satisfied.

Section 11.10. *Waiver of Jury Trial.* EACH OF THE BORROWERS, THE AGENT AND THE BANKS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[SIGNATURE PAGES TO FOLLOW]

66

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

ALLIANCE DATA SYSTEMS CORPORATION, as a Borrower and  
Guarantor

By /s/ Robert P. Armiak  
Name Robert P. Armiak  
Title Sr. Vice President, Treasurer  
Address: 800 Tech Center Drive  
Gahanna, OH 43230  
Attention: Treasurer  
Telephone: (614) 729-4900  
Facsimile: (614) 729-4949

With a copy to:

Address: 17655 Waterview Parkway  
Dallas, TX 75252  
Attention: General Counsel  
Telephone: (972) 348-5135  
Facsimile: (972) 348-5330

LOYALTY MANAGEMENT GROUP CANADA INC., as a  
Borrower

By /s/ Robert P. Armiak

Name	Robert P. Armiak
Title	Sr. Vice President, Treasurer
Address:	800 Tech Center Drive Gahanna, OH 43230
Attention:	Treasurer
Telephone:	(614) 729-4900
Facsimile:	(614) 729-4949

With a copy to:

Address:	17655 Waterview Parkway Dallas, TX 75252
Attention:	General Counsel
Telephone:	(972) 348-5135
Facsimile:	(972) 348-5330

S-1

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ADS ALLIANCE DATA SYSTEMS, INC., as a Guarantor

By /s/ Robert P. Armiak

Name	Robert P. Armiak
Title	Sr. Vice President, Treasurer
Address:	800 Tech Center Drive Gahanna, OH 43230
Attention:	Treasurer
Telephone:	(614) 729-4900
Facsimile:	(614) 729-4949

With a copy to:

Address:	17655 Waterview Parkway Dallas, TX 75252
Attention:	General Counsel
Telephone:	(972) 348-5135
Facsimile:	(972) 348-5330

ADS COMMERCIAL SERVICES, INC., as a Guarantor

By /s/ Robert P. Armiak

Name	Robert P. Armiak
Title	Sr. Vice President, Treasurer
Address:	800 Tech Center Drive Gahanna, OH 43230
Attention:	Treasurer
Telephone:	(614) 729-4900
Facsimile:	(614) 729-4949

With a copy to:

Address:	17655 Waterview Parkway Dallas, TX 75252
Attention:	General Counsel
Telephone:	(972) 348-5135
Facsimile:	(972) 348-5330

S-2

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ADS MB CORPORATION, as Guarantor

By /s/ Robert P. Armiak

Name	Robert P. Armiak
Title	Sr. Vice President, Treasurer
Address:	800 Tech Center Drive Gahanna, OH 43230
Attention:	Treasurer
Telephone:	(614) 729-4900
Facsimile:	(614) 729-4949

With a copy to:

Address: 17655 Waterview Parkway  
Dallas, TX 75252  
Attention: General Counsel  
Telephone: (972) 348-5135  
Facsimile: (972) 348-5330

LMG TRAVEL SERVICES LIMITED, as a Guarantor

By /s/ Robert P. Armiak

Name	Robert P. Armiak
Title	Sr. Vice President, Treasurer
Address:	800 Tech Center Drive Gahanna, OH 43230
Attention:	Treasurer
Telephone:	(614) 729-4900
Facsimile:	(614) 729-4949

With a copy to:

Address: 17655 Waterview Parkway  
Dallas, TX 75252  
Attention: General Counsel  
Telephone: (972) 348-5135  
Facsimile: (972) 348-5330

S-3

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HARRIS TRUST AND SAVINGS BANK, as Administrative Agent

By /s/ Thad D. Raschle

Name	Thad D. Raschle
Title	Vice President
Address:	111 West Monroe Street Chicago, IL 60603
Attention:	Thad Rasche
Telephone:	(312) 461-5739
Facsimile:	(312) 461-5225

BANK OF MONTREAL

By /s/ Thad D. Raschle

Name	Thad D. Raschle
Title	Vice President
Address:	115 South LaSalle Street Chicago, IL 60603
Attention:	
Telephone:	( )
Facsimile:	( )

Domestic Lending Office:  
115 South LaSalle Street  
Chicago, IL 60603

Euro-Dollar Lending Office:  
115 South LaSalle Street  
Chicago, IL 60603

Canadian Lending Office:  
1 First Canadian Place, Concourse Level  
P.O. Box 3, Transit #0002  
Toronto, Ontario M5X 1A3

