UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2004

OR

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

Commission file number 000-12477

AMGEN INC.

(Exact name of registrant as specified in its charter)

Delaware	**95-3540776**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
One Amgen Center Drive, Thousand Oaks, California	**91320-1799**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code (805) 447-1000

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes [X] No [ ]

Indicate by check mark whether the registrant is an accelerated filer. [X]

As of July 16, 2004, the registrant had 1,266,016,718 shares of common stock, $0.0001 par value, outstanding.

AMGEN INC.

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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

The information in this report for the three and six months ended June 30, 2004 and 2003 is unaudited but includes all adjustments (consisting only of normal recurring accruals, unless otherwise indicated) which Amgen Inc., including its subsidiaries, ("Amgen" or the "Company") considers necessary for a fair presentation of the results of operations for those periods.

The Condensed Consolidated Financial Statements should be read in conjunction with the Company's financial statements and the notes thereto contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2003.

Interim results are not necessarily indicative of results for future quarters or the full fiscal year.

AMGEN INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In millions, except per share data)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Revenues:				
Product sales	$2,431.0	$1,916.5	$4,638.8	$3,552.4
Other revenues	153.9	124.6	289.1	249.9
Total revenues	2,584.9	2,041.1	4,927.9	3,802.3
Operating expenses:				
Cost of sales (excludes amortization of acquired intangible assets presented below)	435.4	329.1	808.6	612.4
Research and development	467.8	393.7	909.1	745.0
Selling, general and administrative	591.0	441.2	1,107.5	821.7
Amortization of acquired intangible assets	84.0	84.0	167.9	167.9
Other items, net	—	(24.0)	—	(24.0)
Total operating expenses	1,578.2	1,224.0	2,993.1	2,323.0
Operating income	1,006.7	817.1	1,934.8	1,479.3
Interest and other income and expense, net	10.1	31.6	31.2	57.5
Income before income taxes	1,016.8	848.7	1,966.0	1,536.8
Provision for income taxes	268.7	241.5	527.7	436.3
Net income	$ 748.1	$ 607.2	$1,438.3	$1,100.5
Earnings per share:				
Basic	$ 0.59	$ 0.47	$ 1.13	$ 0.85
Diluted	$ 0.57	$ 0.45	$ 1.09	$ 0.82
Shares used in calculation of earnings per share:				
Basic	1,268.2	1,287.9	1,274.3	1,289.3
Diluted	1,317.7	1,347.0	1,325.6	1,348.5

See accompanying notes.

AMGEN INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
(In millions, except per share data)
(Unaudited)

	June 30, 2004	December 31, 2003
ASSETS		
Current assets:		
Cash and cash equivalents	$ 1,716.9	$ 836.6
Marketable securities	2,544.9	4,286.3
Trade receivables, net	1,281.2	1,007.9
Inventories	725.1	712.6
Other current assets	568.0	558.8
Total current assets	6,836.1	7,402.2
Property, plant, and equipment at cost, net	4,351.2	3,799.4
Intangible assets, net	4,338.8	4,455.5
Goodwill	9,700.4	9,715.9
Other assets	833.5	803.5
	$26,060.0	$26,176.5
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 311.9	$ 327.2
Accrued liabilities	1,786.8	1,919.1
Convertible notes	2,895.7	—
Total current liabilities	4,994.4	2,246.3
Deferred tax liabilities	1,454.8	1,461.6
Long-term debt	200.0	3,079.5
Stockholders' equity:		
Preferred stock; $0.0001 par value; 5.0 shares authorized; none issued or outstanding	—	—
Common stock and additional paid-in capital; $0.0001 par value; 2,750.0 shares authorized; outstanding - 1,265.4 shares in 2004 and 1,283.7 shares in 2003	20,255.4	19,995.3
Accumulated deficit	(884.4)	(667.0)
Accumulated other comprehensive income	39.8	60.8
Total stockholders' equity	19,410.8	19,389.1
	$26,060.0	$26,176.5

See accompanying notes.

AMGEN INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In millions)
(Unaudited)

	Six Months Ended June 30,	
	2004	**2003**
Cash flows from operating activities:		
Net income	$ 1,438.3	$ 1,100.5
Depreciation and amortization	355.1	341.2
Tax benefits related to employee stock options	91.8	161.9
Other non-cash items	71.5	98.9
Cash provided by (used in) changes in operating assets and liabilities:		
Trade receivables, net	(273.3)	(208.3)
Inventories	(12.5)	(93.8)
Other current assets	32.0	55.0
Accounts payable and accrued liabilities	(189.1)	265.1
Net cash provided by operating activities	1,513.8	1,720.5
Cash flows from investing activities:		
Purchases of property, plant, and equipment	(741.8)	(544.0)
Proceeds from maturities of marketable securities	109.8	281.1
Proceeds from sales of marketable securities	4,655.4	996.2
Purchases of marketable securities	(3,086.6)	(2,409.8)
Other	(114.4)	(147.4)
Net cash used in investing activities	822.4	(1,823.9)
Cash flows from financing activities:		
Repayment of commercial paper	—	(100.0)
Net proceeds from issuance of common stock upon the exercise of employee stock options and in connection with an employee stock purchase plan	194.8	302.9
Repurchases of common stock	(1,649.7)	(899.6)
Other	(1.0)	18.9
Net cash used in financing activities	(1,455.9)	(677.8)
Increase (decrease) in cash and cash equivalents	880.3	(781.2)
Cash and cash equivalents at beginning of period	836.6	1,851.7
Cash and cash equivalents at end of period	$ 1,716.9	$ 1,070.5

See accompanying notes.

AMGEN INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

June 30, 2004

1. Summary of significant accounting policies

Business

Amgen Inc., including its subsidiaries, ("Amgen" or the "Company") is a global biotechnology company that discovers, develops, manufactures, and markets human therapeutics based on advances in cellular and molecular biology.

Basis of presentation

The financial information for the three and six months ended June 30, 2004 and 2003 is unaudited but includes all adjustments (consisting only of normal recurring accruals, unless otherwise indicated), which the Company considers necessary for a fair presentation of the results of operations for these periods. Interim results are not necessarily indicative of results for the full fiscal year.

Principles of consolidation

The Condensed Consolidated Financial Statements include the accounts of the Company as well as its wholly owned subsidiaries and majority-owned affiliates (affiliated companies in which the Company has a majority ownership interest and exercises control over their operations) that are not considered variable interest entities. As of June 30, 2004, the Company does not have any significant interests in variable interest entities. All material intercompany transactions and balances have been eliminated in consolidation.

Use of estimates

The preparation of financial statements in conformity with United States generally accepted accounting principles ("GAAP") requires management to make estimates and assumptions that affect the amounts reported in the Condensed Consolidated Financial Statements and accompanying notes. Actual results may differ from those estimates.

Inventories

Inventories are stated at the lower of cost or market. Cost is determined in a manner which approximates the first-in, first-out (FIFO) method. Inventories are shown net of applicable reserves and allowances. Inventories consisted of the following (in millions):

AMGEN INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS- (Continued)

	June 30, 2004	December 31, 2003
Raw materials	$127.7	$125.3
Work in process	443.0	451.5
Finished goods	154.4	135.8
	$725.1	$712.6

Intangible assets and goodwill

Intangible assets are recorded at cost, less accumulated amortization. Amortization of intangible assets is provided over their estimated useful lives ranging from 7 to 15 years on a straight-line basis (weighted average amortization period of 14.6 years at June 30, 2004). As of June 30, 2004 and December 31, 2003, accumulated amortization of intangible assets amounted to $668.9 million and $512.2 million, respectively. Intangible assets primarily consist of acquired product technology rights of $4,803.2 million, net of accumulated amortization of $658.8 million, which relate to the identifiable intangible assets acquired in connection with the Immunex Corporation ("Immunex") acquisition in July 2002. Amortization of acquired product technology rights is included in "Amortization of acquired intangible assets" in the accompanying Condensed Consolidated Statements of Operations. The Company reviews its intangible assets for impairment periodically and whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable.

In accordance with SFAS No. 142, "Goodwill and Other Intangible Assets", goodwill, which primarily relates to the Immunex acquisition, is no longer amortized, but is subject to an annual impairment test.

Product sales

Product sales primarily consist of sales of EPOGEN® (Epoetin alfa), Aranesp® (darbepoetin alfa), ENBREL® (etanercept), Neulasta® (pegfilgrastim), and NEUPOGEN® (Filgrastim).

The Company has the exclusive right to sell Epoetin alfa for dialysis, certain diagnostics and all non-human, non-research uses in the United States. The Company sells Epoetin alfa under the brand name EPOGEN®. Amgen has granted to Ortho Pharmaceutical Corporation (which has assigned its rights under the product license agreement to Ortho Biotech Products, L.P.), a subsidiary of Johnson & Johnson ("Johnson & Johnson"), a license relating to Epoetin alfa for sales in the United States for all human uses except dialysis and diagnostics. The license agreement, which is perpetual, can be terminated upon mutual agreement of the parties, or default. Pursuant to this license, the Company and Johnson & Johnson are required to compensate each other for Epoetin alfa sales that either party makes into the other party's exclusive market, sometimes referred to as "spillover". Accordingly, Amgen does not recognize product sales it makes into the exclusive market of Johnson & Johnson and does recognize the product sales made by Johnson & Johnson into Amgen's exclusive market. Sales in Amgen's exclusive market are derived from the Company's sales to its customers, as adjusted for spillover. The Company is employing an arbitrated audit methodology to measure each

party's spillover based on estimates of and subsequent adjustments thereto of third-party data on shipments to end users and their usage.

Sales of the Company's other products are recognized when shipped and title and risk of loss have passed. Product sales are recorded net of accruals for estimated rebates, including Medicaid, discounts, incentives, and returns.

Research and development costs

Research and development expenses are comprised of the following types of costs incurred in performing R&D activities: salaries and benefits, allocated overhead and occupancy costs, clinical trial and related clinical manufacturing costs, contract services, and other outside costs, which include milestones, consulting fees, and regulatory fees. Research and development expenses also include such costs related to activities performed on behalf of corporate partners. Research and development costs are expensed as incurred.

Earnings per share

Basic earnings per share is based upon the weighted-average number of common shares outstanding. Diluted earnings per share is based upon the weighted-average number of common shares and dilutive potential common shares outstanding. Potential common shares outstanding include stock options under the Company's employee stock option plans, potential issuances of stock under the employee stock purchase plans, and restricted stock plans under the treasury stock method (collectively "Dilutive Securities"). Common shares to be issued under the assumed conversion of the outstanding 30-year, zero-coupon senior convertible notes (the "Convertible Notes") (see Note 5, "Convertible notes") are included under the if-converted method when dilutive.

The following table sets forth the computation for basic and diluted earnings per share (in millions, except per share information):

AMGEN INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS- (Continued)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Income (Numerator):				
Net income for basic EPS	$ 748.1	$ 607.2	$1,438.3	$1,100.5
Adjustment for interest expense on Convertible Notes, net of tax	5.3	5.2	10.6	10.4
Net income for diluted EPS, after assumed conversion of Convertible Notes	$ 753.4	$ 612.4	$1,448.9	$1,110.9
Shares (Denominator):				
Weighted-average shares for basic EPS	1,268.2	1,287.9	1,274.3	1,289.3
Effect of Dilutive Securities	14.5	24.1	16.3	24.2
Effect of Convertible Notes, after assumed conversion of Convertible Notes	35.0	35.0	35.0	35.0
Weighted-average shares for diluted EPS	1,317.7	1,347.0	1,325.6	1,348.5
Basic earnings per share	$ 0.59	$ 0.47	$ 1.13	$ 0.85
Diluted earnings per share	$ 0.57	$ 0.45	$ 1.09	$ 0.82

Employee stock option and stock purchase plans

The Company accounts for its employee stock option and stock purchase plans under the recognition and measurement principles of Accounting Principles Board Opinion (“APB”) No. 25, “Accounting for Stock Issued to Employees,” and related Interpretations. Under APB No. 25, no stock-based compensation is reflected in net income, as all options granted under the plans had an exercise price equal to the market value of the underlying common stock on the date of grant and the related number of shares granted is fixed at that point in time.

AMGEN INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS- (Continued)

The following table illustrates the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of SFAS No. 123, “Accounting for Stock-Based Compensation”, as amended:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Net income	$748.1	$607.2	$1,438.3	$1,100.5
Stock-based compensation, net of tax	(72.3)	(47.7)	(157.3)	(85.1)
Pro forma net income	$675.8	$559.5	$1,281.0	$1,015.4
Earnings per share:				
Basic	$ 0.59	$ 0.47	$ 1.13	$ 0.85
Basic – pro forma	$ 0.53	$ 0.43	$ 1.01	$ 0.79
Diluted	$ 0.57	$ 0.45	$ 1.09	$ 0.82
Diluted – pro forma	$ 0.52	$ 0.42	$ 0.98	$ 0.76

The weighted average fair value of common stock and stock options on the date of grant, and the weighted average assumptions used to estimate the fair value of the stock options using the Black-Scholes option valuation model, were as follows for the three months ended June 30:

	2004	2003
Weighted average fair value of common stock	$56.45	$62.37
Weighted average fair value of stock options granted	21.97	24.10
Risk-free interest rate	3.3%	1.9%
Expected life (in years)	4.5	3.7
Expected volatility	42.0%	50.0%
Expected dividend yield	0%	0%

Recent accounting developments

In March 2004, the Financial Accounting Standards Board (“FASB”) issued a Proposed SFAS, “Share-Based Payment, an amendment of FASB Statements Nos. 123 and 95” (“Exposure Draft”). The Exposure Draft would eliminate the ability to account for share-based compensation transactions using APB No. 25, Accounting for Stock Issued to Employees, and generally would require such transactions be accounted for using a fair-value-based method and the resulting cost recognized in the financial statements. The Company is closely monitoring developments related to the Exposure Draft and will adopt the final standard upon issuance.

Reclassification

Certain prior year amounts have been reclassified to conform to the current year presentation.

AMGEN INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS- (Continued)

2. Related party transactions

The Company owns a 50% interest in Kirin-Amgen ("KA"), a corporation formed in 1984 with Kirin Brewery Company, Limited ("Kirin") for the development and commercialization of certain products based on advanced biotechnology. The Company accounts for its interest in KA under the equity method and includes its share of KA's profits or losses in "Selling, general, and administrative" in the Condensed Consolidated Statements of Operations. KA's revenues consist of royalty income related to its licensed technology rights. All of Amgen's rights to manufacture and market certain products including erythropoietin, granulocyte colony-stimulating factor ("G-CSF"), darbepoetin alfa, and pegfilgrastim are pursuant to exclusive licenses from KA. The Company currently markets certain of these products under the brand names EPOGEN® (erythropoietin), NEUPOGEN® (G-CSF), Aranesp® (darbepoetin alfa), and Neulasta® (pegfilgrastim). KA receives royalty income from Amgen, as well as Kirin, Johnson & Johnson, F. Hoffmann-La Roche Ltd, and others under separate product license agreements for certain geographic areas outside of the United States. During the three and six months ended June 30, 2004, KA earned royalties from Amgen of $68.3 million and $130.5 million, respectively. During the three and six months ended June 30, 2003, KA earned royalties from Amgen of $54.6 million and $99.9 million, respectively. These amounts are included in "Cost of sales" in the accompanying Condensed Consolidated Statements of Operations.

KA's expenses primarily consist of costs related to research and development activities conducted on its behalf by Amgen and Kirin. KA pays Amgen and Kirin for such services at negotiated rates. During the three and six months ended June 30, 2004, Amgen earned revenues from KA of $57.7 million and $91.6 million, respectively, for certain research and development activities performed on KA's behalf. During the three and six months ended June 30, 2003, Amgen earned revenues from KA of $21.7 million and $48.0 million, respectively. These amounts are included in "Other revenues" in the accompanying Condensed Consolidated Statements of Operations.

3. Income taxes

The tax rates for the three and six months ended June 30, 2004, are different from the statutory rate primarily as a result of permanently reinvested earnings of the Company's foreign operations. The Company does not provide for U.S. income taxes on undistributed earnings of its foreign operations that are intended to be permanently reinvested outside of the United States. During 2002, the Company restructured its Puerto Rico manufacturing operations using a controlled foreign corporation.

The Company's income tax returns are routinely audited by the Internal Revenue Service and various state tax authorities. While disputes may arise with these tax authorities, some of which may be significant, the Company believes that adequate tax liabilities have been established for all open audit years.

AMGEN INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS- (Continued)

4. Stockholders' equity

Stock repurchase program

The Company has a stock repurchase program primarily to reduce the dilutive effect of its employee stock option and stock purchase plans. Additionally, stock repurchases beyond this level reflect a measure of the Company's confidence in the long-term value of Amgen common stock. A summary of the Company's repurchase activity for the six months ended June 30, 2004 and 2003 is as follows (amounts in millions):

	2004		2003	
	Shares	Dollars	Shares	Dollars
First quarter	10.1	$ 649.7	8.2	$450.6
Second quarter	17.4	1,000.0	7.3	449.0
Total	27.5	$1,649.7	15.5	$899.6

In December 2003, the Board of Directors authorized the Company to repurchase up to an additional $5.0 billion of common stock allowing for a multi-year stock repurchase program. As of June 30, 2004, $3.4 billion was available for stock repurchases. The amount the Company spends and the number of shares repurchased varies based on a variety of factors, including the stock price and blackout periods in which the Company is restricted from repurchasing shares.

Other comprehensive income

SFAS No. 130, "Reporting Comprehensive Income", requires unrealized gains and losses on the Company's available-for-sale securities and foreign currency forward contracts, which qualify and are designated as cash flow hedges, and foreign currency translation adjustments to be included in other comprehensive income. During the three and six months ended June 30, 2004, total comprehensive income was $712.5 million and $1,417.3 million, respectively. During the three and six months ended June 30, 2003, total comprehensive income was $646.9 million and $1,117.4 million, respectively.

5. Convertible notes

As of June 30, 2004, the Company had Convertible Notes (30-year, zero-coupon senior convertible notes) with an accreted value of $2.9 billion outstanding and having an aggregate face amount of $3.95 billion and yield to maturity of 1.125%. The original issue discount of $1.13 billion is being accreted to the balance of the Convertible Notes and recognized as interest expense over the life of the Convertible Notes using the effective interest method. The holders of the Convertible Notes may require the Company to purchase all or a portion of their notes on various dates, the earliest of which is March 1, 2005, at a price equal to the original issuance price plus the accrued original issue discount to the purchase dates, and accordingly, the Convertible Notes were classified as current in the accompanying Condensed Consolidated Balance Sheet as of June 30, 2004. In such

event, under the terms of the Convertible Notes, the Company has the right to pay the purchase price in cash and/or shares of common stock, which would be issued at the then current market price.

Holders of the Convertible Notes may convert each of their notes into 8.8601 shares of common stock of the Company (the "conversion rate") at any time on or before the maturity date, or approximately 35.0 million shares in the aggregate. The conversion price per share as of any day will equal the original issuance price plus the accrued original issue discount to that day, divided by the conversion rate, or $82.75 per share as of June 30, 2004.

6. Other items, net

License Agreement arbitration

In September 1985, the Company granted Johnson & Johnson's affiliate, Ortho Pharmaceutical Corporation, a license relating to certain patented technology and know-how of the Company to sell Epoetin alfa throughout the United States for all human uses except dialysis and diagnostics. A number of disputes arose between Amgen and Johnson & Johnson as to their respective rights and obligations under the various agreements between them, including the agreement granting the license (the "License Agreement"). These disputes between Amgen and Johnson & Johnson have been resolved through binding arbitration. One of these disputes related to the alleged violation of the License Agreement by Johnson & Johnson. In October 2002, the Arbitrator issued a final order awarding the Company $150.0 million for Johnson & Johnson's breach of the License Agreement. The legal award of $151.2 million, which included interest, was recorded in the fourth quarter of 2002. In January 2003, the Company was awarded reimbursement of its costs and expenses, as the successful party in the arbitration. In May 2003, the Arbitrator issued a final order awarding the Company $74.0 million in such costs and expenses, which were recorded in the three months ended June 30, 2003.