Euro-Canadian Dollar Lending Office:  
1 First Canadian Place, Concourse Level  
P.O. Box 3, Transit #0002  
Toronto, Ontario M5X 1A3

S-4

BANK ONE, NA

By /s/ Mark Wasden  
Name Mark Wasden  
Title Director  
Address: 1 Bank One Plaza  
Chicago, IL 60670  
Attention: Mark Wasden  
Telephone: (312) 336-2989  
Facsimile: (312) 732-6222

Domestic Lending Office

1 Bank One Plaza  
Chicago, IL 60670

Euro-Dollar Lending Office

1 Bank One Plaza  
Chicago, IL 60670

Canadian Lending Office

161 Bay Street, Suite 4240  
Toronto, Ontario M5J 2S1

Euro-Canadian Dollar Lending Office

161 Bay Street, Suite 4240  
Toronto, Ontario M5J 2S1

S-5

CANADIAN IMPERIAL BANK OF COMMERCE

By /s/ Katherine Bass  
Name Katherine Bass  
Title Executive Director  
Address: 425 Lexington Avenue  
New York, NY 10017  
Attention: Katherine Bass  
Telephone: (212) 856-3916  
Facsimile: (212) 856-3761

By /s/ Marc St.-Onge  
Name Marc St.-Onge  
Title Director  
Address: BCE Place 8<sup>th</sup> Floor  
161 Bay Street  
Toronto, Ontario M5J 2S8425  
Attention: Marc St.-Onge  
Telephone: (416) 594-8173  
Facsimile: (416) 956-6680

Domestic Lending Office

2727 Paces Ferry Road, Suite 1200  
2 Paces West, Building 2  
Atlanta, GA 30339

Euro-Dollar Lending Office

2727 Paces Ferry Road, Suite 1200 2 Paces West,  
Building 2 Atlanta, GA 30339

Canadian Lending Office

BCE Place 8<sup>th</sup> Floor

161 Bay Street  
Toronto, Ontario M5J 258

Euro Canadian Dollar Lending Office

BCE Place 8<sup>th</sup> Floor  
161 Bay Street  
Toronto, Ontario M5J 258

S-6

CREDIT SUISSE FIRST BOSTON (TORONTO BRANCH)

By /s/ Peter Chauvin  
Name Peter Chauvin  
Title Vice President

By /s/ Alain Daoust  
Name Alain Daoust  
Title Director  
Address: One First Canadian Place,  
Suite 3000  
Toronto, Ontario M5X 1C9  
Attention: Peter Chauvin  
Telephone: (416) 352 4529  
Facsimile: (416) 352 4576

Domestic Lending Office

Eleven Madison Avenue  
New York, New York 10010-3629

Euro-Dollar Lending Office

Eleven Madison Avenue  
New York, New York 10010-3629

Canadian Lending Office

One First Canadian Place, Suite 3000  
Toronto, Ontario M5X1C9

Euro-Canadian Dollar Lending Office

One First Canadian Place, Suite 3000  
Toronto, Ontario M5X1C9

S-7

**SCHEDULE I**

**COMMITMENTS**

<b>Bank</b>	<b>Amount</b>
Bank of Montreal	U.S. \$15,000,000
Bank One, NA	U.S. \$ 5,000,000
Canadian Imperial Bank of Commerce	U.S. \$15,000,000
Credit Suisse First Boston (Toronto Branch)	U.S. \$15,000,000
<b>TOTAL</b>	<b>U.S. \$50,000,000</b>

**SCHEDULE II**

# ALLIANCE DATA SYSTEMS CORPORATION

## INVESTMENT POLICY

### STATEMENT OF PURPOSE

The purpose of this policy is to institute proper guidelines for the ongoing management of the cash investments of Alliance Data Systems Corp. and its subsidiaries.

### INVESTMENT OBJECTIVES

The assets are to be invested in a manner, which preserves capital, provides adequate liquidity, maintains appropriate diversification and generates returns relative to these guidelines and prevailing market conditions. The intent is that all of the investments shall be held to maturity.

### RESPONSIBILITIES

A. It is the responsibility of the Board of Directors of the Company to adopt the Investment Policy.

B. It is the responsibility of the Treasurer or the Chief Financial Officer to implement the Investment Policy of the Company including the direction of purchases and sales of securities.

C. The approval of either the Treasurer or the Chief Financial Officer shall be required to transfer Company funds to Company banks or investment accounts.

D. The Treasurer and Chief Financial Officer may employ the services of a Bank or a Registered Investment Advisor to direct a portion or all of the investment activities of the Company consistent with the guidelines set forth in the Investment Policy. The firms selected must maintain a net worth of at least \$1 billion.

E. The Treasurer and Chief Financial Officer will monitor ongoing investment activities to insure that proper liquidity is being maintained and that the investment strategy is consistent with the Company objectives.

F. The Treasurer or the Chief Financial Officer will report to the Board of Directors quarterly concerning the investment performance during the most recent quarter.

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## ALLIANCE DATA SYSTEMS CORPORATION AND SUBSIDIARIES

### INVESTMENT GUIDELINES

#### A. *Appropriate Investments*

1. Direct obligations of the U.S. or Canadian Treasury including Treasury Bills, Notes and Bonds. Canadian Government Debt must be rated A or better.

2. Federal Agency Securities which carry the direct or implied guarantee of the U.S. Government including Government National Mortgage Association, Federal Home Loan Bank, Federal Farm Credit Bank, Federal National Mortgage Association, Student Loan Marketing Association, and World Bank. Investments can include Notes, Discount Notes, Medium Term Notes and Floating Rate Notes.

3. Certificates of Deposit, Guaranteed Investment Contracts, Banker's Acceptance and Time Deposits including Eurodollar denominated and Yankee issues. Investments will be limited to those institutions with total assets in excess of \$1 billion and which carry a short term rating of "A2" or "P2" or "F2" or better, or a Keefe Bruyette and Woods rating of at least "A" or better.

4. Corporate Securities (including commercial paper or loan participations) and corporate debt instruments (including medium term notes and floating rate notes) issued by Canadian or U.S. corporations and carry a minimum long term rating of "A" or short term rating of "A2" or "P2" or "F2" or "R1 (L)" or better.

5. Tax Exempt Securities including municipal notes, commercial paper, auction rate floaters, and floating rate notes rated A2 or P2 or F2 or better; Municipal Notes rated SP-2/MIG-2/VMIG-2 or better, or a long term rating of "A" or better.

6. Auction rate preferred stock or bonds issued with a rate reset mechanism and a maximum term of 180 days. Investment will be limited to those issuers who have a minimum long term rating of "A" or short term rating of "A2" or "P2" or "F2" or "R1 (L)" or better.

7. Money market mutual funds, which offer daily purchase and redemption and maintain a constant share price (no equities allowed).

8. Repurchase Agreements. The underlying collateral (of at least 102%) shall consist of US Government obligations and/or government agency securities. Investments in repurchase agreements may not exceed 3 days.

#### B. *Investment Concentration Limits*

1. Investments rated AAA (long term) or A1 (short term) or equivalent — no limit.

2. Investments rated AA or equivalent — not to exceed 70% of total portfolio.
3. Investments rated A (long term) or A2 (short term) or equivalent — not to exceed 30% of total portfolio.
4. Bank or Insurance Company obligations — not to exceed 50% of total portfolio.
5. Money Market Mutual Funds — no limit.
6. Repurchase Agreements — 30% of total portfolio.
7. No individual investment shall be in excess of \$10 million USD (or equivalent).

#### MATURITY LIMITS

1. No investments may exceed 5 years to maturity.
2. Commercial Paper/Loan Participations/Master Notes may not exceed 180 days.
3. A minimum of 30% of the portfolio must have a maturity of 1 year or less.

#### SAFEKEEPING

All securities firms with whom the Company does business must be qualified to safekeep securities on the Company's behalf at no charge. The CFO or Treasurer will authorize these firms to hold securities.

#### WAIVERS

In certain circumstances the appropriate investment criteria and portfolio concentration limits may be temporarily waived by the Chief Financial Officer for a period not to exceed four (4) weeks. Any waivers granted during a fiscal year will be reported to the ADS Board of Directors annually.

#### INVESTMENT POLICY REVIEW

*This policy will be reviewed annually by the CFO and Treasurer to ensure that it remains consistent with the financial objectives of the Company and current market conditions.*

### SCHEDULE III

#### CRA INVESTMENTS

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#### APPENDIX I

#### PRICING SCHEDULE

"Euro-Canadian Dollar Margin" means 1.50% per annum

"Euro-Dollar Margin" means 1.50% per annum.