Amgen Foundation contribution

During the three months ended June 30, 2003, the Company made a $50.0 million cash contribution to the Amgen Foundation. This contribution will allow the Amgen Foundation to continue its support of non-profit organizations that focus on issues in health and medicine, science education, and other activities that strengthen local communities.

7. Contingencies

In the ordinary course of business, the Company is involved in various legal proceedings. While it is not possible to accurately predict or determine the eventual outcome of these proceedings, the Company does not believe any such proceedings currently pending will have a material adverse effect on its annual consolidated financial statements, although an adverse resolution in any reporting period of one or more of the proceedings could have a material impact on the results of operations for that period.

AMGEN INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS- (Continued)

8. Proposed merger with Tularik Inc.

On March 28, 2004, the Company signed a definitive agreement to acquire Tularik Inc. ("Tularik") in a transaction to be accounted for as a business combination. Tularik is a pioneer in drug discovery related to cell signaling and the control of gene expression. Under the terms of the agreement, each share of Tularik common stock outstanding at the close of the merger will be converted into Amgen common stock based on an exchange ratio that will be determined by dividing $25 by the average closing price of Amgen common stock for the ten trading day period ending two trading days prior to the closing of the merger. In addition, at the closing of the merger each option and warrant outstanding to purchase a share of Tularik common stock will be assumed by Amgen and converted into an option or warrant to purchase Amgen common stock based on the terms of the merger agreement. The estimated purchase price is approximately $1.5 billion, which includes Amgen's existing ownership of Tularik of approximately 21%, the estimated fair value of Amgen stock issued, options and warrants to be converted, and the direct transaction costs. The final purchase price will be determined based upon the number of Tularik shares, options, and warrants outstanding at the closing date. The transaction is expected to close in the second half of 2004, subject to approval by shareholders of Tularik, customary regulatory approvals, as well as certain other closing conditions. It is expected that the merger will qualify as a tax-free reorganization within the meaning of Section 368(a) of the Internal Revenue Code.

9. Subsequent event

In July 2004, the Company established a $1.0 billion five-year unsecured revolving credit facility to be used for general corporate purposes, including commercial paper support. Additionally, the Company increased the size of its commercial paper authorization by $1.0 billion. No amounts were outstanding under the credit facility or commercial paper program.

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

Forward looking statements

This report and other documents we file with the Securities and Exchange Commission ("SEC") contain forward looking statements that are based on current expectations, estimates, forecasts and projections about us, our future performance, our business or others on our behalf, our beliefs and our management's assumptions. In addition, we, or others on our behalf, may make forward looking statements in press releases or written statements, or in our communications and discussions with investors and analysts in the normal course of business through meetings, webcasts, phone calls, and conference calls. Words such as "expect," "anticipate," "outlook," "could," "target," "project," "intend," "plan," "believe," "seek," "estimate," "should," "may," "assume," "continue," variations of such words and similar expressions are intended to identify such forward looking statements. These statements are not guarantees of future performance and involve certain risks, uncertainties, and assumptions that are difficult to predict. We describe our respective risks, uncertainties, and assumptions that could affect the outcome or results of operations in "Factors that may affect Amgen". We have based our forward looking statements on our management's beliefs and assumptions based on information available to our management at the time the statements are made. We caution you that actual outcomes and results may differ materially from what is expressed, implied, or forecast by our forward looking statements. Reference is made in particular to forward looking statements regarding product sales, reimbursement, expenses, earnings per share, liquidity and capital resources, and trends. Except as required under the federal securities laws and the rules and regulations of the SEC, we do not have any intention or obligation to update publicly any forward looking statements after the distribution of this report, whether as a result of new information, future events, changes in assumptions, or otherwise.

Overview

Business

Amgen Inc. (including its subsidiaries, "Amgen" or the "Company") is a global biotechnology company that discovers, develops, manufactures, and markets human therapeutics based on advances in cellular and molecular biology.

The Company focuses its research and development ("R&D") efforts on human therapeutics delivered in the form of proteins, monoclonal antibodies, and small molecules in the areas of hematology, oncology, inflammation, metabolic and bone disorders, and neuroscience. In addition to internal R&D efforts, the Company has acquired certain product and technology rights and has established R&D collaborations.

The Company primarily earns revenues and income and generates cash from sales of human therapeutic products in the areas of hematology, oncology, and inflammation. In the near-term, the Company expects business growth to be primarily driven by sales of Aranesp®, Neulasta®, and ENBREL®. For the three and six months ended June 30, 2004, total revenues were $2,584.9 million and $4,927.9 million, respectively, and net income was $748.1 million and $1,438.3 million, respectively. As of June 30, 2004, cash and marketable securities were approximately $4.3 billion.

Net income was $748.1 million, or $0.57 per share, for the three months ended June 30, 2004 compared with $607.2 million, or $0.45 per share, for the three months ended June 30, 2003. These increases were primarily driven by a 27% increase in product sales partially offset by a 29% increase in total operating expenses from the same period of the prior year.

The Medicare Prescription Drug, Improvement and Modernization Act (or the Medicare Modernization Act (MMA)) was enacted into law in December 2003. The Company is closely monitoring the impact on its business of the change from the current Average Wholesale Price (AWP) mechanism as the basis of Medicare Part B payment for covered outpatient drugs and biologics to an "average sales price" (ASP) methodology. The Company expects that effective January 1, 2005, in the physician clinic market segment, Aranesp®, NEUPOGEN® and Neulasta® will be reimbursed under a new Part B system that reimburses each product at 106% of its ASP (sometimes referred to as "ASP + 6%"). The Centers for Medicare and Medicaid Services (CMS) is in the process of determining what each product's ASP will be and on July 28, 2004, CMS issued ASPs for Aranesp®, Neupogen®, and Neulasta® based on data submitted by the Company from first quarter 2004. Although ASP + 6% does not become effective in the physician clinic market segment until January 1, 2005, the reimbursement rates for Aranesp®, NEUPOGEN® and Neulasta® calculated at 106% of the ASPs issued on July 28, 2004, and based on first quarter 2004 Company data, are lower than the current 2004 reimbursement rates. The MMA calls for quarterly payment rates based on updated ASP information. The Company expects that the respective ASPs for these products will change, that the first quarter 2005 reimbursement rate for these products will be based on third quarter 2004 Company data, and that these reimbursement rates are likely to change in every quarter thereafter. Effective January 1, 2006, the Outpatient Prospective Payment System, which determines payment rates for specified covered outpatient drugs and biologics in the hospital outpatient setting, will change from an AWP based reimbursement system to a system based on "average acquisition cost" as determined by CMS considering surveys by the General Accounting Office in 2004 and 2005. This change will affect Aranesp®, NEUPOGEN®, and Neulasta® when administered in the hospital outpatient setting.

Further, the MMA changes Medicare reimbursement for EPOGEN® used in the dialysis setting for calendar year 2005 from the current rate of $10 per 1,000 units to a rate based upon an acquisition cost determined by the Office of the Inspector General (OIG), or to an amount set by the Secretary of Health and Human Services if the OIG has not determined an acquisition cost. On July 28, 2004, CMS announced a proposed rule suggesting that 2005 Medicare payments to dialysis facilities for all drugs separately billed when used in dialysis (including EPOGEN®) be set based on an ASP calculation of 97% of ASP (sometimes referred to as "ASP –3%"). The proposal calls for quarterly updates to the payment rates based on updated ASP information from the manufacturer. Pursuant to the MMA and the CMS proposed rule, the difference between the 2004 reimbursement rates for all drugs separately billed (including EPOGEN®) and the 2005 reimbursement rates for such drugs will be added to the composite rate that dialysis providers receive for dialysis treatment. CMS has solicited comments on its proposal and the Company plans on working with CMS to ensure continued patient access to EPOGEN® therapy in 2005 and beyond. CMS is expected to issue a final rule on or about November 1, 2004. Under the MMA, effective January 1, 2006, reimbursement for EPOGEN® in the dialysis setting will be based on the acquisition cost as determined by the OIG or based on the amount determined under the ASP +6% methodology established in the MMA for Medicare-reimbursed drugs provided in certain other settings, at the discretion of the Secretary.

In addition, the Company believes that beginning on January 1, 2006, ENBREL®, Sensipar™, and Kineret® will be covered by the MMA-mandated outpatient prescription drug benefit (also known as "Part D"). These changes driven by the MMA are lowering the 2005 reimbursement rate for EPOGEN® and may lower reimbursement rates for certain of our other products.

However, because additional information and decisions are expected to be made by CMS regarding reimbursement affecting our products, and because the Company cannot predict the impact of any such changes on how, or under what circumstances, healthcare providers will prescribe or administer our products, as of the date of this filing, the Company has not determined the full impact of this new law on its business.

On July 8, 2004, CMS released a proposed revision to the Hematocrit Measurement Audit Program Memorandum (HMA-PM), a Medicare payment review mechanism used by CMS to audit appropriate hematocrit outcomes of dialysis patients. As of the date of this filing, the proposed revision is in a 60-day comment period, but is expected to go into effect on or after January 1, 2005. Among other things, the proposed policy would establish new guidelines defining a maximum number of units of EPOGEN® that will be paid for by Medicare per month for dialysis patients whose hematocrits exceed a specified amount. The Medicare EPOGEN® usage limits would not be applied if there is medical justification for the higher hematocrit. The Company is currently reviewing the draft guidelines to assess its impact and will provide comments to CMS, as appropriate.

The Company believes that legislation or regulations that reduce reimbursement for its products could adversely impact how much or under what circumstances healthcare providers will prescribe or administer its products.

Key products

The Company markets human therapeutic products in the areas of hematology, oncology, and inflammation. The Company's key products include EPOGEN® (Epoetin alfa), Aranesp® (darbepoetin alfa), Neulasta® (pegfilgrastim), NEUPOGEN® (Filgrastim), and ENBREL® (etanercept), which is marketed under a co-promotion agreement with Wyeth.

EPOGEN® and Aranesp® stimulate the production of red blood cells. EPOGEN® is marketed in the United States for the treatment of anemia associated with chronic renal failure in patients on dialysis. Aranesp® is marketed in the United States, most countries in Europe, Canada, Australia, and New Zealand for the treatment of anemia associated with chronic renal failure, including patients on dialysis and patients not on dialysis. Aranesp® is also marketed in the United States for the treatment of chemotherapy-induced anemia in patients with non-myeloid malignancies. Aranesp® is marketed in Europe for the treatment of anemia in adult cancer patients with solid tumors receiving chemotherapy and for the treatment of chemotherapy-induced anemia in adult patients with non-myeloid malignancies.

Neulasta® and NEUPOGEN® selectively stimulate the production of neutrophils, one type of white blood cell. Neulasta® is marketed in the United States to decrease the incidence of infection, as manifested by febrile neutropenia in patients with non-myeloid malignancies receiving myelosuppressive anti-cancer drugs associated with a clinically significant incidence of febrile neutropenia. Neulasta® is marketed in most countries in Europe and Canada for the reduction in the duration of neutropenia and the incidence of febrile neutropenia in patients with cytotoxic chemotherapy for malignancy. NEUPOGEN® is marketed in the United States, certain countries in Europe, Canada, and Australia for use in decreasing the incidence of infection in patients undergoing myelosuppressive chemotherapy. In addition, NEUPOGEN® is marketed in most of these countries for use in increasing neutrophil counts in various other treatment modalities.

ENBREL® blocks the biologic activity of tumor necrosis factor ("TNF") by competitively inhibiting TNF, a substance induced in response to inflammatory and immunological responses. In April 2004, the FDA approved ENBREL® for the treatment of adult patients with moderate to severe plaque psoriasis who are candidates for systemic therapy or phototherapy and immediately launched ENBREL® for this indication. ENBREL® is marketed in the United States for reducing the signs and symptoms, improving physical function, and inhibiting the progression of structural damage in patients with moderately to severely active rheumatoid arthritis; and for reducing the signs and symptoms and inhibiting the progression of structural damage in patients with psoriatic arthritis. In addition, ENBREL is approved for reducing the signs and symptoms of moderately to severely active polyarticular-course juvenile rheumatoid arthritis in patients who have had an inadequate response to one or more disease-modifying medicines; to treat the signs and symptoms in patients with active ankylosing spondylitis; and for the treatment of adult patients with moderate to severe plaque psoriasis who are candidates for systemic therapy or phototherapy.

For additional information about these and the Company's other products and their approved indications see "Item 1. Business – Products" in the Company's Annual Report on Form 10-K for the year ended December 31, 2003.

Results of Operations

Product sales

For the three and six months ended June 30, 2004 and 2003, total product sales by geographic region were as follows (in millions):

	Three months ended June 30,			Six months ended June 30,		
	2004	2003	Change	2004	2003	Change
Total U.S.	$2,007.3	$1,657.3	21%	$3,825.0	$3,084.8	24%
Total International	423.7	259.2	63%	813.8	467.6	74%
Total product sales	$2,431.0	$1,916.5	27%	$4,638.8	$3,552.4	31%

See “Overview – Key products” for a discussion of these products and their approved indications. Product sales are influenced by a number of factors, including demand, third-party reimbursement availability and policies, wholesaler inventory management practices, foreign exchange effects, new product launches and indications, competitive products, pricing strategies, product supply, and acquisitions.

Sales growth was principally driven by demand for Aranesp®, ENBREL®, and Neulasta®. Excluding the beneficial impact of foreign currency exchange rates of $33.8 million and $96.1 million, respectively, international product sales increased 50% and 53%, respectively, for the three and six months ended June 30, 2004.

In the near-term, the Company expects growth of its businesses to be driven primarily by Aranesp®, Neulasta®, and ENBREL®.

EPOGEN®/Aranesp®

(Amounts in millions)

	Three months ended June 30,			Six months ended June 30,		
	2004	2003	Change	2004	2003	Change
EPOGEN® – U.S.	$ 632.6	$611.1	4%	$1,222.6	$1,158.2	6%
Aranesp® – U.S.	380.7	216.6	76%	710.3	374.5	90%
Aranesp® – International	236.6	131.1	80%	449.6	228.0	97%
Aranesp® – Total	617.3	347.7	78%	1,159.9	602.5	93%
Total EPOGEN® and Aranesp®	$1,249.9	$958.8	30%	$2,382.5	$1,760.7	35%

The increase in combined EPOGEN® and worldwide Aranesp® sales was primarily driven by strong worldwide Aranesp® demand.

The growth in reported EPOGEN® sales for the three months ended June 30, 2004 was primarily due to demand partially offset by changes in wholesaler inventory levels. For the six months ended June 30, 2004, the growth in reported EPOGEN® sales was primarily due to demand.

The Company believes EPOGEN® sales growth will primarily depend on dialysis patient population growth. Patients receiving treatment for end stage renal disease are covered primarily under medical programs provided by the federal government. The Company believes future EPOGEN® sales growth may also be affected by future changes in reimbursement rates or a change in the basis for reimbursement by the federal government and governmental or private organization regulations or guidelines relating to the use of our products. EPOGEN® competes to a slight degree with Aranesp® in the United States as some health care providers use Aranesp® to treat anemia associated with chronic renal failure instead of EPOGEN®. Additionally, reported sales in the first quarter for EPOGEN® have tended to be comparable or slightly less than reported sales in the fourth quarter of the previous year.

The increase in Aranesp® sales in the United States was driven by demand. The increase in international Aranesp® sales was principally driven by demand, and to a lesser extent, favorable changes in foreign currency exchange rates. International Aranesp® sales growth for the three and six months ended June 30, 2004, benefited by $19.1 million and $53.3 million, respectively, from foreign currency exchange rate changes.

The Company believes future worldwide Aranesp® sales growth will be dependent, in part, on such factors as: reimbursement by third party payors (including governments and private insurance plans); governmental or private organization regulations or guidelines relating to the use of our products; the effects and pricing of competitive products or therapies; penetration of existing and new market opportunities; and changes in foreign currency exchange rates. In addition, future worldwide sales growth may be affected by cost containment pressures from governments and private insurers on health care providers.

Neulasta®/NEUPOGEN®

(Amounts in millions)

	Three months ended June 30,			Six months ended June 30,		
	2004	2003	Change	2004	2003	Change
Neulasta® – U.S.	$362.2	$291.0	24%	$ 698.5	$ 543.4	29%
Neulasta® – International	63.7	12.5	410%	122.1	18.0	578%
Neulasta® – Total	425.9	303.5	40%	820.6	561.4	46%
NEUPOGEN® – U.S.	194.5	233.3	(17%)	366.8	427.3	(14%)
NEUPOGEN® – International	100.7	97.5	3%	197.4	187.5	5%
NEUPOGEN® – Total	295.2	330.8	(11%)	564.2	614.8	(8%)
Total Neulasta® and NEUPOGEN®	$721.1	$634.3	14%	$1,384.8	$1,176.2	18%

The increase in combined worldwide Neulasta® and NEUPOGEN® sales was driven by demand for Neulasta®.

The increase in Neulasta® sales in the United States was primarily driven by demand partially offset by changes in wholesaler inventory levels. The increase in international Neulasta® sales was primarily due to demand, which reflects the January 2003 launch of Neulasta® in Europe.

The decrease in NEUPOGEN® sales in the United States was principally due to a decline in demand. Additionally, for the three months ended June 30, 2004, changes in wholesaler inventory

levels also contributed to the decrease in U.S. NEUPOGEN® sales. The increase in international NEUPOGEN® sales was due to favorable changes in foreign currency exchange rates partially offset by a decline in demand.

The Company believes future worldwide Neulasta® and NEUPOGEN® sales growth will be dependent, in part, on such factors as: reimbursement by third-party payors (including governments and private insurance plans); penetration of existing markets; patient population growth; price increases; the effects of competitive products or therapies; the development of new treatments for cancer; governmental or private organization regulations or guidelines relating to the use of our products; and changes in foreign currency exchange rates. In addition, future worldwide sales growth may be affected by cost containment pressures from governments and private insurers on health care providers. Further, chemotherapy treatments that are less myelosuppressive may require less Neulasta®/NEUPOGEN®. NEUPOGEN® competes with Neulasta® in the United States and Europe. The Company believes that U.S. NEUPOGEN® sales have and will continue to be adversely impacted by Neulasta®. However, the Company believes that most of the conversion in the U.S. has occurred due to the rapid adoption of Neulasta®. The Company believes that it is experiencing conversion of NEUPOGEN® patients to Neulasta® in Europe, but believes this conversion will occur to a lesser extent than that experienced in the United States. The Company cannot accurately predict the rate or timing of future conversion of NEUPOGEN® patients to Neulasta® worldwide. Additionally, reported sales in the first quarter for combined Neulasta®/NEUPOGEN® have tended to be comparable or slightly less than respective reported sales in the fourth quarter of the previous year.

ENBREL®

(Amounts in millions)

	Three months ended June 30,			Six months ended June 30,		
	2004	2003	Change	2004	2003	Change
ENBREL® – U.S.	$423.5	$293.7	44%	$805.2	$558.2	44%
ENBREL® – International	16.9	10.3	64%	32.5	19.8	64%
Total ENBREL®	$440.4	$304.0	45%	$837.7	$578.0	45%

ENBREL® sales growth was driven by growing demand in rheumatology due to greater use of biologics and increased use by dermatologists driven by the 2004 approval of ENBREL® for use in psoriasis. ENBREL® was re-launched in the first quarter of 2003, following FDA approval of the Company's Rhode Island manufacturing facility.

The Company believes that future sales growth of ENBREL® will be dependent, in part, on such factors as: limits on the current supply of and sources of ENBREL®; the effects of competing products or therapies; penetration of existing and new market opportunities, including potential new indications; governmental or private organization regulations or guidelines relating to the use of our products; and the availability and extent of reimbursement by third-party payors.