"Base Rate Margin" means 0.50% per annum.

"Canadian Base Rate Margin" means 0.50% per annum.

"Applicable Commitment Fee Percentage" means 0.30% per annum.

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## FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Date: \_\_\_\_\_,

Reference is made to the 364-Day Credit Agreement described in Item 2 of Annex I attached hereto (as such 364-Day Credit Agreement may hereafter be amended, modified or supplemented from time to time, the "*Credit Agreement*"). Unless defined in Annex I attached hereto, terms defined in the Credit Agreement are used herein as therein defined. \_\_\_\_\_ (the "*Assignor*") and \_\_\_\_\_ (the "*Assignee*") hereby agree as follows:

1. The Assignor hereby sells and assigns to the Assignee without recourse and without representation or warranty (other than as expressly provided herein), and the Assignee hereby purchases and assumes from the Assignor, that interest in and to all of the Assignor's rights and obligations under the Credit Agreement as of the date hereof which represents the percentage interest specified in Item 4 of Annex I attached hereto (the "*Assigned Share*") of all of Assignor's outstanding rights and obligations under the Credit Agreement indicated in Item 4 of such Annex I, including, without limitation, in the case of any assignment of all or any portion of the Assignor's outstanding Commitment, all rights and obligations with respect to the Assigned Share of such Commitment and of the Loans related thereto.

2. The Assignor (i) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any liens or security interests; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or the other Credit Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement or the other Credit Documents or any other instrument or document furnished pursuant thereto; and (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of either Borrower or any of their Subsidiaries or the performance or observance by either Borrower or any of their Subsidiaries of any of their obligations under the Credit Agreement or the other Credit Documents or any other instrument or document furnished pursuant thereto.

3. The Assignee (i) represents and warrants that it is duly authorized to enter into and perform the terms of this Assignment and Assumption Agreement; (ii) confirms that it has received a copy of the Credit Agreement and the other Credit Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption Agreement; (iii) agrees that it will, independently and without reliance upon the Administrative Agent, the Assignor or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iv) appoints and authorizes the Administrative Agent

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and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Credit Documents as are delegated to the Administrative Agent and the Collateral Agent by the terms thereof, together with such powers as are reasonably incidental thereto[;] [and] (v) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Bank[; and (v) to the extent legally entitled to do so, attaches the forms described in Section 9.4(b) of the Credit Agreement.](1)

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(1) If the Assignee is organized under the laws of a jurisdiction outside the United States.

4. Following the execution of this Assignment and Assumption Agreement by the Assignor and the Assignee, an executed original hereof (together with all attachments) will be delivered to the Administrative Agent. The effective date of this Assignment and Assumption Agreement shall be the date of execution hereof by the Assignor, the Assignee and the consent hereof by the Administrative Agent (and if required by the terms of the Credit Agreement, the consent of the Borrowers, which consents will not be unreasonably withheld), the recordation by the Administrative Agent of the assignment effected hereby in the Register and the receipt by the Administrative Agent of the applicable assignment fee referred to in Section 11.6(c) of the Credit Agreement, unless otherwise specified in Item 5 of Annex I attached hereto (the "*Settlement Date*").

5. Upon the delivery of a fully executed original hereof to the Administrative Agent, as of the Settlement Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment or Assumption Agreement, have the rights and obligations of a Bank thereunder and under the other Credit Documents and (ii) the Assignor shall, to the extent provided in this Assignment or Assumption Agreement, relinquish its rights and be released from its obligations under the Credit Agreement and the other Credit Documents.

6. It is agreed that upon the effectiveness hereof, the Assignee shall be entitled to (x) all interest on the Assigned Share of the Loans at the rates specified in Item 6 of Annex I attached hereto, and (y) all commitment fees (if applicable) on the Assigned Share of the Commitment, at the rates specified in Item 7 of Annex I attached hereto, which, in each case, accrue on and after the Settlement Date, such interest and, if applicable, commitment fees to be paid by the Administrative Agent directly to the Assignee. It is further agreed that all payments of principal made by either Borrower on the Assigned Share of the Loans which occur on and after the Settlement Date will be paid directly by the Administrative Agent to the Assignee. Upon the Settlement Date, the Assignee shall pay to the Assignor an amount specified by the Assignor in writing which represents the Assigned Share of the principal amount of the Loans made by the Assignor pursuant to the Credit Agreement which are outstanding on the Settlement Date, net of any closing costs, and which are being assigned hereunder. The Assignor and the

Assignee shall make all appropriate adjustments in payments under the Credit Agreement for periods prior to the Settlement Date directly between themselves.