Selected operating expenses

The following table summarizes selected operating expenses (dollars in millions):

	Three months ended June 30,		Six months ended June 30,	
	2004	2003	2004	2003
Product sales	$2,431.0	$1,916.5	$4,638.8	$3,552.4
Operating expenses:				
Cost of sales (excludes amortization of acquired intangible assets)	$ 435.4	$ 329.1	$ 808.6	$ 612.4
% of product sales	18%	17%	17%	17%
Research and development	$ 467.8	$ 393.7	$ 909.1	$ 745.0
% of product sales	19%	21%	20%	21%
Selling, general and administrative	$ 591.0	$ 441.2	$1,107.5	$ 821.7
% of product sales	24%	23%	24%	23%

Cost of sales

Cost of sales, which excludes the amortization of acquired intangible assets (see “Condensed Consolidated Statements of Operations”), increased 32% for the three and six months ended June 30, 2004, respectively, primarily due to higher sales. Cost of sales as a percent of product sales was slightly higher for the three months ended June 30, 2004, primarily due to costs incurred at certain manufacturing facilities which are temporarily operating at less than normal capacity as they transition to other products, as well as changes in the product mix. Cost of sales as a percent of product sales was comparable for the six months ended June 30, 2004 and 2003.

Research and development

R&D expenses increased 19% for the three months ended June 30, 2004 primarily due to: 1) higher staff-related costs, and 2) higher outside R&D costs. During the three months ended June 30, 2004, staff-related costs and outside R&D costs increased approximately $42 million and $28 million, respectively. R&D expenses increased 22% for the six months ended June 30, 2004, respectively, primarily due to: 1) higher staff-related costs, (2) higher outside R&D costs, including collaboration agreements, and 3) higher clinical manufacturing costs. During the six months ended June 30, 2004, staff-related costs, outside R&D costs, and clinical manufacturing costs increased approximately $90 million, $51 million, and $23 million, respectively.

Selling, general and administrative

Selling, general and administrative (“SG&A”) expenses increased 34% and 35% for the three and six months ended June 30, 2004, respectively, primarily due to higher staff-related costs and higher outside marketing expenses, to support products in competitive markets and sales growth. Outside marketing expenses include the Wyeth profit share related to ENBREL®. During the three months ended June 30, 2004, staff-related costs increased approximately $62 million and outside marketing expenses increased approximately $64 million. During the six months ended June 30, 2004, staff-related costs increased approximately $134 million and outside marketing expenses increased approximately $107 million.

SG&A expenses in the fourth quarter are expected to increase over the first three quarters of the year in a trend similar to that seen in previous years.

Other items, net

During the three and six months ended June 30, 2003, other items, net consisted of a benefit for the recovery of costs and expenses associated with a legal award related to an arbitration proceeding with Johnson & Johnson of $74.0 million, partially offset by a charitable contribution to the Amgen Foundation of $50.0 million (See Note 6, “Other items, net”).

Income taxes

The Company’s effective tax rates for the three and six months ended June 30, 2004, were 26.4% and 26.8%, respectively, compared with 28.5% and 28.4%, respectively, for the same periods last year. The Company’s effective tax rates for the three and six months ended June 30, 2004, have decreased primarily due to an increase in the amount of permanently reinvested foreign earnings.

During 2002, the Company restructured its Puerto Rico manufacturing operations using a controlled foreign corporation. As permitted in APB No. 23, the Company does not provide U.S. income taxes on its controlled foreign corporations’ undistributed earnings that are intended to be permanently reinvested outside the U.S.

Financial Condition, Liquidity and Capital Resources

The following table summarizes selected financial data (amounts in millions):

	June 30, 2004	December 31, 2003
Cash, cash equivalents, and marketable securities	$ 4,261.8	$ 5,122.9
Total assets	26,060.0	26,176.5
Total current and non-current debt	3,095.7	3,079.5
Stockholders’ equity	19,410.8	19,389.1

The Company believes that existing funds, cash generated from operations, and existing sources of and access to financing are adequate to satisfy its working capital, capital expenditure and debt service requirements for the foreseeable future, as well as to support its stock repurchase program. However, in order to provide for greater financial flexibility and liquidity, the Company may raise additional capital from time to time.

Cash, cash equivalents, and marketable securities

Of the total cash, cash equivalents, and marketable securities at June 30, 2004, approximately $1.9 billion represents cash generated from operations in foreign tax jurisdictions and is intended for use outside the United States (see “Results of Operations – Income taxes”). If these funds are repatriated for use in the Company’s U.S. operations, additional taxes on certain of these amounts would be required to be paid. The Company does not currently anticipate a need to repatriate these funds to the United States.

Financing activities

As of June 30, 2004, the Company had Convertible Notes (30-year, zero-coupon senior convertible notes) with an accreted value of $2.9 billion outstanding and having an aggregate face amount of $3.95 billion and yield to maturity of 1.125%. The original issue discount of $1.13 billion is being accreted to the balance of the Convertible Notes and recognized as interest expense over the life of the Convertible Notes using the effective interest method. The holders of the Convertible Notes may require the Company to purchase all or a portion of their notes on various dates, the earliest of which is March 1, 2005, at a price equal to the original issuance price plus the accrued original issue discount to the purchase dates, and accordingly, the Convertible Notes are classified as current in the accompanying Condensed Consolidated Balance Sheet as of June 30, 2004. In such event, under the terms of the Convertible Notes, the Company has the right to pay the purchase price in cash and/or shares of common stock, which would be issued at the then current market price.

Holders of the Convertible Notes may convert each of their notes into 8.8601 shares of common stock of the Company (the “conversion rate”) at any time on or before the maturity date, or approximately 35.0 million shares in the aggregate. The conversion price per share as of any day will equal the original issuance price plus the accrued original issue discount to that day, divided by the conversion rate, or $82.75 per share as of June 30, 2004. The Company’s Convertible Notes are rated A2 by Moody’s and A+ by Standard & Poor’s.

In July 2004, the Company established a $1.0 billion five-year unsecured revolving credit facility to be used for general corporate purposes, including commercial paper support. Additionally, the Company increased the size of its commercial paper authorization by $1.0 billion. No amounts were outstanding under the credit facility or commercial paper program.

The Company has a $1.0 billion shelf registration (the “$1 Billion Shelf”), which allows the Company to issue debt securities, common stock, and associated preferred share purchase rights, preferred stock, warrants to purchase debt securities, common stock or preferred stock, securities purchase contracts, securities purchase units and depositary shares of the Company. The $1 Billion Shelf was established to provide for further financial flexibility and the securities available for issuance may be offered from time to time with terms to be determined at the time of issuance. As of June 30, 2004, no securities had been issued under the $1 Billion Shelf.

The Company has $100 million of debt securities outstanding bearing interest at a fixed rate of 6.5% and maturing in 2007 (the “Notes”) under a $500 million debt shelf registration (the “$500 Million Shelf”). Under the $500 Million Shelf, all of the remaining $400 million of debt securities available for issuance may be offered from time to time under the Company’s medium-term note program with terms to be determined at the time of issuance.

Cash flows

The following table summarizes the Company’s cash flow activity (amounts in millions):

	Six months ended June 30,	
	2004	**2003**
Net cash provided by operating activities	$ 1,513.8	$ 1,720.5
Net cash provided by (used in) investing activities	822.4	(1,823.9)
Net cash used in financing activities	(1,455.9)	(677.8)

Operating

Cash provided by operating activities has been and is expected to continue to be the Company's primary recurring source of funds. The decrease in cash provided by operating activities during the six months ended June 30, 2004 resulted primarily from the timing of accrued liability payments partially offset by higher earnings (See Condensed Consolidated Statements of Cash Flows).

Investing

Capital expenditures totaled $741.8 million during the six months ended June 30, 2004, compared with $544.0 million during the same period last year. The increase in capital expenditures during the six months ended June 30, 2004 resulted primarily from capital expenditures related to the new ENBREL® manufacturing plant in Rhode Island, the Thousand Oaks site expansion, and the Puerto Rico manufacturing expansion.

The Company currently estimates spending on capital projects and equipment to be approximately $1.3 billion to $1.5 billion in 2004, the most significant of which relate to the new ENBREL® manufacturing plant in Rhode Island, the Puerto Rico manufacturing expansion, and the Thousand Oaks site expansion.

Financing

The Company receives cash from the exercise of employee stock options and proceeds from the sale of stock by Amgen pursuant to the employee stock purchase plan. Employee stock option exercises and proceeds from the sale of stock by Amgen pursuant to the employee stock purchase plans provided $194.8 million and $302.9 million of cash during the six months ended June 30, 2004 and 2003, respectively. Proceeds from the exercise of employee stock options will vary from period to period based upon, among other factors, fluctuations in the market value of the Company's stock relative to the exercise price of such options.

The Company has a stock repurchase program primarily to reduce the dilutive effect of its employee stock option and stock purchase plans. Additionally, stock repurchases beyond this level reflect the Company's confidence in the long-term value of Amgen common stock. A summary of the Company's repurchase activity for the six months ended June 30, 2004 and 2003 is as follows (amounts in millions):

	2004		2003	
	Shares	Dollars	Shares	Dollars
First quarter	$10.1	649.7	8.2	$450.6
Second quarter	17.4	1,000.0	7.3	449.0
Total	$27.5	1,649.7	15.5	$899.6

In December 2003, the Board of Directors authorized the Company to repurchase up to an additional $5.0 billion of common stock allowing for a multi-year stock repurchase program. As of June 30, 2004, $3.4 billion was available for stock repurchases. The amount the Company spends and the number of shares repurchased varies based on a variety of factors, including employee stock option grants, the stock price and blackout periods in which the Company is restricted from repurchasing shares. See Part II – Other Information, Item 2. Changes in Securities, Use of Proceeds

and Issuer Purchases of Equity Securities for additional information regarding the Company's stock repurchase program.

Summary of Critical Accounting Policies

The preparation of the Company's consolidated financial statements in conformity with United States generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and the notes to the financial statements. Some of those judgments can be subjective and complex, and therefore, actual results could differ materially from those estimates under different assumptions or conditions.

EPOGEN® revenue recognition

The Company has the exclusive right to sell Epoetin alfa for dialysis, certain diagnostics, and all non-human, non-research uses in the United States. Amgen has granted to Johnson & Johnson a license relating to Epoetin alfa for sales in the United States for all human uses except dialysis and diagnostics. Pursuant to this license, the Company and Johnson & Johnson are required to compensate each other for Epoetin alfa sales that either party makes into the other party's exclusive market, sometimes referred to as "spillover". Accordingly, Amgen does not recognize product sales it makes into the exclusive market of Johnson & Johnson and does recognize the product sales made by Johnson & Johnson into Amgen's exclusive market. Sales in Amgen's exclusive market are derived from the Company's sales to its customers, as adjusted for spillover. The Company is employing an arbitrated audit methodology to measure each party's spillover based on independent third-party data on shipments to end users and their estimated usage. Data on end user usage is derived in part using market sampling techniques, and accordingly, the results of such sampling can produce variability in the amount of recognized spillover. The Company initially recognizes spillover based on estimates of shipments to end users and their usage, utilizing historical third-party data and subsequently adjusts such amounts based on revised third-party data as received. Differences between initial estimates of spillover and amounts based on revised third-party data could produce materially different amounts for recognized EPOGEN® sales. However, such differences to date have not been material.

Deferred income taxes

The Company's effective tax rate reflects the impact of undistributed foreign earnings for which no U.S. taxes have been provided because such earnings are intended to be permanently reinvested internationally based on the Company's projected cash flow, working capital, and long- term investment requirements of its U.S. and foreign operations. If future events, including material changes in estimates of cash, working capital, and long-term investment requirements necessitate that certain assets associated with these earnings be repatriated to the United States, an additional tax provision and related liability would be required which could materially impact the Company's effective future tax rate.

Sales incentives and returns

Product sales are recorded net of accruals for estimated rebates including Medicaid, discounts, incentives, and returns. These accruals are established in the same period the related sales are recognized and are included in accrued liabilities. The accruals are based on reasonable estimates of the amounts earned or to be claimed during the related periods. These estimates take into

consideration current contractual and statutory requirements, specific known market events and trends, historical data (both internal and external) and forecasted activity of the number of customers that ultimately earn or claim such amounts. Rebates, discounts, incentives and returns are product-specific and, therefore, for any given year, can be impacted by the mix of products sold.

The most significant and difficult to estimate of these accruals relates to rebates earned by healthcare providers such as clinics, hospitals and pharmacies which are performance-based incentive offers, primarily based on sales volumes and growth. As a result, the calculation of the accrual for these rebates is complicated by the need to estimate customer buying patterns and the resulting applicable contractual rebate rate(s) to be earned over a contractual period. The Company believes that the accruals we have established for rebates are reasonable and appropriate given current facts and circumstances. However, actual results may differ. For example, a 5 percent change in the revenue reduction attributable to rebates recognized in 2003 would have had an approximate $35 million effect on the Company's reported product sales in 2003.

Amounts accrued for rebates, discounts, incentives and returns are adjusted when trends or significant events indicate that adjustment is appropriate. Accruals are also adjusted to reflect actual results. However, such adjustments to date have not been material to results of operations or financial position

Factors that may affect Amgen

The following items are representative of the risks, uncertainties, and assumptions that could affect the outcome of the forward looking statements.

Our sales depend on payment and reimbursement from third-party payors, and a reduction in the payment rate or reimbursement could result in decreased use or sales of our products.

In both domestic and foreign markets, sales of our products are dependent, in part, on the availability of reimbursement from third-party payors such as state and federal governments, under programs such as Medicare and Medicaid in the United States, and private insurance plans. Medicare does not cover prescriptions for ENBREL®. In certain foreign markets, the pricing and profitability of our products generally are subject to government controls. In the United States, there have been, there are, and we expect there will continue to be, a number of state and federal proposals that could limit the amount that state or federal governments will pay to reimburse the cost of pharmaceutical and biologic products. The Medicare Prescription Drug, Improvement and Modernization Act (or the Medicare Modernization Act (MMA)) was enacted into law in December 2003. We are closely monitoring the impact on our business of the change from the current Average Wholesale Price (AWP) mechanism as the basis of Medicare Part B payment for covered outpatient drugs and biologics to an "average sales price" (ASP) methodology. We expect that effective January 1, 2005, in the physician clinic market segment, Aranesp®, NEUPOGEN®, and Neulasta® will be reimbursed under a new Part B system that reimburses each product at 106% of its ASP (sometimes referred to as "ASP + 6%"). The Centers for Medicare and Medicaid Services (CMS) is in the process of determining what each product's ASP will be and on July 28, 2004, CMS issued ASPs for Aranesp®, Neupogen® and Neulasta® based on data submitted by us from first quarter 2004. Although ASP + 6% does not become effective in the physician clinic market segment until January 1, 2005, the reimbursement rates for Aranesp®, NEUPOGEN® and Neulasta® calculated at 106% of the ASPs issued on July 28, 2004, and based on first quarter 2004 Company data, are lower than the current 2004 reimbursement rates. The MMA calls for quarterly payment rates based on updated ASP information. We expect that the respective ASPs for these products will change, that the first quarter 2005 reimbursement rate for these products will be based on third quarter 2004 Company data, and that these reimbursement rates are likely to change in every quarter thereafter. Effective January 1, 2006, the Outpatient Prospective Payment System, which determines payment rates for specified covered outpatient drugs and biologics in the hospital outpatient setting, will change from an AWP based reimbursement system to a system based on "average acquisition cost" as determined by CMS considering surveys by the General Accounting Office in 2004 and 2005. This change will affect Aranesp®, NEUPOGEN®, and Neulasta® when administered in the hospital outpatient setting.

Further, the MMA changes Medicare reimbursement for EPOGEN® used in the dialysis setting for calendar year 2005 from the current rate of $10 per 1,000 units to a rate based upon an acquisition cost determined by the Office of the Inspector General (OIG), or to an amount set by the Secretary of Health and Human Services if the OIG has not determined an acquisition cost. On July 28, 2004, CMS announced a proposed rule suggesting that 2005 Medicare payments to dialysis facilities for all drugs separately billed when used in dialysis (including EPOGEN®) be set based on an ASP calculation of 97% of ASP (sometimes referred to as "ASP –3%"). The proposal calls for quarterly updates to the payment rates based on updated ASP information from the manufacturer. Pursuant to the MMA and the CMS proposed rule, the difference between the 2004 reimbursement rates for all drugs separately billed (including EPOGEN®) and the 2005 reimbursement rates for such drugs will be added to the composite rate that dialysis providers receive for dialysis treatment. CMS has solicited comments on its proposal and we plan on working with CMS to ensure continued patient access to EPOGEN® therapy in 2005 and beyond. CMS is expected to issue a final rule on or about November 1, 2004. Under the MMA, effective January 1, 2006, reimbursement for EPOGEN® in the dialysis setting will be based on the acquisition cost as determined by the OIG or based on the amount determined under the ASP +6% methodology established in the MMA for Medicare-reimbursed drugs provided in certain other settings, at the discretion of the Secretary.

In addition, we believe that beginning on January 1, 2006, ENBREL®, Sensipar™, and Kineret® will be covered by the MMA-mandated outpatient prescription drug benefit (also known as "Part D"). These changes driven by the MMA are lowering the 2005 reimbursement rate for EPOGEN® and may lower reimbursement rates for certain of our other products.

However, because additional information and decisions are expected to be made by CMS regarding reimbursement affecting our products, and because we cannot predict the impact of any such changes on how, or under what circumstances, healthcare providers will prescribe or administer our products, as of the date of this filing, we have not determined the full impact of this new law on our business.

On July 8, 2004, CMS released a proposed revision to the Hematocrit Measurement Audit Program Memorandum (HMA-PM), a Medicare payment review mechanism used by CMS to audit appropriate hematocrit outcomes of dialysis patients. As of the date of this filing, the proposed revision is in a 60-day comment period, but is expected to go into effect on or after January 1, 2005. Among other things, the proposed policy would establish new guidelines defining a maximum number of units of EPOGEN® that will be paid for by Medicare per month for dialysis patients whose hematocrits exceed a specified amount. The Medicare EPOGEN® usage limits would not be applied if there is medical justification for the higher hematocrit. We are currently reviewing the draft guidelines to assess its impact and will provide comments to CMS, as appropriate.

However, we believe that legislation or regulations that reduce reimbursement for our products could adversely impact how much or under what circumstances healthcare providers will prescribe or administer our products. In addition, we believe that private insurers, such as managed care organizations, may adopt their own reimbursement reductions in response to such legislation or regulations. Reduction in reimbursement for our products could have a material adverse effect on our results of operations. Also, we believe the increasing emphasis on managed care in the United States has and will continue to put pressure on the price and usage of our products, which may adversely impact product sales. Further, when a new therapeutic product is approved, the availability of governmental and/or private reimbursement for that product is uncertain, as is the amount for which that product will be reimbursed. We cannot predict the availability or amount of reimbursement for our approved products or product candidates, including those at a late stage of development, and current reimbursement policies for marketed products may change at any time. Sales of all our products are and will be affected by government and private payor reimbursement policies

If reimbursement for our marketed products changes adversely or if we fail to obtain adequate reimbursement for our other current or future products, health care providers may limit how much or under what circumstances they will prescribe or administer them, which could reduce the use of our products or cause us to reduce the price of our products. This could result in lower product sales or revenues, which could have a material adverse effect on us and our results of operations. For example, in the United States the use of EPOGEN® in connection with treatment for end-stage renal disease is funded primarily by the U.S. federal government. In early 1997, CMS, formerly known as HCFA, instituted a reimbursement change for EPOGEN®, which materially and adversely affected our EPOGEN® sales until the policies were revised.

Our current products and products in development cannot be sold if we do not obtain and maintain regulatory approval.

We conduct research, preclinical testing, and clinical trials and we manufacture and contract manufacture our product candidates. We also manufacture and contract manufacture, price, sell, distribute, and market or co-market our products for their approved indications. These activities are subject to extensive regulation by numerous state and federal governmental authorities in the United States, such as the FDA and CMS, as well as in foreign countries, including Europe. Currently, we are required in the United States and in foreign countries to obtain approval from those countries' regulatory authorities before we can manufacture (or have our third-party manufacturers produce product), market and sell our products in those countries. In our experience, obtaining regulatory approval is costly and takes many years, and after it is obtained, it remains costly to maintain. The FDA and other U.S. and foreign regulatory agencies have substantial discretion to terminate clinical trials, require additional testing, delay or withhold registration and marketing approval, require changes in labeling of our products, and mandate product withdrawals. Substantially all of our marketed products are currently approved in the United States and most are approved in Europe and in other foreign countries for specific uses. We currently manufacture and market all our approved key products, and we plan to manufacture and market many of our potential products. See "–We may be required to perform additional clinical trials or change the labeling of our products if we or others identify side effects after our products are on the market." Even though we have obtained regulatory approval for our marketed products, these products and our manufacturing processes are subject to continued review by the FDA and other regulatory authorities. In addition, ENBREL® is manufactured both by us at our Rhode Island manufacturing facility and by a third-party contract manufacturer, Boehringer Ingelheim Pharma KG ("BI Pharma"), and fill and finish of bulk product produced at our Rhode Island manufacturing facility is done by third-party service providers. BI Pharma and these third-party service providers are subject to FDA regulatory authority. See "–Limits on supply for ENBREL® may constrain ENBREL® sales." In addition, later discovery of unknown problems with our products or manufacturing processes or those of our contract manufacturers or third-party service providers could result in restrictions on such products or manufacturing processes, including potential withdrawal of the products from the market. If regulatory authorities determine that we or our contract manufacturers or third-party service providers have violated regulations or if they restrict, suspend, or revoke our prior approvals, they could prohibit us from manufacturing or selling our marketed products until we or our contract manufacturers or third-party service providers comply, or indefinitely. In addition, if regulatory authorities determine that we have not complied with regulations in the research and development of a product candidate, then they may not approve the product candidate and we will not be able to market and sell it. If we were unable to market and sell our products or product candidates, our business and results of operations would be materially and adversely affected.

If our intellectual property positions are challenged, invalidated, circumvented or expire, or if we fail to prevail in present and future intellectual property litigation, our business could be adversely affected.

The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and often involve complex legal, scientific, and factual questions. To date, there has emerged no consistent policy regarding breadth of claims allowed in such companies' patents. Third parties may challenge, invalidate, or circumvent our patents and patent applications relating to our products, product candidates, and technologies. In addition, our patent positions might not protect us against competitors with similar products or technologies because competing products or technologies may

not infringe our patents. For certain of our product candidates, there are third parties who have patents or pending patents that they may claim prevent us from commercializing these product candidates in certain territories. Patent disputes are frequent, costly, and can preclude commercialization of products. We are currently, and in the future may be, involved in patent litigation. For example, we are involved in ongoing patent infringement lawsuits against Transkaryotic Therapies, Inc. ("TKT") and Aventis with respect to our erythropoietin patents. If we lose or settle these or other litigations at certain stages or entirely, we could be: subject to competition and/or significant liabilities; required to enter into third-party licenses for the infringed product or technology; or required to cease using the technology or product in dispute. In addition, we cannot guarantee that such licenses will be available on terms acceptable to us, or at all.

Our success depends in part on our ability to obtain and defend patent rights and other intellectual property rights that are important to the commercialization of our products and product candidates. We have filed applications for a number of patents and have been granted patents or obtained rights relating to erythropoietin, recombinant G-CSF, darbepoetin alfa, pegfilgrastim, etanercept, and our other products and potential products. We market our erythropoietin, recombinant G-CSF, darbepoetin alfa, pegfilgrastim, and etanercept products as EPOGEN®, NEUPOGEN®, Aranesp®, Neulasta®, and ENBREL®, respectively. Our material patents are listed in the table below:

PRODUCT		GENERAL SUBJECT MATTER	EXPIRATION
Epoetin alfa	U.S.	- DNA and host cells (issued in 1987)	10/27/2004
		- Process of making erythropoietin (issued in 1995 and 1997)	8/15/2012
		- Product claims to erythropoietin (issued in 1996 and 1997)	8/20/2013
		- Pharmaceutical compositions of erythropoietin (issued in 1999)	8/20/2013
		- Cells that make certain levels of erythropoietin (issued in 1998)	5/26/2015
	Europe(1)	- Erythropoietin DNA cells, polypeptides and processes (issued in 1990)	12/12/2004
darbepoetin alfa	Europe(1)	- Glycosylation analogs of erythropoietin proteins (issued in 1999)	10/12/2010
		- Glycosylation analogs of erythropoietin proteins (issued in 1997)	8/16/2014
Filgrastim	U.S.	- Methods for recombinant production of G-CSF (issued in 1998)	8/23/2005
		- Analogs of G-CSF (issued in 1999)	8/23/2005
		- Pharmaceutical Compositions Comprising G-CSF (issued in 2002)	8/23/2005
		- DNA, vectors, cells and processes relating to recombinant G-CSF (issued in 1989 and 1991)	3/7/2006
		- G-CSF polypeptides (issued in 1996)	12/3/2013
		- Methods of treatment using G-CSF polypeptides (issued in 1996)	12/10/2013
	Europe(1)	- G-CSF DNA Vectors, cells, polypeptides, methods of use and production (issued in 1991)	8/22/2006
pegfilgrastim	U.S.	- Pegylated G-CSF (issued in 1998)	10/20/2015
	Europe(1)	- Pegylated G-CSF (issued in 1999)	2/8/2015
etanercept	U.S.	- Methods of treating TNF - dependent disease (issued in 2003)	9/5/2009
		- TNFR proteins and pharmaceutical compositions (issued in 1999 and 2001)	9/5/2009
		- TNFR DNA vectors, cells and processes for making proteins (issued in 1995 and 2000)	3/7/2012

(1) In some cases these European patents may also be entitled to Supplemental Protection in one or more countries in Europe and the length of any such extension will vary country by country.

We also have been granted or obtained rights to patents in Europe relating to: erythropoietin; G-CSF; pegfilgrastim (pegylated G-CSF); etanercept; two relating to darbepoetin alfa; and hyperglycosylated erythropoietic proteins. Our European patents relating to erythropoietin and G-CSF expire on December 12, 2004 and August 22, 2006, respectively, and we believe that after the expiration of these patents, other companies could develop and market follow-on or biosimilar products to our products in Europe; presenting additional competition to our products. While we do not market erythropoietin in Europe as this right belongs to Johnson & Johnson (through KA), we do market Aranesp® in the EU, which competes with Johnson & Johnson's and others' erythropoietin products. We believe that the EU is currently in the process of developing regulatory requirements that would affect the development and approval of new competitive products. Until such requirements are finalized, we cannot predict when follow-on or biosimilar products could appear on the market in the EU or to what extent such additional competition would impact future Aranesp® and NEUPOGEN®/Neulasta® sales in the EU.

Limits on supply for ENBREL® may constrain ENBREL® sales.

U.S. and Canadian supply of ENBREL® is impacted by many manufacturing variables, such as the timing and actual number of production runs, production success rate, bulk drug yield, and the timing and outcome of product quality testing. For example, in the second quarter of 2002, the prior co-marketer with respect to ENBREL®, experienced a brief period where no ENBREL® was available to fill patient prescriptions, primarily due to variation in the expected production yield from BI Pharma. If we are at any time unable to provide an uninterrupted supply of ENBREL® to patients, we may lose patients, physicians may elect to prescribe competing therapeutics instead of ENBREL®, and ENBREL® sales will be adversely affected, which could materially and adversely affect our results of operations. See "–We are dependent on third parties for a significant portion of our supply and the fill and finish of ENBREL®; and our sources of supply are limited."

We are dependent on third parties for a significant portion of our supply and the fill and finish of ENBREL®; and our sources of supply are limited.

We currently produce a substantial portion of annual ENBREL® supply at our Rhode Island manufacturing facility. However, we also depend on third parties for a significant portion of our ENBREL® supply as well as for the fill and finish of ENBREL® that we manufacture. BI Pharma is currently our sole third-party manufacturer of ENBREL® bulk drug; accordingly, our U.S. and Canadian supply of ENBREL® is currently significantly dependent on BI Pharma's production schedule for ENBREL®. We would be unable to produce ENBREL® in sufficient quantities to substantially offset shortages in BI Pharma's scheduled production if BI Pharma or other third-party manufacturers used for the fill and finish of ENBREL® bulk drug were to cease or interrupt production or services or otherwise fail to supply materials, products, or services to us for any reason, including due to labor shortages or disputes, due to regulatory requirements or action, or due to contamination of product lots or product recalls. This in turn could materially reduce our ability to satisfy demand for ENBREL®, which could materially and adversely affect our operating results. Factors that will affect our actual supply of ENBREL® at any time include, without limitation, the following:

- BI Pharma does not produce ENBREL® continuously; rather, it produces the drug through a series of periodic campaigns throughout the year. Our Rhode Island manufacturing facility is currently dedicated to Enbrel® production. The amount of commercial inventory

available to us at any time depends on a variety of factors, including the timing and actual number of BI Pharma's production runs, the actual number of runs at our Rhode Island manufacturing facility, and, for either Rhode Island or BI Pharma facilities, the level of production yields and success rates, the timing and outcome of product quality testing, and the amount of vialing capacity.

- BI Pharma schedules the vialing production runs for ENBREL® in advance, based on the expected timing and yield of bulk drug production runs. Therefore, if BI Pharma realizes production yields beyond expected levels, or provides additional manufacturing capacity for ENBREL®, it may not have sufficient vialing capacity for all of the ENBREL® bulk drug that it produces. As a result, even if we are able to increase our supply of ENBREL® bulk drug, BI Pharma may not be able to fill and finish the extra bulk drug in time to prevent any supply interruptions.

We are dependent on third parties for fill and finish of ENBREL® bulk drug manufactured at our Rhode Island facility. If third-party fill and finish manufacturers are unable to provide sufficient capacity or otherwise unable to provide services to us, then supply of ENBREL® could be adversely affected.

Our current plan to increase U.S. and Canadian supply of ENBREL® includes construction of an additional large-scale cell culture commercial manufacturing facility adjacent to the current Rhode Island manufacturing facility. Additionally, we have entered into a manufacturing agreement with Genentech, Inc. ("Genentech") to produce ENBREL® at Genentech's manufacturing facility in South San Francisco, California. These manufacturing facilities are subject to FDA approval. Under the terms of the agreement, Genentech is expected to produce ENBREL® through 2005, with an extension through 2006 by mutual agreement. However, certain milestones under the manufacturing agreement, including obtaining FDA approval for the manufacturing process, have not been met in the pre-agreed time frame and there can be no assurance that Genentech will be able to obtain the requisite FDA approval. If and when approval is received, Enbrel® bulk drug produced at the Genentech facility is expected to be produced in campaigns similar to those conducted at BI Pharma. Consequently, supply from the Genentech facility is expected to also be dependent on the timing and number of production runs in addition to the other manufacturing risk discussed above. In addition, Wyeth is constructing a new manufacturing facility in Ireland, which is expected to increase the U.S. and Canadian supply of ENBREL®. If the additional ENBREL® manufacturing capacity at the Rhode Island site, or at Genentech, or in Ireland are not completed on time, or if these manufacturing facilities do not receive FDA or The European Agency for the Evaluation of Medicinal Products (EMEA) approval before we encounter supply constraints, our ENBREL® sales would be restricted, which could have a material adverse effect on our results of operations. See "–Limits on supply for ENBREL® may constrain ENBREL® sales." If these third-party manufacturing facilities are completed and approved by the various regulatory authorities, our costs of acquiring bulk drug may fluctuate.

Continual manufacturing process improvement efforts may result in the carrying value of certain existing manufacturing facilities or other assets becoming impaired.

In connection with our ongoing process improvement activities associated with products we manufacture, we continually invest in our various manufacturing practices and related processes with the objective of increasing production yields and success rates to gain increased cost efficiencies and capacity utilization. Depending on the timing and outcomes of these efforts and our other

estimates and assumptions regarding future product sales, the carrying value of certain manufacturing facilities or other assets may not be fully recoverable and could result in the recognition of an impairment in the carrying value at the time that such effects are identified. The potential recognition of impairment in the carrying value, if any, could have a material and adverse affect on our results of operations.

Our marketed products face substantial competition and other companies may discover, develop, acquire or commercialize products before or more successfully than we do.

We operate in a highly competitive environment. Our products compete with other products or treatments for diseases for which our products may be indicated. For example, ENBREL® competes in certain circumstances with rheumatoid arthritis products marketed by Abbott Laboratories/Knoll, Centocor Inc./Johnson & Johnson, Aventis Pharmaceuticals, Inc., Pfizer Inc., and Merck & Co., Inc. (“Merck) as well as the generic drug methotrexate, and may face competition from other potential therapies being developed. Additionally, Aranesp® competes with Johnson & Johnson in the United States and the EU. Further, if our currently marketed products are approved for new uses, or if we sell new products, we may face new, additional competition that we do not face today. Additionally, some of our competitors, including biotechnology and pharmaceutical companies, market products or are actively engaged in research and development in areas where we have products or where we are developing product candidates or new indications for existing products. In the future, we expect that our products will compete with new drugs currently in development, drugs approved for other indications that may be approved for the same indications as those of our products, and off-label use of drugs approved for other indications. Our European patents relating to erythropoietin and G-CSF expire on December 12, 2004 and August 22, 2006, respectively, and we believe that after the expiration of these patents, other companies could develop and market follow-on or biosimilar products to our products in Europe; presenting additional competition to our products. While we do not market erythropoietin in Europe as this right belongs to Johnson & Johnson (through KA), we do market Aranesp® in the EU, which competes with Johnson & Johnson’s and others’ erythropoietin products. We believe that the EU is currently in the process of developing regulatory requirements that would affect the development and approval of follow-on or biosimilar products. Until such requirements are finalized, we cannot predict when follow-on or biosimilar products could appear on the market in the EU or to what extent such additional competition would impact future Aranesp® and NEUPOGEN®/Neulasta® sales in the EU. Our products may compete against products that have lower prices, superior performance, are easier to administer, or that are otherwise competitive with our products. Our inability to compete effectively could adversely affect product sales.

Large pharmaceutical corporations may have greater clinical, research, regulatory, manufacturing, marketing, financial and human resources than we do. In addition, some of our competitors may have technical or competitive advantages over us for the development of technologies and processes. These resources may make it difficult for us to compete with them to successfully discover, develop, and market new products and for our current products to compete with new products or new product indications that these competitors may bring to market. Business combinations among our competitors may also increase competition and the resources available to our competitors.

Certain of our raw materials, medical devices and components are single-sourced from third parties; third-party supply failures could adversely affect our ability to supply our products.

Certain raw materials necessary for commercial manufacturing and formulation of our products are provided by single-source unaffiliated third-party suppliers. Also, certain medical devices and components necessary for fill, finish, and packaging of our products are provided by single-source unaffiliated third-party suppliers. Certain of these raw materials, medical devices, and components are the proprietary products of these unaffiliated third-party suppliers and, in some cases, such proprietary products are specifically cited in our drug application with the FDA so that they must be obtained from that specific sole source and could not be obtained from another supplier unless and until the FDA approved that other supplier. We would be unable to obtain these raw materials, medical devices, or components for an indeterminate period of time if these third-party single-source suppliers were to cease or interrupt production or otherwise fail to supply these materials or products to us for any reason, including due to regulatory requirements or action, due to adverse financial developments at or affecting the supplier, or due to labor shortages or disputes. This, in turn, could materially and adversely affect our ability to satisfy demand for our products, which could materially and adversely affect our operating results.

Also, certain of the raw materials required in the commercial manufacturing and the formulation of our products are derived from biological sources, including mammalian tissues, bovine serum and human serum albumin, or HSA. We are investigating alternatives to certain biological sources. Raw materials may be subject to contamination and/or recall. A material shortage, contamination, and/or recall could adversely impact or disrupt our commercial manufacturing of our products or could result in a mandated withdrawal of our products from the market. This too, in turn, could adversely affect our ability to satisfy demand for our products, which could materially and adversely affect our operating results.

Our product development efforts may not result in commercial products.

We intend to continue an aggressive research and development program. Successful product development in the biotechnology industry is highly uncertain, and very few research and development projects produce a commercial product. Product candidates that appear promising in the early phases of development, such as in early human clinical trials, may fail to reach the market for a number of reasons, such as:

- the product candidate did not demonstrate acceptable clinical trial results even though it demonstrated positive preclinical trial results
- the product candidate was not effective in treating a specified condition or illness
- the product candidate had harmful side effects in humans
- the necessary regulatory bodies, such as the FDA, did not approve our product candidate for an intended use
- the product candidate was not economical for us to manufacture and commercialize
- other companies or people have or may have proprietary rights to our product candidate, such as patent rights, and will not let us sell it on reasonable terms, or at all

- the product candidate is not cost effective in light of existing therapeutics

Several of our product candidates have failed or been discontinued at various stages in the product development process, including Brain Derived Neurotrophic Factor ("BDNF") and Megakaryocyte Growth and Development Factor ("MGDF"). For example, in 1997, we announced the failure of BDNF for the treatment of amyotrophic lateral sclerosis, or Lou Gehrig's Disease, because the product candidate, when administered by injection, did not produce acceptable clinical results for a specific use after a phase 3 trial, even though BDNF had progressed successfully through preclinical and earlier clinical trials. In addition, in 1998, we discontinued development of MGDF, a novel platelet growth factor, at the phase 3 trial stage after several people in platelet donation trials developed low platelet counts and neutralizing antibodies. Of course, there may be other factors that prevent us from marketing a product. We cannot guarantee we will be able to produce commercially successful products. Further, clinical trial results are frequently susceptible to varying interpretations by scientists, medical personnel, regulatory personnel, statisticians, and others, which may delay, limit, or prevent further clinical development or regulatory approvals of a product candidate. Also, the length of time that it takes for us to complete clinical trials and obtain regulatory approval for product marketing has in the past varied by product and by the intended use of a product. We expect that this will likely be the case with future product candidates and we cannot predict the length of time to complete necessary clinical trials and obtain regulatory approval. See "–Our current products and products in development cannot be sold if we do not obtain and maintain regulatory approval."

We may be required to perform additional clinical trials or change the labeling of our products if we or others identify side effects after our products are on the market.

If we or others identify side effects after any of our products are on the market, or if manufacturing problems occur, regulatory approval may be withdrawn and reformulation of our products, additional clinical trials, changes in labeling of our products, and changes to or re-approvals of our manufacturing facilities may be required, any of which could have a material adverse effect on sales of the affected products and on our business and results of operations.

After any of our products are approved for commercial use, we or regulatory bodies could decide that changes to our product labeling are required. Label changes may be necessary for a number of reasons, including: the identification of actual or theoretical safety or efficacy concerns by regulatory agencies or the discovery of significant problems with a similar product that implicates an entire class of products. Any significant concerns raised about the safety or efficacy of our products could also result in the need to reformulate those products, to conduct additional clinical trials, to make changes to our manufacturing processes, or to seek re-approval of our manufacturing facilities. Significant concerns about the safety and effectiveness of one of our products could ultimately lead to the revocation of its marketing approval. The revision of product labeling or the regulatory actions described above could be required even if there is no clearly established connection between the product and the safety or efficacy concerns that have been raised. The revision of product labeling or the regulatory actions described above could have a material adverse effect on sales of the affected products and on our business and results of operations. See "–Our current products and products in development cannot be sold if we do not obtain and maintain regulatory approval."

Our business may be impacted by government investigations or litigation

We and certain of our subsidiaries are involved in legal proceedings relating to various patent matters, government investigations, and other legal proceedings that arise from time to time in the ordinary course of our business. Matters required to be disclosed by us are set forth in "Item 3. Legal Proceedings" in our Form 10-K for the year ended December 31, 2003 and are updated as required in subsequently filed Form 10-Qs. Litigation is inherently unpredictable, and excessive verdicts can occur. Consequently, it is possible that we could, in the future, incur judgments or enter into settlements of claims for monetary damages that could have a material adverse effect on our results of operations in the period in which such amounts are incurred.