7. THIS ASSIGNMENT AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

\* \* \*

A-3

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

[NAME OF ASSIGNOR], as Assignor

By \_\_\_\_\_  
Title \_\_\_\_\_

[NAME OF ASSIGNEE], as Assignee

By \_\_\_\_\_  
Title \_\_\_\_\_

Acknowledged and Agreed:

HARRIS TRUST AND SAVINGS BANK  
as Administrative Agent

By \_\_\_\_\_  
Title \_\_\_\_\_

Acknowledged and Agreed:

ALLIANCE DATA SYSTEMS CORPORATION

By \_\_\_\_\_  
Title \_\_\_\_\_

LOYALTY MANAGEMENT GROUP CANADA INC.

By \_\_\_\_\_  
Title \_\_\_\_\_

A-4

**ANNEX I**

**ANNEX FOR ASSIGNMENT AGREEMENT**

- |    |                                    |   |
|----|------------------------------------|---|
| 1. | The Borrowers:                     | ALLIANCE DATA SYSTEMS CORPORATION, the U.S. Borrower, and LOYALTY MANAGEMENT GROUP CANADA INC., the Canadian Borrower   |
| 2. | Name and Date of Credit Agreement: | 364-Day Credit Agreement, dated as of May 22, 2002, among the Borrowers, the Guarantor parties thereto, the Banks from time to time party thereto and Harris Trust and Savings Bank as Administrative Agent |
| 3. | Date of Assignment Agreement:      |   |
| 4. | Amounts (as of date of item #3     |   |

above):

5. Settlement Date:

6. Rate of Interest to the Assignee: As set forth in Section 2.6 of the Credit Agreement (unless otherwise agreed to by the Assignor and the Assignee).(2)

7. Commitment Fees As set forth in Section 2.7(a) of the Credit Agreement (unless otherwise agreed to by the Assignor and the Assignee).(3)

8. Notices: ASSIGNOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

(2) The Borrowers and the Agent shall direct the entire amount of the interest to the Assignee at the rate set forth in Section 2.6 of the Credit Agreement, with the Assignor and Assignee effecting any agreed upon sharing of interest through payments by the Assignee to the Assignor.

(3) The Borrowers and the Agent shall direct the entire amount of the commitment fees to the Assignee at the rate set forth in Section 2.7(a) of the Credit Agreement, with the Assignor and the Assignee effecting any agreed upon sharing of ticking fees through payment by the Assignee to the Assignor.

ASSIGNEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

9. Payment Instructions: ASSIGNOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ABA No. \_\_\_\_\_  
Account No.: \_\_\_\_\_  
Reference: \_\_\_\_\_  
Attention: \_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ABA No. \_\_\_\_\_  
Account No.: \_\_\_\_\_  
Reference: \_\_\_\_\_  
Attention: \_\_\_\_\_

For value received, ALLIANCE DATA SYSTEMS CORPORATION, a Delaware corporation (the "Borrower"), promises to pay to the order of [NAME OF BANK] (the "Bank"), the unpaid principal amount of each Loan made by the Bank to the Borrower pursuant to the Credit Agreement referred to below on the maturity date provided for in the Credit Agreement. The Borrower promises to pay interest on the unpaid principal amount of each such Loan on the dates and at the rate or rates provided for in the Credit Agreement. All such payments of principal and interest shall be made in lawful money of the United States (in the case of U.S. Dollar Borrowings) or of Canada (in the case of Canadian Dollar Borrowings) in Federal or other immediately available funds at the office of Harris Trust and Savings Bank (the "Administrative Agent") at 111 West Monroe Street, Chicago, Illinois (or, at such other office as the Administrative Agent has previously notified the Borrower in accordance with Article 2 of the Credit Agreement).

All Loans made by the Bank, the respective types thereof and all repayments of the principal thereof shall be recorded by the Bank and, if the Bank so elects in connection with any transfer or enforcement hereof, appropriate notations to evidence the foregoing information with respect to each such Loan then outstanding may be endorsed by the Bank on the schedule attached hereto, or on a continuation of such schedule attached to and made a part hereof; provided, that the failure of the Bank to make any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under the Credit Agreement.