The Federal government, state governments and private payors are investigating, and many have filed actions against, numerous pharmaceutical and biotechnology companies, including Amgen and Immunex, alleging that the reporting of prices for pharmaceutical products has resulted in false and overstated Average Wholesale Price ("AWP"), which in turn is alleged to have improperly inflated the reimbursement paid by Medicare beneficiaries, insurers, state Medicaid programs, medical plans and other payors to health care providers who prescribed and administered those products. Fifteen of these actions have been brought against us and/or Immunex, now a wholly owned subsidiary of ours. Eleven states and Puerto Rico have pending investigations regarding our drug pricing practices and the U.S. Departments of Justice and Health and Human Services have requested that Immunex produce documents relating to pricing issues. Further, certain state government entity plaintiffs in some of these AWP cases are also alleging that companies, including ours, are not reporting their "best price" to the states under the Medicaid program. These cases and investigations are described in "Item 3. Legal Proceedings – Average Wholesale Price Litigation" in our Form 10-K for the year ended December 31, 2003, and are updated as required in subsequent Form 10-Qs (See Part II – Other Information, Item 1. Legal Proceedings). Other states and agencies could initiate investigations of our pricing practices. A decision adverse to our interests on these actions and/or investigations could result in substantial economic damages and could have a material adverse effect on our results of operations in the period in which such amounts are incurred.

We may be required to defend lawsuits or pay damages for product liability claims.

Product liability is a major risk in testing and marketing biotechnology and pharmaceutical products. We may face substantial product liability exposure in human clinical trials and for products that we sell after regulatory approval. Product liability claims, regardless of their merits, could be costly and divert management's attention, and adversely affect our reputation and the demand for our products.

Our operating results may fluctuate, and this fluctuation could cause financial results to be below expectations.

Our operating results may fluctuate from period to period for a number of reasons. In budgeting our operating expenses, we assume that revenues will continue to grow; however, some of our operating expenses are fixed in the short term. Because of this, even a relatively small revenue shortfall may cause a period's results to be below our expectations or projections. A revenue shortfall could arise from any number of factors, some of which we cannot control. For example, we may face:

- lower than expected demand for our products

- inability to provide adequate supply of our products
- changes in the government's or private payors' reimbursement policies for our products
- changes in wholesaler buying patterns
- increased competition from new or existing products
- fluctuations in foreign currency exchange rates
- changes in our product pricing strategies

Of these, we would only have control over changes in our product pricing strategies and, of course, there may be other factors that affect our revenues in any given period.

We have grown rapidly, and if we fail to adequately manage that growth our business could be adversely impacted.

We have had an aggressive growth plan that has included substantial and increasing investments in research and development, sales and marketing, and facilities. We plan to continue to grow and our plan has a number of risks, some of which we cannot control. For example:

- we will need to generate higher revenues to cover a higher level of operating expenses, and our ability to do so may depend on factors that we do not control
- we will need to assimilate a large number of new employees
- we will need to manage complexities associated with a larger and faster growing organization
- we will need to accurately anticipate demand for the products we manufacture and maintain adequate manufacturing capacity, and our ability to do so may depend on factors that we do not control

Of course, there may be other risks and we cannot guarantee that we will be able to successfully manage these or other risks.

Our stock price is volatile, which could adversely affect your investment.

Our stock price, like that of other biotechnology companies, is highly volatile. For example, in the fifty-two weeks prior to June 30, 2004, the trading price of our common stock has ranged from a high of $72.37 per share to a low of $52.15 per share. Our stock price may be affected by a number of factors, such as:

- clinical trial results
- adverse developments regarding the safety or efficacy of our products
- actual or anticipated product supply constraints

- product development announcements by us or our competitors
- regulatory matters
- announcements in the scientific and research community
- intellectual property and legal matters
- changes in reimbursement policies or medical practices
- broader industry and market trends unrelated to our performance

In addition, if our revenues, earnings or other financial results in any period fail to meet the investment community's expectations, there could be an immediate adverse impact on our stock price.

Our corporate compliance program cannot guarantee that we are in compliance with all potentially applicable federal and state regulations.

The development, manufacturing, distribution, pricing, sales, and reimbursement of our products, together with our general operations, is subject to extensive federal and state regulation. See "–Our current products and products in development cannot be sold if we do not obtain and maintain regulatory approval." and "–We may be required to perform additional clinical trials or change the labeling of our products if we or others identify side effects after our products are on the market." While we have developed and instituted a corporate compliance program based on current best practices, we cannot assure you that we or our employees are or will be in compliance with all potentially applicable federal and state regulations. If we fail to comply with any of these regulations a range of actions could result, including, but not limited to, the termination of clinical trials, the failure to approve a product candidate, restrictions on our products or manufacturing processes, including withdrawal of our products from the market, significant fines, or other sanctions or litigation.

Our marketing of ENBREL® will be dependent in part upon Wyeth.

Under a co-promotion agreement, we and Wyeth market and sell ENBREL® in the United States and Canada. A management committee comprised of an equal number of representatives from us and Wyeth is responsible for overseeing the marketing and sales of ENBREL®: including strategic planning, the approval of an annual marketing plan, product pricing, and the establishment of a brand team. The brand team, with equal representation from us and Wyeth, will prepare and implement the annual marketing plan, which includes a minimum level of financial and sales personnel commitment from each party, and is responsible for all sales activities. If Wyeth fails to market ENBREL® effectively or if we and Wyeth fail to coordinate our efforts effectively, our sales of ENBREL® may be adversely affected.

Guidelines and recommendations published by various organizations can reduce the use of our products.

Government agencies promulgate regulations and guidelines directly applicable to us and to our products. However, professional societies, practice management groups, private health/science foundations, and organizations involved in various diseases from time to time may also publish guidelines or recommendations to the health care and patient communities. Recommendations of government agencies or these other groups/organizations may relate to such matters as usage, dosage, route of administration, and use of related therapies. Organizations like these have in the past made recommendations about our products. Recommendations or guidelines that are followed by patients and health care providers could result in decreased use of our products. In addition, the perception by the investment community or stockholders that recommendations or guidelines will result in decreased use of our products could adversely affect prevailing market prices for our common stock.

Item 4. Controls and Procedures

The Company maintains “disclosure controls and procedures”, as such term is defined under Exchange Act Rule 13a-15(e), that are designed to ensure that information required to be disclosed in the Company’s Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to the Company’s management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, the Company’s management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives and in reaching a reasonable level of assurance the Company’s management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. The Company has carried out an evaluation under the supervision and with the participation of the Company’s management, including the Company’s Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company’s disclosure controls and procedures. Based upon their evaluation and subject to the foregoing, the Chief Executive Officer and Chief Financial Officer concluded that the Company’s disclosure controls and procedures were effective in ensuring that material information relating to the Company, is made known to the Chief Executive Officer and Chief Financial Officer by others within the Company during the period in which this report was being prepared.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

Israel Bio-Engineering Project Litigation

Israel Bio-Engineering Project filed its appeal brief on June 2, 2004.

Columbia Litigation

On May 6, 2004, the U.S. Patent and Trademark Office ("PTO") granted a request to reexamine Columbia's U.S. Patent No. 6,455,275 ("the '275 patent"). On June 18, 2004, Columbia filed a reissue application in the PTO of the '275 patent. On June 23, 2004, the U.S. District Court of the District of Massachusetts denied Columbia's request to stay the litigation pending the reexamination and reissue proceedings before the PTO. The court also scheduled a November 22, 2004 hearing regarding motions for summary judgment that the '275 patent is invalid for double patenting and a December 13, 2004 trial date on that issue.

Average Wholesale Price Litigation

On June 3, 2004 a civil action was filed in Dane County Circuit Court in Madison, Wisconsin broadly alleging that the Company, together with many other pharmaceutical manufacturers, reported prices for certain products in a manner that allegedly inflated reimbursement under Medicare and/or Medicaid, including co-payments paid to providers who prescribe and administer the products. This action, captioned *State of Wisconsin v. Abbott Laboratories, et al.* is the fifteenth such civil action naming the Company and/or Immunex Corporation as defendants, either separately or together.

Tularik Inc. Stockholder Litigation

Janis Zvokel v. Tularik Inc. et al and *Fred Zucker v. David V. Goeddel et al*

On June 15, 2004, the Court of Chancery in the State of Delaware in and for New Castle County issued an order consolidating the above matters into *In re: Tularik Inc. Shareholders Litigation*.

Mary Kahler v. Tularik, Inc. et al

On July 2, 2004, the plaintiff filed an amended complaint. In addition to the allegations in the initial complaint, the plaintiff also alleges that the defendants breached their fiduciary duties by failing to provide Tularik's stockholders with material information necessary for them to make a fully informed decision concerning the merger of Tularik Inc. with and into Arrow Acquisition, LLC, a wholly owned subsidiary of the Company, in exchange for shares of common stock of the Company. In connection with the amended complaint, the plaintiff sought the permission of the Superior Court of the state of California for the County of San Mateo to take expedited discovery in support of the plaintiff's claims and to schedule a preliminary injunction hearing before the Tularik stockholders' meeting on August 12, 2004. These matters were heard by the court on July 8, 2004. At the hearing, the court denied the plaintiff's motion to take expedited discovery and set a preliminary injunction hearing date of August 6, 2004.

Item 2. Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities

During the three months ended June 30, 2004, the Company had two outstanding stock repurchase programs. As of January 2004, all of the shares authorized under one of these programs were repurchased. The Company's stock repurchase program is primarily intended to reduce the dilutive effect of its employee stock option and stock purchase plans. Additionally, stock repurchases beyond this level reflect the Company's confidence in the long-term value of Amgen common stock. The amount the Company spends and the number of shares repurchased varies based on a variety of factors, including employee stock option grants, the stock price and blackout periods in which the Company is restricted from repurchasing shares.

A summary of the Company's repurchase activity for the three months ended June 30, 2004 is as follows:

	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs	Maximum $ Value that May Yet Be Purchased Under the Programs (1)
April 1 - April 30	9,326,337	$59.14	9,295,110	$3,841,698,192
May 1 - May 31	6,253,108	55.47	6,232,692	3,495,940,076
June 1 - June 30	1,950,025	55.11	1,897,406	3,391,368,654
Total	17,529,470(2)	$57.39	17,425,208	

(1) In June 2002, the Board of Directors (the "Board") authorized the Company to repurchase $2.0 billion of common stock through June 30, 2004 (the "2002 Program). The 2002 Program expired on June 30, 2004 and all amounts remaining under the program were spent in January 2004. Additionally, in December 2003, the Board authorized the Company to repurchase up to an additional $5.0 billion of common stock allowing for a multi-year stock repurchase program with no expiration date.

(2) The difference between total number of shares purchased and the total number of shares purchased as part of publicly announced programs is due to repurchases of common stock from certain employees in connection with their exercise of stock options issued prior to June 23, 1998 as well as shares of common stock withheld by the Company for the payment of taxes upon vesting of certain employees' restricted stock.

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

(a) The Company held its Annual Meeting of Stockholders on May 13, 2004.

(b) Omitted pursuant to Instruction 3 to Item 4 of Form 10-Q.

(c) The three items voted upon at the meeting were: (i) to elect four directors to a three year term of office expiring at the 2007 Annual Meeting of Stockholders ("Item One"); (ii) to ratify the selection of Ernst & Young LLP as independent auditors of the Company for the year ending December 31, 2004 ("Item Two"); and (iii) the Stockholder Proposals ("Item Three"): (A)

Stockholder Proposal #1 relating to the preparation of an Equal Employment Opportunity-1 Report, and (B) Stockholder Proposal #2 relating to the expensing of stock options.

The voting was as follows:

	In Favor	Against ("Withheld" for purposes of Item One)	Abstain	Broker Non-Votes
Item One				
Mr. Frank J. Biondi, Jr.	1,062,682,952	39,693,214	0	0
Mr. Jerry D. Choate	757,782,299	344,593,867	0	0
Mr. Frank C. Herringer	1,082,830,030	19,546,136	0	0
Dr. Gilbert S. Omenn	1,058,731,884	43,644,282	0	0
Item Two	1,040,961,284	54,476,817	6,938,063	2
Item Three				
Stockholder Proposal #1	106,580,845	627,868,746	105,587,364	262,339,206
Stockholder Proposal #2	500,347,704	313,077,636	26,602,402	262,348,424

All nominees to the Board of Directors were declared to have been elected as directors to hold office until the 2007 Annual Meeting of Stockholders. Item Two was declared to have been approved. Stockholder Proposal #1 was declared to have not been approved. Stockholder Proposal #2 was declared to have been approved.

(d) Not applicable.

Item 5. Other Information

The Company's 2005 Annual Meeting of Stockholders will be held on May 11, 2005.

Item 6. Exhibits and Reports on Form 8-K

(a) *Reference is made to the Index to Exhibits included herein.*

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

The Company also furnished, but did not file, one Current Report on Form 8-K during the three months ended June 30, 2004. The report dated April 27, 2004 contained the Company's press release announcing its earnings for the three months ended March 31, 2004.

SIGNATURES

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

Amgen Inc.
(Registrant)

Date: 08/06/04

By: /s/ Richard D. Nanula

Richard D. Nanula
Executive Vice President
and Chief Financial Officer,
acting in both his capacity as authorized
signatory on behalf of the registrant and
as principal financial officer

AMGEN INC.

INDEX TO EXHIBITS

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated March 28, 2004, by and between Amgen Inc., Arrow Acquisition, LLC, and Tularik Inc. (included as Annex A to the proxy statement/prospectus)(43)
3.1	Restated Certificate of Incorporation as amended. (9)
3.2*	Amended and Restated Bylaws of Amgen Inc. (as amended and restated July 13, 2004). (43)
3.3	Certificate of Amendment of Restated Certificate of Incorporation. (17)
3.4	Certificate of Designations of Series A Junior Participating Preferred Stock. (20)
4.1	Indenture dated January 1, 1992 between the Company and Citibank N.A., as trustee. (3)
4.2	First Supplement to Indenture, dated February 26, 1997 between the Company and Citibank N.A., as trustee. (6)
4.3	Officer's Certificate pursuant to Sections 2.1 and 2.3 of the Indenture, as supplemented, establishing a series of securities "8-1/8% Debentures due April 1, 2097." (8)
4.4	8-1/8% Debentures due April 1, 2097. (8)
4.5	Form of stock certificate for the common stock, par value $.0001 of the Company. (9)
4.6	Officer's Certificate pursuant to Sections 2.1 and 2.3 of the Indenture, dated as of January 1, 1992, as supplemented by the First supplemental Indenture, dated as of February 26, 1997, each between Amgen Inc. and Citibank, N.A., as Trustee, establishing a series of securities entitled "6.50% Notes Due December 1, 2007". (11)
4.7	6.50% Notes Due December 1, 2007 described in Exhibit 4.6. (11)
4.8	Corporate Commercial Paper – Master Note between and among Amgen Inc., as Issuer, Cede & Co., as nominee of The Depository Trust Company and Citibank, N.A. as Paying Agent. (12)
4.9	Shareholders' Rights Agreement dated as of December 16, 2001 by and among Amgen Inc., Wyeth (formerly American Home Products Corporation), MDP Holdings, Inc., and Lederle Parenterals, Inc. (25)
4.10	Indenture, dated as of March 1, 2002, between Amgen Inc. and LaSalle Bank National Association. (27)
4.11	Form of Liquid Yield Option™ Note due 2032. (27)
4.12	Registration Rights Agreement, dated as of March 1, 2002, between Amgen Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated. (27)
9.1	Stockholder Voting Agreement by and between Amgen Inc. and the Stockholders of Tularik Inc. identified on Schedule A attached thereto dated as of March 28, 2004. (43)
10.1+	Company's Amended and Restated 1991 Equity Incentive Plan, effective December 2003. (42)
10.2+	Company's Amended and Restated 1997 Equity Incentive Plan, effective July 15, 2002. (40)

Exhibit No.	Description
10.3	Shareholder's Agreement of Kirin-Amgen, Inc., dated May 11, 1984, between the Company and Kirin Brewery Company, Limited. (20)
10.4	Amendment Nos. 1, 2, and 3, dated March 19, 1985, July 29, 1985 and December 19, 1985, respectively, to the Shareholder's Agreement of Kirin-Amgen, Inc., dated May 11, 1984. (17)
10.5	Product License Agreement, dated September 30, 1985, and Technology License Agreement, dated, September 30, 1985 between Amgen Inc. and Ortho Pharmaceutical Corporation. (17)
10.6	Product License Agreement, dated September 30, 1985, and Technology License Agreement, dated September 30, 1985 between Kirin-Amgen, Inc. and Ortho Pharmaceutical Corporation. (17)
10.7+	Amended and Restated Employee Stock Purchase Plan of Amgen Inc. (17)
10.8	Research, Development Technology Disclosure and License Agreement PPO, dated January 20, 1986, by and between Amgen Inc. and Kirin Brewery Co., Ltd. (1)
10.9	Amendment Nos. 4 and 5, dated October 16, 1986 (effective July 1, 1986) and December 6, 1986 (effective July 1, 1986), respectively, to the Shareholders Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.10	Assignment and License Agreement, dated October 16, 1986, between Amgen Inc. and Kirin-Amgen, Inc. (20)
10.11	G-CSF European License Agreement, dated December 30, 1986, between Kirin-Amgen, Inc. and Amgen Inc. (20)
10.12+	Retirement and Savings Plan of Amgen Inc. (as amended and restated effective January 1, 2003). (41)
10.13+	Amended and Restated 1988 Stock Option Plan of Amgen Inc. (5)
10.14+	First Amendment to the Amgen Inc. Nonqualified Deferred Compensation Plan. (40)
10.15	Amendment, dated June 30, 1988, to Research, Development, Technology Disclosure and License Agreement: GM-CSF dated March 31, 1987, between Kirin Brewery Company, Limited and Amgen Inc. (2)
10.16	ENBREL® Supply Agreement, dated April 12, 2002, between Immunex Corporation and Genentech, Inc. (with certain confidential information deleted therefrom). (31)
10.17	Partnership Purchase Agreement, dated March 12, 1993, between Amgen Inc., Amgen Clinical Partners, L.P., Amgen Development Corporation, the Class A limited partners and the Class B limited partner. (4)
10.18+	Amgen Inc. Supplemental Retirement Plan (As Amended and Restated Effective November 1, 1999). (16)
10.19+	First Amendment to Amgen Inc. Change of Control Severance Plan. (17)
10.20+	Amended and Restated Amgen Performance Based Management Incentive Plan. (15)
10.21	G-CSF United States License Agreement dated June 1, 1987 (effective July 1, 1986) between Kirin-Amgen, Inc. and Amgen Inc. (20)
10.22	Amendment No. 1 dated October 20, 1988 to Kirin-Amgen, Inc./Amgen G-CSF United States License Agreement dated June 1, 1987 (effective July 1, 1986). (20)
10.23	Amendment No. 2 dated October 17, 1991 (effective November 13, 1990) to Kirin-Amgen, Inc./Amgen G-CSF United States License Agreement dated June 1, 1987 (effective July 1, 1986). (20)
10.24	Amendment No. 10 dated March 1, 1996 to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)

Exhibit No.	Description
10.25+	Amgen Inc. Change of Control Severance Plan effective as of October 20, 1998. (14)
10.26	Preferred Share Rights Agreement, dated as of December 12, 2000, between Amgen Inc. and American Stock Transfer and Trust Company, as Rights Agent. (19)
10.27+	First Amendment, effective January 1, 1998, to the Amended and Restated Employee Stock Purchase Plan of Amgen Inc. (10)
10.28	Amendment No. 11 dated March 20, 2000 to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.29+	Agreement between Amgen Inc. and Dr. Fabrizio Bonanni, dated March 3, 1999. (16)
10.30	Amendment No. 1 dated June 1, 1987 to Kirin-Amgen, Inc./Amgen G-CSF European License Agreement dated December 30, 1986. (20)
10.31	Amendment No. 2 dated March 15, 1988 to Kirin-Amgen, Inc./Amgen G-CSF European License Agreement dated December 30, 1986. (20)
10.32	Amendment No. 3 dated October 20, 1988 to Kirin-Amgen, Inc./Amgen G-CSF European License Agreement dated December 30, 1986. (20)
10.33	Amendment No. 4 dated December 29, 1989 to Kirin-Amgen, Inc./Amgen G-CSF European License Agreement dated December 30, 1986. (20)
10.34+	Amended and Restated 1987 Directors' Stock Option Plan of Amgen Inc. (7)
10.35+	Amgen Inc. Amended and Restated 1993 Equity Incentive Plan (formerly known as the Immunex Corporation 1993 Stock Option Plan). (39)
10.36+	Amgen Inc. Executive Incentive Plan. (28)
10.37+	Promissory Note of Dr. Fabrizio Bonanni, dated October 29, 1999. (16)
10.38+	2002 Special Severance Pay Plan for Amgen Employees. (35)
10.39	Amendment No. 6 dated May 11, 1984 to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.40	Amendment No. 7 dated July 17, 1987 (effective April 1, 1987) to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.41	Amendment No. 8 dated May 28, 1993 (effective November 13, 1990) to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.42	Amendment No. 9 dated December 9, 1994 (effective June 14, 1994) to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.43+	Agreement between Amgen Inc. and Mr. George J. Morrow, dated March 3, 2001. (21)
10.44+	Promissory Note of Mr. George J. Morrow, dated March 11, 2001. (21)
10.45+	Agreement between Amgen Inc. and Dr. Roger M. Perlmutter, M.D., Ph.D., dated March 5, 2001. (21)
10.46+	Agreement between Amgen Inc. and Mr. Brian McNamee, dated May 5, 2001. (22)
10.47+	Agreement between Amgen Inc. and Mr. Richard Nanula, dated May 15, 2001. (22)
10.48+	Promissory Note of Mr. Richard Nanula, dated June 27, 2001. (22)
10.49+	Promissory Note of Dr. Roger M. Perlmutter, dated June 29, 2001. (22)
10.50	Amendment No. 1 to ENBREL® Supply Agreement, effective as of September 20, 2002 (with certain confidential information deleted therefrom). (41)
10.51+	Second Amendment to the Amgen Inc. Change of Control Severance Plan. (23)
10.52+	First Amendment to the Amgen Supplemental Retirement Plan as amended and restated effective November 1, 1999. (23)
10.53+	Promissory Note of Mr. Brian McNamee, dated May 30, 2001. (23)
10.54+	Restricted Stock Purchase Agreement between Amgen Inc. and Mr. Richard Nanula, dated May 16, 2001. (23)

Exhibit No.	Description
10.55+	Restricted Stock Purchase Agreement between Amgen Inc. and Dr. Roger M. Perlmutter, dated January 8, 2001. (23)
10.56+	Agreement between Amgen Inc. and Dr. Beth C. Seidenberg, dated December 21, 2001. (26)
10.57+	Amendment to Agreement between Amgen Inc. and Dr. Beth C. Seidenberg, dated December 21, 2001. (26)
10.58+	Second Amendment to the Amgen Supplemental Retirement Plan (As Amended and Restated Effective November 1, 1999), effective January 1, 2002. (26)
10.59	Amendment No. 2 to ENBREL® Supply Agreement, effective as of July 16, 2002. (41)
10.60+	Amgen Inc. Executive Nonqualified Retirement Plan, effective January 1, 2001. (26)
10.61+	Nonqualified Deferred Compensation Plan, effective January 1, 2002. (26)
10.62	Shareholder voting agreement dated as of December 16, 2001 by and among Amgen Inc., Wyeth (formerly American Home Products Corporation), MDP Holdings, Inc., and Lederle Parenterals, Inc. (24)
10.63+	Agreement between Amgen Inc. and Dr. Joseph Miletich, dated March 22, 2002. (29)
10.64+	Restricted Stock Purchase Agreement between Amgen Inc. and Dr. Joseph Miletich, dated April 1, 2002. (29)
10.65	Amended and Restated Promotion Agreement by and between Immunex Corporation, Wyeth (formerly American Home Products Corporation) and Amgen Inc. dated December 16, 2001 (with certain confidential information deleted therefrom). (28)
10.66	Agreement Regarding Governance and Commercial Matters by and among Wyeth (formerly American Home Products Corporation), American Cyanamid Company and Amgen Inc. dated December 16, 2001 (with certain confidential information deleted therefrom). (28)
10.67+	Amgen Inc. Amended and Restated 1999 Equity Incentive Plan (formerly known as the Immunex Corporation 1999 Stock Option Plan). (32)
10.68+	Amgen Inc. Amended and Restated 1999 Stock Purchase Plan (formerly known as the Immunex Corporation 1999 Stock Purchase Plan). (32)
10.69	ENBREL® Supply Agreement among Immunex Corporation, American Home Products Corporation and Boehringer Ingelheim Pharma KG, dated as of November 5, 1998 (with certain confidential information deleted therefrom). (33)
10.70	Amendment No. 1 to the ENBREL® Supply Agreement among Immunex Corporation, American Home Products Corporation and Boehringer Ingelheim Pharma KG, dated June 27, 2000 (with certain confidential information deleted therefrom). (34)
10.71	Amendment No. 2 to the ENBREL® Supply Agreement among Immunex Corporation, American Home Products Corporation and Boehringer Ingelheim Pharma KG, dated June 3, 2002 (with certain confidential information deleted therefrom). (35)
10.72	Asset Purchase Agreement, dated May 2, 2002, by and between Immunex Corporation and Schering Aktiengesellschaft (with certain confidential information deleted therefrom). (35)
10.73	Amendment No. 1 to the Asset Purchase Agreement dated as of September 25, 2002, by and between Immunex Corporation and Schering Aktiengesellschaft. (35)
10.74	Amendment No. 2 to the Asset Purchase Agreement dated as of July 17, 2002, by and between Immunex Corporation and Schering Aktiengesellschaft. (35)
10.75+	Promissory Note of Ms. Beth Seidenberg, dated March 20, 2002. (35)

Exhibit No.	Description
10.76+	Agreement between Amgen Inc. and Edward Fritzky, dated July 15, 2002. (35)
10.77+	Restricted Stock Purchase Agreement between Amgen Inc. and Edward Fritzky, dated July 15, 2002. (35)
10.78+	Stock Option Agreement between Amgen Inc. and Edward Fritzky, dated July 15, 2002. (35)
10.79+	Promissory Note of Dr. Hassan Dayem, dated July 10, 2002. (35)
10.80	Amendment No. 3 to the ENBREL® Supply Agreement among Immunex Corporation, American Home Products Corporation and Boehringer Ingelheim Pharma KG, dated December 18, 2002 (with certain confidential information deleted therefrom). (38)
10.81+	Amgen Limited Sharesave Plan. (37)
10.82+	Amgen Limited 2000 UK Company Employee Share Option Plan. (38)
10.83+	Restricted Stock Purchase Agreement between Amgen Inc. and Dr. Beth C. Seidenberg, dated January 14, 2002 and First Amendment thereto dated September 20, 2002. (38)
10.84+	Restricted Stock Purchase Agreement between Amgen Inc. and Brian M. McNamee, dated March 3, 2003. (40)
10.85	Amendment No. 3 to ENBREL® Supply Agreement, effective as of March 26, 2003 (with certain confidential information deleted therefrom). (41)
10.86	Amendment No. 4 to ENBREL® Supply Agreement, effective as of October 31, 2003 (with certain confidential information deleted therefrom). (41)
10.87	Description of Amendment No. 1 to Amended and Restated Promotion Agreement, effective as of July 8, 2003 (with certain confidential information deleted therefrom). (41)
10.88+	Amended and Restated Agreement between Amgen Inc. and David J. Scott, dated February 16, 2004. (41)
10.89+	Amgen Inc. Director Equity Incentive Program, effective as of December 9, 2003. (41)
10.90+	Form of Restricted Stock Unit Agreement. (41)
10.91+	Amgen Inc. Performance Award Program, effective as of December 9, 2003. (41)
10.92+	Form of Performance Unit Agreement. (41)
10.93	Description of Amendment No. 2 to Amended and Restated Promotion Agreement, effective as of April 20, 2004. (43)
10.94*	Amgen Inc. Credit Agreement, dated as of July 16, 2004, among Amgen Inc. the Banks therein named, Citibank N.A., as Issuing Bank, Citicorp USA, Inc., as Administrative Agent and Barclays Bank PLC, as Syndication Agent.
31*	Rule 13a-14(a) Certifications.
32**	Section 1350 Certifications.

(* = filed herewith)

(** = furnished herewith and not “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended)

(+ = management contract or compensatory plan or arrangement.)

(1) Filed as an exhibit to Amendment No. 1 to Form S-1 Registration Statement (Registration No. 33-3069) on March 11, 1986 and incorporated herein by reference.

(2) Filed as an exhibit to Form 8 amending the Quarterly Report on Form 10-Q for the quarter ended June 30, 1988 on August 25, 1988 and incorporated herein by reference.

(3) Filed as an exhibit to Form S-3 Registration Statement dated December 19, 1991 and incorporated herein by reference.

(4) Filed as an exhibit to the Form 8-A dated March 31, 1993 and incorporated herein by reference.

(5) Filed as an exhibit to the Form 10-Q for the quarter ended September 30, 1996 on November 5, 1996 and incorporated herein by reference.

(6) Filed as an exhibit to the Form 8-K Current Report dated March 14, 1997 on March 14, 1997 and incorporated herein by reference.

(7) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 1996 on March 24, 1997 and incorporated herein by reference.

(8) Filed as an exhibit to the Form 8-K Current Report dated April 8, 1997 on April 8, 1997 and incorporated herein by reference.

(9) Filed as an exhibit to the Form 10-Q for the quarter ended March 31, 1997 on May 13, 1997 and incorporated herein by reference.

(10) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 1997 on August 12, 1997 and incorporated herein by reference.

(11) Filed as an exhibit to the Form 8-K Current Report dated and filed on December 5, 1997 and incorporated herein by reference.

(12) Filed as an exhibit to the Form 10-Q for the quarter ended March 31, 1998 on May 13, 1998 and incorporated herein by reference.

(13) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 1998 on August 14, 1998 and incorporated herein by reference.

(14) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 1998 on March 16, 1999 and incorporated herein by reference.

(15) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 1999 on August 3, 1999 and incorporated herein by reference.

(16) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 1999 on March 7, 2000 and incorporated herein by reference.

(17) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 2000 on August 1, 2000 and incorporated herein by reference.

(18) Filed as an exhibit to the Form 10-Q for the quarter ended September 30, 2000 on November 14, 2000 and incorporated herein by reference.

(19) Filed as an exhibit to the Form 8-K Current Report dated December 13, 2000 on December 18, 2000 and incorporated herein by reference.

(20) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 2000 on March 7, 2001 and incorporated herein by reference.

(21) Filed as an exhibit to the Form 10-Q for the quarter ended March 31, 2001 on May 14, 2001 and incorporated herein by reference.

(22) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 2001 on July 27, 2001 and incorporated herein by reference.

(23) Filed as an exhibit to the Form 10-Q for the quarter ended September 30, 2001 on October 26, 2001 and incorporated herein by reference.

(24) Filed as an exhibit to the Form 8-K Current Report dated December 16, 2001 on December 17, 2001 and incorporated herein by reference.

(25) Filed as an exhibit to the Form S-4 Registration Statement dated January 31, 2002 and incorporated herein by reference.

(26) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 2001 on February 26, 2002 and incorporated herein by reference.

(27) Filed as an exhibit to the Form 8-K Current Report dated February 21, 2002 on March 1, 2002 and incorporated herein by reference.

(28) Filed as an exhibit to Amendment No. 1 to the Form S-4 Registration Statement dated March 22, 2002 and incorporated herein by reference.

(29) Filed as an exhibit to the Form 10-Q for the quarter ended March 31, 2002 on April 29, 2002 and incorporated herein by reference.

(30) Filed as an exhibit to the Post-Effective Amendment No. 1 to the Form S-4 Registration Statement dated July 15, 2002 and incorporated herein by reference.

(31) Filed as an exhibit to Form 8-K Current Report of Immunex Corporation dated April 12, 2002 on May 7, 2002 and incorporated herein by reference.

(32) Filed as an exhibit to the Form S-8 dated July 16, 2002 and incorporated herein by reference.

(33) Filed as an exhibit to the Annual Report on Form 10-K of Immunex Corporation for the year ended December 31, 1998.

(34) Filed as an exhibit to the Form 10-Q of Immunex Corporation for the quarter ended June 30, 2000.

(35) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 2002 on August 13, 2002 and incorporated herein by reference.

(36) Filed as an exhibit to the Form 10-Q for the quarter ended September 30, 2002 on November 5, 2002 and incorporated herein by reference.

(37) Filed as an exhibit to the Form S-8 dated March 17, 1999 and incorporated herein by reference.

(38) Filed as an exhibit to the Form 10-K for the year ended December 31, 2002 on March 10, 2003 and incorporated herein by reference.

(39) Filed as an exhibit to the Form 10-Q for the quarter ended March 31, 2003 on May 2, 2003 and incorporated herein by reference.

(40) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 2003 on July 30, 2003 and incorporated herein by reference.

(41) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 2003 on March 11, 2004 and incorporated herein by reference.

(42) Filed as an exhibit to the Form S-4 dated April 26, 2004 and incorporated herein by reference.

(43) Filed as an exhibit to the Form S-4/A dated June 29, 2004 and incorporated herein by reference.

EXHIBIT 3.2

AMENDED AND RESTATED BYLAWS

OF

AMGEN INC.

(AS AMENDED AND RESTATED JULY 13, 2004)

As of July 13, 2004

AMENDED AND RESTATED BYLAWS

OF

AMGEN INC.
(a Delaware corporation)

ARTICLE I

Offices

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent.

Section 2. Other Offices. The corporation also shall have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and also may have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

Corporate Seal

Section 3. Corporate Seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

Stockholders' Meetings

Section 4. Place of Meetings. Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then at the office of the corporation required to be maintained pursuant to Section 2 hereof.

Section 5. Annual Meeting. The annual meeting of the stockholders of the corporation shall be held on any date and time which may from time to time be designated by the Board of Directors. At such annual meeting, directors shall be elected

and any other business may be transacted that may properly come before the meeting.

Section 6. Special Meetings. Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by the Chairman of the Board of Directors ("Chairman of the Board"), the Chief Executive Officer, the President, or the Board of Directors at any time.

Section 7. Notice of Meetings. Except as otherwise provided by law or the Certificate of Incorporation, written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, date and hour and purpose or purposes of the meeting. Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. Any shares, the voting of which at said meeting has been enjoined, or which for any reason cannot be lawfully voted at such meeting, shall not be counted to determine a quorum at such meeting. In the absence of a quorum any meeting of stockholders may be adjourned, from time to time, by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the voting power represented at any meeting at which a quorum is present shall be valid and binding upon the corporation.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time by the vote of a majority of the shares, the holders of which are present either in person or by proxy, or by the chairman of the meeting or the Board of Directors. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary at or before the meeting at which it is to be used. An agent so appointed need not be a stockholder. No proxy shall be voted on after three (3) years from its date of creation unless the proxy provides for a longer period. All elections of Directors shall be by written ballot, unless otherwise provided in the Certificate of Incorporation.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the General Corporation Law of Delaware, Section 217(b). If the instrument filed with the

Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection (c) shall be a majority or even-split in interest.

Section 12. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the corporation. The list of stockholders must also be open to examination at the meeting as required by applicable law. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 13. No Action Without Meeting. Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders.

Section 14. Organization; Conduct of Meetings.

(a) At every meeting of stockholders, the Chairman of the Board, or, if the Chairman of the Board is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, the President, or, if the President is absent, the most senior Vice President present, or in the absence of any such officer, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the Chief Executive Officer, shall act as secretary of the meeting.

(b) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of

stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 15. Notifications of Nominations and Proposed Business. Subject to the rights of holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation,

(x) nominations for the election of directors, and

(y) business proposed to be brought before any stockholder meeting,

may be made by the Board of Directors or a proxy committee appointed by the Board of Directors or by any stockholder entitled to vote in the election of directors generally. However, any such stockholder may nominate one or more persons for election as directors at a meeting or propose business to be brought before a meeting, or both, only if such stockholder has given timely notice in proper written form of his intent to make such nomination or nominations or to propose such business. To be timely, a stockholder's notice must be delivered to or mailed and received by the Secretary of the corporation not later than 90 days prior to such meeting; provided, however, that in the

event that less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be received not later than the close of business on the 10th day following the date on which such notice of the date of such meeting was mailed or such public disclosure was made. To be in proper written form, a stockholder's notice to the Secretary shall set forth:

(a) the name and address of the stockholder who intends to make the nominations or propose the business and, as the case may be, of the person or persons to be nominated or of the business to be proposed;

(b) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and, if applicable, intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice;

(c) if applicable, a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder;

(d) such other information regarding each nominee or each matter of business to be proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, or the matter been proposed, or intended to be proposed by the Board of Directors; and

(e) if applicable, the consent of each nominee to serve as director of the corporation if so elected.

The chairman of the meeting may refuse to acknowledge the nomination of any person or the proposal of any business not made in compliance with the foregoing procedure.

ARTICLE IV

Directors

Section 16. Number. The authorized number of directors of the corporation shall be fixed from time to time by the Board of Directors. The number of directors presently authorized is thirteen. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause the

directors shall not have been elected at any annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 17. Classes of Directors. The Board of Directors shall be divided into three classes: Class I, Class II and Class III, which shall be as nearly equal in number as possible. Each director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting at which the director was elected. Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal.

Section 18. Newly Created Directorships and Vacancies. In the event of any increase or decrease in the authorized number of directors, the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board of Directors among the three classes of directors so as to maintain such classes as nearly equal in number as possible. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office (and not by stockholders), even though less than a quorum of the authorized Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successors shall have been elected and qualified.

Section 19. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 20. Resignation. Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote

thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 21. Removal. At a special meeting of stockholders called for the purpose in the manner hereinabove provided, the Board of Directors, or any individual director, may be removed from office, with cause, and one or more new directors may be elected, by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of Directors.

Section 22. Meetings.

(a) Annual Meetings. The annual meeting of the Board of Directors shall be held on any date and time and at such place which may from time to time be designated by resolution of the Board of Directors. Such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Regular Meetings. Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 2 hereof. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors also may be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the written consent of all Directors.

(c) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Directors.

(d) Telephone Meetings. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) Notice of Meetings. Written notice of the time and place of all regular and special meetings of the Board of Directors shall be given at least one (1) day before the date of the meeting. Notice of any meeting may be waived in writing at

any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(f) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each of the Directors not present sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 23. Quorum and Voting.

(a) Quorum. Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of Directors fixed from time to time in accordance with Section 16 of these Bylaws, but not less than one (1); provided, however, at any meeting whether a quorum is present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) Majority Vote. At each meeting of the Board of Directors at which a quorum is present all questions and business shall be determined by a vote of a majority of the Directors present, unless a different vote is required by law, the Certificate of Incorporation or these Bylaws.

Section 24. Action without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 25. Fees and Compensation. Directors shall not receive any stated salary for their services as Directors, but by resolution of the Board of Directors a fixed fee, with or without expense of attendance, may be allowed for serving on the Board of Directors and/or attendance at each meeting and at each meeting

of any committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, consultant, employee, or otherwise and receiving compensation therefor.

Section 26. Committees.

(a) Executive Committee. The Board of Directors may by resolution passed by a majority of the whole Board of Directors, appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and specifically granted by the Board of Directors, shall have and may exercise when the Board of Directors is not in session all powers of the Board of Directors in the management of the business and affairs of the corporation, including, without limitation, the power and authority to declare a dividend or to authorize the issuance of stock, except such committee shall not have the power or authority to amend the Certificate of Incorporation (except that the committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided by law, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation), to adopt an agreement of merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, to recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution or to amend these Bylaws.

(b) Other Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors, and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of subsections (a) or (b) of

this Section 26, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 26 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at the principal office of the corporation required to be maintained pursuant to Section 2 hereof, or at any place which has been designated from time to time by resolution of such committee or by written consent of all members thereof, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 27. Organization. At every meeting of the directors, the Chairman of the Board, or, if the Chairman of the Board is absent, the Chief Executive Officer, or if the Chief

Executive Officer is absent, the President, or if the President is absent, the most senior Vice President, or, in the absence of any such officer, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, an Assistant Secretary directed to do so by the Chief Executive Officer, shall act as secretary of the meeting.