This note is one of the Notes referred to in the 364-Day Credit Agreement dated as of May 22, 2002, among Alliance Data Systems Corporation, Loyalty Management Group Canada Inc., the Banks parties thereto and Harris Trust and Savings Bank, as Administrative Agent (as the same may be amended, restated or supplemented from time to time, the "Credit Agreement"). Terms defined in the Credit Agreement are used herein with the same meanings. Reference is made to the Credit Agreement for provisions for the prepayment hereof and the acceleration of the maturity hereof.

ALLIANCE DATA SYSTEMS CORPORATION

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

LOANS AND PAYMENTS OF PRINCIPAL

Date	Amount of Loan and Currency	Type of Loan	Amount of Principal Repaid	Notation Made By
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Exhibit B-2

NOTE

Chicago, Illinois  
, 2002

For value received, LOYALTY MANAGEMENT GROUP CANADA INC., an Ontario corporation (the "Borrower"), promises to pay to the order of [NAME OF BANK] (the "Bank"), the unpaid principal amount of each Loan made by the Bank to the Borrower pursuant to the Credit Agreement referred to below on the maturity date provided for in the Credit Agreement. The Borrower promises to pay interest on the unpaid principal amount of each such Loan on the dates and at the rate or rates provided for in the Credit Agreement. All such payments of principal and interest shall be made in lawful money of the United States (in the case of U.S. Dollar Borrowings) or of Canada (in the case of Canadian Dollar Borrowings) in Federal or other immediately available funds at the office of Harris Trust and Savings Bank (the "Administrative Agent") at 111 West Monroe Street, Chicago, Illinois (or at such other office as the Administrative Agent has previously notified the Borrower in accordance with Article 2 of the Credit Agreement).

All Loans made by the Bank, the respective types thereof and all repayments of the principal thereof shall be recorded by the Bank and, if the Bank so elects in connection with any transfer or enforcement hereof, appropriate notations to evidence the foregoing information with respect to each such Loan then outstanding may be endorsed by the Bank on the schedule attached hereto, or on a continuation of such schedule attached to and made a part hereof; provided, that the failure of the Bank to make any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under the Credit Agreement.

This note is one of the Notes referred to in the 364-Day Credit Agreement dated as of May 22, 2002, among Alliance Data Systems Corporation, Loyalty Management Group Canada Inc., the Banks parties thereto and Harris Trust and Savings Bank, as Administrative Agent (as the same may be amended, restated or supplemented from time to time, the "Credit Agreement"). Terms defined in the Credit Agreement are used herein with the same meanings. Reference is made to the Credit Agreement for provisions for the prepayment hereof and the acceleration of the maturity hereof.

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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**LOANS AND PAYMENTS OF PRINCIPAL**

<b>Date</b>	<b>Amount of Loan and Currency</b>	<b>Type of Loan</b>	<b>Amount of Principal Repaid</b>	<b>Notation Made By</b>
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**Certification of  
Chief Executive Officer  
of  
Alliance Data Systems Corporation**

This certification is provided pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and accompanies the quarterly report on Form 10-Q (the "Form 10-Q") for the quarter ended June 30, 2002 of Alliance Data Systems Corporation (the "Registrant").

I, J. Michael Parks, the Chief Executive Officer of Registrant certify that to the best of my knowledge:

- (i) the Form 10-Q fully complies with the requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
- (ii) the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: August 8, 2002

/s/ J. Michael Parks

\_\_\_\_\_  
Name: J. Michael Parks

Subscribed and sworn to before me  
this 8th day of August, 2002.

/s/ Mary Ball

\_\_\_\_\_  
Name:

Title: Notary Public

My commission expires:

---

**Certification of  
Chief Financial Officer  
of  
Alliance Data Systems Corporation**

This certification is provided pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and accompanies the quarterly report on Form 10-Q (the "Form 10-Q") for the quarter ended June 30, 2002 of Alliance Data Systems Corporation (the "Registrant").

I, Edward J. Heffernan, the Chief Financial Officer of Registrant certify that to the best of my knowledge:

- (i) the Form 10-Q fully complies with the requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
- (ii) the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: August 8, 2002

/s/ Edward J. Heffernan

\_\_\_\_\_  
Name: Edward J. Heffernan

Subscribed and sworn to before me  
this 8th day of August, 2002.

/s/ Mary Ball

\_\_\_\_\_  
Name:

Title: Notary Public

My commission expires:

---