ARTICLE V

Officers

Section 28. Officers.

(a) Officers Elected by the Board of Directors. The Board of Directors shall elect the Chairman of the Board, the Chief Executive Officer, the President and Chief Operating Officer, one or more Vice Presidents, the Chief Financial Officer and the Secretary of the corporation at each annual meeting of the Board of Directors. The Board of Directors also may appoint such other officers and agents with such powers and duties as it shall deem necessary. The order of the seniority of the Vice Presidents shall be in the order of their nomination, unless otherwise determined by the Board of Directors. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate.

(b) Other Officers. The Chief Executive Officer shall have the power to appoint in writing such additional vice presidents of the corporation as he or she shall deem necessary or appropriate, with such titles as appropriately reflect the authority and responsibility of such officers. Such appointment shall become effective upon the delivery of such writing to the Secretary of the Company. The Chief Executive Officer shall annually appoint officers on the date of the annual meeting of the Board of Directors.

(c) In general. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. For purposes of these bylaws, unless specified otherwise herein, references to "officers" shall refer to both officers elected by the board of directors and officers appointed by the Chief Executive Officer.

Section 29. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, or until such officer's earlier resignation or removal. If the office of any

officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. In addition, each officer appointed by the Chief Executive Officer shall also hold office at the pleasure of the Board of Directors or the Chief Executive Officer and until his or her successor shall have been appointed by the Chief Executive Officer, or until such officer's earlier resignation or removal. If the office of any officer appointed by the Chief Executive Officer becomes vacant for any reason, the vacancy may also be filled by the Chief Executive Officer.

(b) Duties of Chairman of the Board. The Chairman of the Board, subject to the control of the Board of Directors, shall perform such duties and functions as are necessary to further the strategic direction of the corporation. Unless the Board of Directors designates another person, the Chairman of the Board shall preside at all meetings of the stockholders, the Board of Directors and of the Executive Committee.

(c) Duties of Chief Executive Officer. The Chief Executive Officer, at the request of the Chairman of the Board or upon his absence or disability, or in the event of a vacancy in the office of Chairman of the Board, shall exercise all the powers of Chairman of the Board as provided in Subsection 29(b). The Chief Executive Officer shall, subject to the control of the Board of Directors, exercise general management and supervision over the property, affairs and business of the corporation and shall authorize officers of the corporation, other than the Chairman of the Board, to exercise such powers as he, in his discretion, may deem to be in the best interests of the corporation. The Chief Executive Officer shall in general perform all duties incident to general management and supervision of the corporation and such other duties as the Board of Directors shall designate from time to time.

(d) Duties of President and Chief Operating Officer. The President and Chief Operating Officer, at the request of the Chief Executive Officer or upon his absence or disability, or in the event of a vacancy in the office of Chief Executive Officer, shall exercise all the powers of Chief Executive Officer as provided in Subsection 29(c). The President and Chief Operating Officer shall, subject to the control of the Chief Executive Officer and the Board of Directors, exercise general management and supervision over the operating functions of the corporation, and shall authorize officers of the corporation, other than the Chairman of the Board and the Chief Executive Officer, to exercise such powers with respect to the operating function of the corporation as he, in his discretion, may deem to be in the best interests of the corporation. The President and Chief Operating Officer shall perform such other duties and have such other powers as the Board of Directors shall designate from time

to time. The offices of President and Chief Operating Officer may be held by either the same person or different persons. If held by different persons, each such officer shall perform the duties customarily incident to his or her office unless otherwise determined by the Board of Directors. In the event the offices of President and Chief Operating Officer are held by two different persons, the office of President shall rank superior to the office of Chief Operating Officer.

(e) Duties of Vice Presidents. The Vice Presidents, in the order of their seniority, may assume and perform the duties of the President and Chief Operating Officer in the absence or disability of the Chief Executive Officer and the President and Chief Operating Officer or whenever the offices of Chief Operating Officer and President and Chief Operating Officer are vacant. The Vice Presidents shall perform other duties commonly incident to their office and also shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, or the President and Chief Operating Officer shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner, and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time. The Chief Executive Officer may direct any Assistant Chief Financial Officer to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Assistant Chief Financial Officer shall perform other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

(g) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors, and shall record all acts and proceedings thereof in the minute books of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders, and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given him in these Bylaws and other duties commonly

incident to his office and also shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The Chief Executive Officer may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

(h) Duties of Other Officers. In addition to any other powers set forth in these Bylaws, officers elected or appointed by the Board of Directors or the Chief Executive Officer, respectively, shall perform the duties customarily incident to such officer's position and such other duties as may from time to time be assigned to such officer by the Board of Directors or the Chief Executive Officer, as applicable.

Section 30. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors or to the Chief Executive Officer or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective.

Section 31. Removal. Any officer may be removed from office at any time, with or without cause, by the vote or written consent of a majority of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors. In addition, any officer appointed by the Chief Executive Officer may be removed from office at any time, with or without cause, by the Chief Executive Officer.

Section 32. Compensation. The compensation of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such compensation by reason of the fact that such officer is also a director of the corporation. In addition, the compensation of officers appointed by the Chief Executive Officer may also be fixed from time to time by the Chief Executive Officer.

ARTICLE VI

Execution of Corporate Instruments and Voting of Securities Owned by the Corporation

Section 33. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board, or the Chief Executive Officer, or the President or any Vice President, and by the Secretary or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Section 34. Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized to do so by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

Shares of Stock

Section 35. Form and Execution of Certificates. The shares of the corporation shall be represented by certificates, provided that the Board of Directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is

surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chairman of the Board or any vice-chairman of the Board of Directors, or the President or any Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation representing the number of shares registered in certificate form. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 36. Lost Certificates. The corporation may issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by the corporation alleged to have been lost, stolen or destroyed, and the corporation may require the owner of such lost, stolen or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against the corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 37. Transfers. Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

Section 38. Fixing Record Dates. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed: (a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is

given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (b) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 39. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 40. Issuance, Transfer and Resignation of Shares. The Board of Directors may make such rules and regulations, not inconsistent with law or with these Bylaws, as it may deem advisable concerning the issuance, transfer and registration of certificates for shares of the capital stock of the corporation. The Board of Directors may appoint a transfer agent or registrar of transfers, or both, and may require all certificates for shares of the corporation to bear the signature of either or both.

ARTICLE VIII

Other Securities of the Corporation

Section 41. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates, may be signed by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated

by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

Dividends

Section 42. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 43. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

Fiscal Year

Section 44. Fiscal Year. Unless otherwise fixed by resolution of the Board of Directors, effective as of January 1, 1992, the fiscal year of the corporation shall end on the 31st day of the month of December in each calendar year.

ARTICLE XI

Indemnification of Directors, Officers Employees and Other Agents

Section 45. Indemnification of Directors, Officers, Employees and Other Agents.

(a) Directors and Officers. The corporation shall indemnify its directors and officers to the full extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said Law permitted the corporation to provide prior to such amendment); provided, further, that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the corporation or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation or (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law, or (iv) such indemnification is required to be made under subsection (d) of this Article XI.

(b) Other Employees and Other Agents. The corporation shall have the power to indemnify its other employees and other agents as set forth in the Delaware General Corporation Law.

(c) Expenses. The corporation shall to the fullest extent not prohibited by applicable law advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of any such proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding upon receipt of any undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Bylaw or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (d) of this Bylaw, no advance shall be made by the corporation to an officer of the corporation in any action, suit or proceeding, whether civil, criminal, administrative or investigate, if a determination is reasonably and promptly made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (2) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion that, the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not reasonably believe to be in or not opposed to the best interests of the corporation, or, with respect to any criminal action or proceeding, such person believed or had reasonable cause to believe his conduct was unlawful, except by reason of the fact that such officer is or was a director of the corporation or is or was serving at the request of the corporation as a director of another corporation, joint venture, trust or other enterprise in which event this paragraph shall not apply.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer who serves in such capacity at any time while this Bylaw and other relevant provisions of the Delaware General Corporation Law and other applicable law, if any, are in effect. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation or is or was serving at the request of the corporation as a director of another corporation, partnership, joint venture, trust or other enterprise) for advances, the corporation shall be entitled to

raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not reasonably believe to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, such person believed or had reasonable cause to believe his conduct was unlawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Article XI or otherwise shall be on the corporation.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, as provided by law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the Delaware General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

(h) Amendments. Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Savings Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent permitted by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(i) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a "director," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Bylaw.

ARTICLE XII

Notices

Section 46. Notices.

(a) Notice to Stockholders. Whenever under any provisions of these Bylaws notice is required to be given to any stockholder, it shall be given in writing or by a form of electronic transmission in accordance with applicable law. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), or by telegram, telecopier, telephone or other means of electronic transmission, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Address Unknown. If no address of a stockholder or director be known, notice may be sent to the office of the corporation required to be maintained pursuant to Section 2 hereof.

(d) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained.

(e) Time Notices Deemed Given. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing and all notices given by telegram, telecopier, telephone or other means of electronic transmission shall be deemed to have been given as at the sending time recorded by the telegraph company or electronic device transmitting the notices.

(f) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(g) Failure to Receive Notice. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such director to receive such notice.

(h) Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the

certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

ARTICLE XIII

Amendments

Section 47. Amendments. These Bylaws may be repealed, altered or amended or new Bylaws adopted by the affirmative vote of the holders of not less than sixty-six and two-thirds percent (66-2/3%) of the outstanding shares of stock entitled to vote upon the election of directors. The Board of Directors also shall have the authority, if such authority is conferred upon the Board of Directors by the Certificate of Incorporation, to repeal, alter or amend these Bylaws or adopt new Bylaws (including, without limitation, the amendment of any Bylaw setting forth the number of directors who shall constitute the whole Board of Directors) subject to the foregoing power of the stockholders to change or repeal such Bylaws and provided that the Board of Directors shall not make or alter any Bylaws fixing the qualifications, classifications, term of office or compensation of directors.

ARTICLE XIV

Loans of Officers and Others

Section 48. Certain Corporate Loans and Guaranties. The corporation may to the fullest extent not prohibited by applicable law make loans of money or property to, or guarantee the obligations of, or otherwise assist any officer or other employee who is a director of the corporation or its parent or any subsidiary, or adopt an employee benefit plan or plans authorizing such loans or guaranties, upon the approval of the Board of Directors alone if the Board of Directors determines that such a loan or guaranty or plan may reasonably be expected to benefit the corporation.

EXHIBIT 10.94

CREDIT AGREEMENT

Dated as of July 16, 2004

This CREDIT AGREEMENT is dated as of July 16, 2004 and is entered into by and among Amgen Inc., a Delaware corporation (the "COMPANY"), Citicorp USA, Inc. ("CUSA"), Barclays Bank PLC ("BARCLAYS") and each other financial institution whose name is set forth on the signature pages hereof as a Bank, Citibank, N.A. ("CITIBANK"), as Issuing Bank, CUSA, as Administrative Agent, and Barclays, as Syndication Agent. In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE 1
DEFINITIONS AND ACCOUNTING TERMS

1.1 DEFINED TERMS. As used in this Agreement, the following terms shall have the meanings set forth below:

"ADDITIONAL BANK" has the meaning set forth in Section 2.8(b).

"ADMINISTRATIVE AGENT" means CUSA, when acting in its capacity as the administrative agent under any of the Loan Documents.

"ADMINISTRATIVE AGENT'S OFFICE" means the Administrative Agent's address as set forth on the signature pages of this Agreement, or such other address as the Administrative Agent hereafter may designate by written notice to the Company and the Banks.

"ADVANCE" means any Advance made or to be made by any Bank to any Borrower as provided in Article 2, and includes each Base Rate Advance and each EURO Rate Advance.

"AFFILIATE" means, as to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (and the correlative terms, "CONTROLLED BY" and "UNDER COMMON CONTROL WITH") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"AGENT PARTIES" has the meaning set forth in Section 13.25(c).

"AGREEMENT" means this Credit Agreement, either as originally executed or as it may from time to time be supplemented, modified, amended, restated or extended in accordance with Section 13.2.

"AGREEMENT TO PARTICIPATE" means an Agreement to Participate, substantially in the form of Exhibit A.

"ALTERNATIVE CURRENCY" means Euro.

"ALTERNATIVE CURRENCY EQUIVALENT" means, with respect to any amount denominated in Dollars on any date of determination, the amount of the Alternative Currency that could be purchased with such amount of Dollars using the reciprocal of the foreign exchange rate(s) specified in the definition of "Dollar Equivalent," as determined by the Administrative Agent.

"ALTERNATIVE CURRENCY LOAN" means any Loan denominated in the Alternative Currency. Each Alternative Currency Loan must be a EURIBOR Rate Advance.

"ALTERNATIVE CURRENCY PAYMENT OFFICE" means such office of Citibank as shall be from time to time selected by the Administrative Agent and notified by the Administrative Agent to the Company and the Banks.

"ARRANGER" means each of Citigroup Global Markets Inc. and Barclays Capital, the investment banking division of Barclays, when acting in its capacity as joint lead arranger and joint book runner under any of the Loan Documents.

"ASSIGNMENT AGREEMENT" means an Assignment Agreement in substantially the form of Exhibit G, executed by a Bank and an Eligible Assignee of all or part of that Bank's interest hereunder.

"BANK" means the Persons identified as "Banks" and listed on the signature pages of this Agreement and each Eligible Assignee that shall become a party hereto pursuant to Section 13.9.

"BANKING DAY" means any Monday, Tuesday, Wednesday, Thursday or Friday, other than a day on which banks are authorized or required to be closed in California or New York.

"BARCLAYS" has the meaning set forth in the introductory paragraph.

"BASE RATE", for any day, means the higher of (i) the rate of interest in effect on such day as publicly announced by Citibank from time to time as its base commercial lending rate (such base rate is not intended to be the lowest rate of interest charged by Citibank) and (ii) the sum of 0.50% per annum and the rate of interest determined by the Administrative Agent to be the average overnight federal funds rate.

"BASE RATE ADVANCE" means an Advance made hereunder that bears interest as set forth in Section 3.1(b) and designated as a Base Rate Advance in accordance with Article 2.

"BORROWER" means the Company and any Borrowing Subsidiary; "BORROWERS" means the Company and each other Borrower, collectively.

"BORROWING SUBSIDIARY" means any Eligible Subsidiary that has executed an Agreement to Participate pursuant to Section 12.1.

"BORROWING SUBSIDIARY OBLIGATIONS" has the meaning set forth in Section 11.1.

"CALCULATION DATE" means, in respect of a EURIBOR Rate Advance, (a) the date falling two Banking Days (or such other period as is customary in the relevant foreign exchange market for delivery on the date of the relevant Advance) prior to the date of each Advance, (b) the date falling two Banking Days (or such other period as is customary in the relevant foreign exchange market for delivery on the date of the relevant conversion or continuation of a Loan) prior to the date of conversion or continuation of any Advance pursuant to Section 2.5, or (c) such additional dates as the Administrative Agent or the Majority Banks shall specify or as any Borrower may reasonably request, in which case the Administrative Agent's specification shall prevail.

"CAPITAL LEASE" means, as to any Person, a lease of any Property by that Person as lessee that is, or should be in accordance with Financial Accounting Standards Board Statement No. 13, recorded as a "capital lease" on the balance sheet of that Person prepared in accordance with Generally Accepted Accounting Principles.

"CASH" means, when used in connection with any Person, all monetary and non-monetary items owned by that Person that are treated as cash in accordance with Generally Accepted Accounting Principles, except for amounts held by, or on deposit with, another Person as cash collateral or other security.

"CERTIFICATE OF A SENIOR OFFICER" means a certificate signed by a Senior Officer of the Person providing the certificate.

"CITIBANK" has the meaning set forth in the introductory paragraph.

"CLOSING DATE" means the time and Banking Day on which the conditions set forth in Section 8.1 are satisfied.

"CODE" means the Internal Revenue Code of 1986, as amended or replaced and as in effect from time to time.

"COMMITMENT" means the aggregate commitment of the Banks (i) to make Advances pursuant to Section 2.1(a) in an aggregate principal amount up to the Dollar Equivalent of $1,000,000,000 and (ii) to purchase an undivided interest in any Letters of Credit issued pursuant to Section 2.6(a), as such Commitment may be reduced in accordance with Section 2.4 or increased in accordance with Section 2.8. The respective Pro Rata Shares of the Banks with respect to the Commitments are set forth in Schedule 2.1.

"COMPANY" has the meaning set forth in the introductory paragraph.

"COMPLIANCE CERTIFICATE" means a certificate in the form of Exhibit C, properly completed and signed by a Senior Officer of the Company.

"CONSOLIDATED NET WORTH" means, as of any date of determination, the Shareholders' Equity of the Company and its Consolidated Subsidiaries on that date.

"CONSOLIDATED SUBSIDIARY" means, as of any date of determination and with respect to any Person, any Subsidiary of that Person whose financial data is, in accordance with Generally Accepted Accounting Principles, reflected in that Person's consolidated financial statements.

"CONTRACTUAL OBLIGATION" means, as to any Person, any provision of any outstanding Securities issued by that Person or of any material agreement, instrument or undertaking to which that Person is a party or by which it or any of its Property is bound.

"CONVERT," "CONVERSION" and "CONVERTED" each refers to a conversion of Advances of one Type into Advances of another Type pursuant to Section 2.5.

"CROSS-DEFAULT AMOUNT" means, as of any date of determination, an amount equal to the lesser of (i) $100,000,000 or (ii) 5% of Tangible Net Worth as of the last day of the then most recently ended Fiscal Quarter with respect to which the Company has delivered (electronically or otherwise) the financial statements required by Section 7.1(a) or, if the Company is delinquent in the delivery of such financial statements with respect to the most recently ended Fiscal Quarter, 5% of Tangible Net Worth as reasonably determined by the Administrative Agent.

"CURRENT ERISA AFFILIATE", as applied to any Person, means (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member.

"CUSA" has the meaning set forth in the introductory paragraph.

"DAILY MARGIN" means, for any date of determination, for the designated Level, the Utilization Ratio applicable to such date of determination and the Type of Advance, the following interest rates per annum:

	Daily Margin when Utilization Ratio is equal to or less than 0.50:1.00		Daily Margin when Utilization Ratio is greater than 0.50:1.00	
	TYPE OF ADVANCE		TYPE OF ADVANCE	
	Base Rate Advance	EURO Rate Advance	Base Rate Advance	EURO Rate Advance
Level 1	0%	0.1500%	0%	0.2500%
Level 2	0%	0.1900%	0%	0.2900%
Level 3	0%	0.2200%	0%	0.3200%
Level 4	0%	0.2600%	0%	0.3600%
Level 5	0%	0.3750%	0%	0.4750%
Level 6	0%	0.4750%	0%	0.6000%

For purposes of this definition, (a) "UTILIZATION RATIO" means, as of any date of determination, the ratio of (1) Total Outstandings as of such date to (2) the aggregate outstanding amount of all Commitments (whether used or unused) in effect as of such date, (b) if any change in the rating established by S&P or Moody's with respect to Long-Term Debt shall result in a change in the Level, the change in the Daily Margin shall be effective as of the date on which such rating change is publicly announced, and (c) if the ratings established by both of S&P and Moody's with respect to Long-Term Debt are unavailable for any reason for any day, then the applicable level for such day shall be deemed to be Level 6 (or, if the Majority Banks consent in writing, such other Level as may be reasonably determined by the Majority Banks from a rating with respect to Long-Term Debt for such day established by another rating agency reasonably acceptable to the Majority Banks).

"DEBTOR RELIEF LAWS" means the Bankruptcy Code of the United States of America, as amended from time to time, and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws from time to time in effect affecting the rights of creditors generally.

"DEFAULT" means any Event of Default or any event that, with the giving of any applicable notice or passage of time specified in Section 9.1, or both, would be an Event of Default.

"DEFAULT RATE" means the interest rate described in Section 3.9.

"DESIGNATED DEPOSIT ACCOUNT" means a deposit account designated by a Borrower in its Request for Loan submitted with respect to each Loan.

"DOLLAR EQUIVALENT" means, as of any date of determination (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any currency other than Dollars, the amount of Dollars that would be required to purchase the amount of the Alternative Currency based on the spot rate for the purchase by Citibank of the Alternative Currency through its foreign exchange trading office on such date.

"DOLLAR LOAN" means any Loan denominated in Dollars.

"DOLLARS" or "$" means United States Dollars.

"ELIGIBLE ASSIGNEE" means (i) a commercial bank organized under the laws of the United States, or any state thereof, and having a combined capital and surplus of at least $100,000,000; (ii) a commercial bank organized under the laws of any other country which is a member of the Organization for Economical Cooperation and Development (the "OECD"), or a political subdivision of any such country and having a combined capital and surplus of at least $100,000,000, provided that such bank is acting through a branch or agency located in the country in which it is organized or another country which is also a member of the OECD; and (iii) any Person engaged in the business of lending and that is an Affiliate of a Bank or of a Person of which a Bank is a Subsidiary.

"ELIGIBLE SUBSIDIARY" means any of the wholly-owned Subsidiaries of the Company.

"EMPLOYEE BENEFIT PLAN" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is, or was at any time, maintained or contributed to by the Company or any of its ERISA Affiliates.

"EMU" means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastrict Treaty of 1992 and the Amsterdam Treaty of 1998, as amended from time to time.

"EMU LEGISLATION" means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency (whether known as the "euro" or otherwise).

"ENVIRONMENTAL LAWS" means all plans, policies or decrees binding on the Company and its Subsidiaries in accordance with applicable statutes, ordinances, orders, rules or regulations and all statutes, ordinances, orders, rules or regulations and the like, in each case, relating to (i) environmental matters, including, without limitation, those relating to fines, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of hazardous materials, (ii) the generation, use, storage, transportation or disposal of hazardous materials, or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to the Company or any of its Subsidiaries or any of their respective properties, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.), the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) and the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Section 11001 et seq.), each as amended or supplemented, and any analogous future or present local, state and federal statutes and regulations promulgated pursuant thereto, each as in effect as of the date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974, and any regulations issued pursuant thereto, as amended or replaced and as in effect from time to time.

"ERISA AFFILIATE", as applied to any Person, means (i) any corporation which is, or was at any time, a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that Person is, or was at any time, a member; (ii) any trade or business (whether or not incorporated) which is, or was at any time, a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which that Person is, or was at any time, a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is, or was at any time, a member.

"ERISA EVENT" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC, or the penalty for failure to provide such notice, has been waived by regulation or by PBGC technical update); (ii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Code) or the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by the Company or any of its ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability pursuant to Sections 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on the Company or any of its ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal by the Company or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by the Company or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on the Company or any of its ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409 or 502(c), (i) or (l) or 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Company or any of its ERISA Affiliates in connection with any such Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Code; or (xi) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Code or pursuant to ERISA with respect to any Pension Plan.

"EURIBOR RATE" means, for any Interest Period for each EURIBOR Rate Advance, an interest rate per annum equal to (i) the offered quotation which appears on the page of the Telerate Screen which displays an average rate of the Banking Federation of the EMU for the Euro (being currently page 248) for such period at or about 10:00 a.m. (London time) two Eurocurrency Banking Days before the first day of such Interest Period or, if such page or such service shall cease to be available, such other page or such other service for the purpose of displaying an average rate of the Banking Federation of the EMU as the Administrative Agent, after consultation with the Banks and the Company, shall reasonably select or (ii) if no quotation for the Euro for the relevant period is displayed and the Administrative Agent has not selected an alternative service on which a quotation is displayed, the average (rounded upwards to the nearest whole multiple of 1/16 of 1% per annum, if such average is not such a multiple) of the

rate per annum at which deposits in Euros are offered by each of the Reference Banks to leading banks in the European interbank market at or about 10:00 a.m. (London time) two Eurocurrency Banking Days before the first day of such Interest Period in an amount substantially equal to the respective Reference Bank's EURIBOR Rate Advance and for a period equal to such Interest Period. For any Interest Period with respect to any EURIBOR Rate Advance and advanced by a Bank required to comply with the relevant requirements of the United Kingdom or any Participating Member State, "EURIBOR Rate" means the sum of (i) the rate determined in accordance with the preceding sentence of this definition and (ii) the Mandatory Cost Rate for such Interest Period.

"EURIBOR RATE ADVANCE" means an Advance in Euros which bears interest at a rate per annum determined on the basis of the EURIBOR Rate. All EURIBOR Rate Advances shall be denominated in Euros.

"EURO" and "(EURO)" means the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

"EUROCURRENCY BANKING DAY" means (a) if such day relates to any Eurodollar Rate Advance, any Banking Day on which dealings in Dollar deposits are conducted by and among banks in the London interbank offer market for Dollar deposits or (b) if such day relates to any EURIBOR Rate Advance, a TARGET Day.

"EUROCURRENCY LENDING OFFICE" means, as to each Bank, its office or branch so designated by written notice to the Company and the Administrative Agent as its Eurocurrency Lending Office. If no Eurocurrency Lending Office is designated by a Bank, its Eurocurrency Lending Office shall be its office at its address for purposes of notices hereunder.

"EUROCURRENCY MARKET" means, with respect to any EURO Rate Advance, the London interbank offer market for Dollar and Euro deposits.

"EUROCURRENCY PERIOD" means, as to each EURO Rate Advance, the period commencing on the date specified by the Borrower pursuant to Section 2.1(b) and ending 1, 2, 3 or 6 months thereafter, as specified by the applicable Borrower in the applicable Request for Loan; provided that:

(a) The first day of any Eurocurrency Period shall be a Eurocurrency Banking Day;

(b) Any Eurocurrency Period that would otherwise end on a day that is not a Eurocurrency Banking Day shall be extended to the next succeeding Eurocurrency Banking Day unless such Eurocurrency Banking Day falls in another calendar month, in which case such Eurocurrency Period shall end on the next preceding Eurocurrency Banking Day; and

(c) No Eurocurrency Period shall extend beyond the Maturity Date.

"EURODOLLAR RATE" means, for any Interest Period for each Eurodollar Rate Advance, an interest rate per annum equal to (i) the offered rate (if any) appearing on the

Telerate Screen which displays British Bankers' Association Interest Settlement Rates for deposits of Dollars for a period equal to the Interest Period relating to that Advance at or about 11:00 a.m. (London time) two Eurocurrency Banking Days before the first day of such Interest Period with respect to each Eurodollar Rate Advance, or (ii) if the Administrative Agent is unable to access the Telerate Screen or if the relevant rate is not displayed, the average (rounded upward to the nearest whole multiple of 1/16 of 1% per annum, if such average is not such a multiple) of the rate per annum at which each of the Reference Banks was offering to leading banks in the London interbank market deposits in Dollars of an equivalent amount and for such Interest Period at or about 11:00 a.m. (London time) two Eurocurrency Banking Days before the first day of such Interest Period with respect to each Eurodollar Rate Advance. For the purposes of this definition, "Telerate Screen" means the display on the Telerate Service or such other service as may be nominated by the British Bankers' Association Interest Settlement Rates for deposits in Dollars.

"EURODOLLAR RATE ADVANCE" means an Advance that bears interest based on the Eurodollar Rate. All Eurodollar Rate Advances shall be denominated in Dollars.

"EURO RATE ADVANCE" means, as the context may require, a Eurodollar Rate Advance or a EURIBOR Rate Advance.

"EVENT OF DEFAULT" shall have the meaning provided in Section 9.1.

"FISCAL QUARTER" means the fiscal quarter of the Company consisting of a three month fiscal period ending on each March 31, June 30, September 30 and December 31.

"FISCAL YEAR" means the fiscal year of the Company consisting of a twelve month fiscal period ending on each December 31.

"FOREIGN BANK" has the meaning set forth in Section 13.27(a)(i).

"GENERALLY ACCEPTED ACCOUNTING PRINCIPLES" means, as of any date of determination, accounting principles set forth as "generally accepted" in then currently effective Statements of the Auditing Standards Board of the American Institute of Certified Public Accountants, or, if no such Statements are then in effect, that are then approved by such other entity as may be approved by a significant segment of the accounting profession in the United States of America. The term "GENERALLY ACCEPTED ACCOUNTING PRINCIPLES" shall be read in each instance as if the words "CONSISTENTLY APPLIED" followed immediately thereafter, meaning that the accounting principles applied are consistent in all material respects (except for changes concurred in by the Company's independent public accountants) to those applied at prior dates or for prior periods.

"GOVERNMENTAL AGENCY" means (a) any foreign, federal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court or administrative tribunal or (d) with respect to any Person, any arbitration tribunal or other nongovernmental authority to whose jurisdiction that Person has consented.

"GUARANTY" has the meaning set forth in Section 11.1.

"HOSTILE ACQUISITION" means the acquisition of over 50% of the capital stock or other equity interests of a Person (the "TARGET") through a tender offer or similar solicitation of the owners of such capital stock or other equity interests which has not been approved (prior to such acquisition) by resolutions of the Board of Directors or shareholders of the Target or by similar action if the Target is not a corporation and as to which such approval has not been withdrawn.

"INCREASED COMMITMENTS" has the meaning set forth in Section 2.8(a).

"INDEBTEDNESS" means, as to any Person, (a) all indebtedness of such Person for borrowed money, (b) that portion of the obligations of such Person under Capital Leases which is properly recorded as a liability on a balance sheet of that Person prepared in accordance with Generally Accepted Accounting Principles, (c) to the extent of the outstanding Indebtedness thereunder, any obligation of such Person that is evidenced by a promissory note or other similar instrument representing an extension of credit to such Person, whether or not for borrowed money, (d) any obligation of such Person for the deferred purchase price of Property or services (other than trade or other accounts payable in the ordinary course of business), (e) any obligation of such Person of the nature described in clauses (a), (b), (c) or (d) above that is secured by a Lien on assets of such Person, whether or not that Person has assumed such obligation or whether or not such obligation is non-recourse to the credit of such Person, but only to the extent of the lesser of the face amount of the obligation or the fair market value of the assets so subject to the Lien, (f) obligations of such Person arising under acceptance facilities or under facilities for the discount of accounts receivable of such Person, (g) any obligation of such Person to reimburse the issuer of any letter of credit issued for the account of such Person upon which and only to the extent a draw has been made and (h) in the case of the Company, any obligations of the Company under a Swap Agreement. Notwithstanding the provisions listed above, Indebtedness shall not include any intercompany loans made by the Company to a Subsidiary or by any Subsidiary to another Subsidiary. As of any date of determination, the amount of the Company's Indebtedness pursuant to any Swap Agreement shall be equal to the negative marked-to-market value for the Company.

"INDEMNITEES" has the meaning set forth in Section 13.12.

"INTANGIBLE ASSETS" means assets that are considered intangible assets under Generally Accepted Accounting Principles, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, unamortized deferred charges, unamortized debt discount, capitalized research and development costs and other intangible assets.

"INTEREST PERIOD" means with respect to any EURO Rate Advance, the related Eurocurrency Period.

"ISSUE" means the issuance or extension of, or amendment to, any Letter of Credit.

"ISSUING BANK" means Citibank.

"LAWS" means, collectively, all foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or controlling precedents of any Governmental Agency.

"LC ISSUANCE FEE" means a fee payable to the Issuing Bank as provided in Section 3.4.

"LC REIMBURSEMENT FEE" means a fee payable to the Administrative Agent, for the pro rata benefit of the Banks, as provided in Section 3.5.

"LETTERS OF CREDIT" means any letters of credit issued by the Issuing Bank pursuant to Section 2.6(a), either as originally executed or as the same may from time to time be supplemented, modified, reviewed, extended or supplanted.

"LEVEL" means Level 1, Level 2, Level 3, Level 4, Level 5 or Level 6, as the case may be, provided, however that if, as of any date of determination, there is more than a one Level difference between (x) the Level that would be applicable if such Level were determined solely by reference to the rating assigned by S&P (the "HYPOTHETICAL S&P LEVEL") and (y) the Level that would be applicable if such Level were determined solely by reference to the rating assigned by Moody's (the "HYPOTHETICAL MOODY'S LEVEL") then the "Level" for such date shall be deemed to be the Level immediately above the lower of the Hypothetical S&P Level and the Hypothetical Moody's Level (for these purposes Level 1 being higher than Level 2, etc.).

"LEVEL 1" means that, as of any date of determination, the Long-Term Debt carries either of the following ratings:

"AA-" or higher from S&P
"Aa3" or higher from Moody's.

"LEVEL 2" means that, as of any date of determination, the criteria of Level 1 are not satisfied and the Long-Term Debt carries either of the following ratings:

"A+" from S&P
"A1" from Moody's.

"LEVEL 3" means that, as of any date of determination, the criteria of neither Level 1 nor Level 2 are satisfied and the Long-Term Debt carries either of the following ratings:

"A" from S&P
"A2" from Moody's.

"LEVEL 4" means that, as of any date of determination, the criteria of none of Level 1, Level 2 or Level 3 are satisfied and the Long-Term Debt carries either of the following ratings:

"A-" from S&P
"A3" from Moody's.

"LEVEL 5" means that, as of any date of determination, the criteria of none of Level 1, Level 2, Level 3 or Level 4 are satisfied and the Long-Term Debt carries either of the following ratings:

"BBB+" from S&P
"Baa1" from Moody's.

"LEVEL 6" means that, as of any date of determination, the criteria of none of Level 1, Level 2, Level 3, Level 4 or Level 5 are satisfied.

"LIEN" means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, lien or charge of any kind, whether voluntarily incurred or arising by operation of Law or otherwise, affecting any Property, including any agreement to grant any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security interest, and/or the filing of or agreement to give any financing statement (other than a precautionary financing statement with respect to a lease that is not in the nature of a security interest) under the Uniform Commercial Code or comparable Law of any jurisdiction with respect to any Property.

"LOAN" means any group of Advances made at any one time by the Banks pursuant to Article 2.

"LOAN DOCUMENTS" means, collectively, this Agreement, the Notes, any Request for Loan, any Agreement to Participate, any Letter of Credit, and any Request for Letter of Credit, in each case either as originally executed or as the same may from time to time be supplemented, modified, amended, restated, extended or supplanted.

"LONG-TERM DEBT" means senior, unsecured, long-term-debt securities of the Company.

"MAJORITY BANKS" means, as of any date of determination, Banks whose aggregate Pro Rata Shares are greater than 50% of the Commitment then in effect or if the Commitment is not then in effect, Banks to which more than 50% of the aggregate Total Outstandings is owed.

"MANDATORY COST RATE" means, with respect to any period, a rate per annum determined in accordance with Schedule 1.1.

"MATERIAL ADVERSE EFFECT" means a circumstance or set of circumstances or events affecting the business, financial condition or operations of the Company and its Subsidiaries, taken as a whole, that have a material adverse effect, individually or in the aggregate, upon the ability (i) of the Company and its Subsidiaries, taken as a whole, to perform under the Loan Documents or (ii) of the Banks to enforce, the Obligations under the Loan Documents.

"MATURITY DATE" means July 16, 2009.

"MOODY'S" means Moody's Investors Service, Inc. or any successor thereto.

"MULTIEMPLOYER PLAN" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any of its ERISA Affiliates is contributing, or ever has contributed, or to which the Company or any of its ERISA Affiliates has, or ever has had, an obligation to contribute.

"NOTES" means any of the promissory notes made by the Borrowers in favor of a Bank in accordance with Section 2.1(e) to evidence revolving Advances made by that Bank under the Commitment, substantially in the form of Exhibit B, as originally executed or as the same may from time to time be supplemented, modified, amended, renewed or extended.

"NOTICE OF CONVERSION/CONTINUATION" has the meaning specified in Section 2.5(a).

"OBLIGATIONS" means all present and future monetary obligations of every kind or nature of the Borrowers at any time and from time to time owed to the Arrangers, the Administrative Agent, the Syndication Agent, the Issuing Bank or the Banks or any one or more of them under any one or more of the Loan Documents, whether due or to become due, matured or unmatured, liquidated or unliquidated, or contingent or noncontingent, including interest that accrues after the commencement of any proceeding under any Debtor Relief Law by or against the Company or any Subsidiary of the Company.

"ORIGINAL CURRENCY" has the meaning set forth in Section 13.26(a).

"OTHER CURRENCY" has the meaning set forth in Section 13.26(a).

"OTHER TAXES" has the meaning set forth in Section 3.12(d)(ii).

"PARTICIPATING MEMBER STATE" means each state so described in any EMU Legislation.

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor thereto).

"PENSION PLAN" means any Employee Benefit Plan other than a Multiemployer Plan, that is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"PERMITTED ENCUMBRANCES" means:

(a) inchoate Liens incident to construction or maintenance of real property, or Liens incident to construction or maintenance of real property, now or hereafter filed of record for sums not yet delinquent or being contested in good faith, if reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made therefor;

(b) Liens for taxes and assessments on real property which are not yet past due, or Liens for taxes and assessments on real property for which adequate reserves have been set aside and are being contested in good faith by appropriate proceedings and have not proceeded to judgment, provided that, by reason of non-payment of the obligations secured by such Liens, no such material real property is subject to a material risk of loss or forfeiture;

(c) easements, exceptions, reservations, or other agreements granted or entered into after the date hereof for the purpose of pipelines, conduits, cables, wire communication lines, power lines and substations, streets, trails, walkways, drainage, irrigation, water, and sewerage purposes, dikes, canals, ditches, the removal of oil, gas, coal, or other minerals, and other like purposes affecting real property which in the aggregate do not materially burden or impair the fair market value or use of such real property for the purposes for which it is or may reasonably be expected to be held;

(d) rights reserved to or vested in any Governmental Agency by Law to control or regulate, or obligations or duties under Law to any Governmental Agency with respect to, the use of any real property;

(e) rights reserved to or vested in any Governmental Agency by Law to control or regulate, or obligations or duties under Law to any Governmental Agency with respect to, any right, power, franchise, grant, license, or permit;

(f) present or future zoning laws and ordinances or other laws and ordinances restricting the occupancy, use, or enjoyment of real property;

(g) statutory Liens, other than those described in clauses (a) or (b) above, arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested in good faith, if reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made therefor;

(h) Liens consisting of pledges or deposits to secure obligations under workers' compensation laws or similar legislation, including Liens of judgments thereunder which are not currently dischargeable;

(i) Liens consisting of pledges or deposits of Property to secure performance in connection with operating leases made in the ordinary course of business to which the Company or a Subsidiary is a party as lessee, provided the aggregate value of all such pledges and deposits in connection with any such lease does not at any time exceed 16-2/3% of the annual fixed rentals payable under such lease;

(j) Liens consisting of deposits of Property to secure statutory obligations of the Company or a Subsidiary of the Company in the ordinary course of its business;

(k) Liens consisting of deposits of Property to secure (or in lieu of) surety, appeal or customs bonds in proceedings to which the Company or a Subsidiary of the Company is a party in the ordinary course of its business, but not in excess of $25,000,000;

(l) purchase money Liens or purchase money security interests upon or in any property acquired or held by the Company or any Subsidiary in the ordinary course of business to secure the purchase price of such property or to secure indebtedness incurred solely for the purpose of financing the acquisition of such property;

(m) Liens on an asset to secure all or any part of the cost of development or construction of such asset or improvements thereon and which shall be released or satisfied within 120 days after completion of such development or construction;

(n) Liens on an asset created in connection with the acquisition, construction or development of additions, extensions or improvements to such asset which shall be financed by obligations described in Sections 142, 144(a) or 144(c) of the Code, as amended, or by obligations entitled to substantially similar tax benefits under other legislation or regulations in effect from time to time;

(o) Liens on property subject to escrow or similar arrangements established in connection with litigation settlements; and

(p) Liens on an asset required in connection with any program, law, statute or regulation of any state or local authority which provides financial or tax benefits not available without such Lien, provided that substantially all of the obligations secured by such Lien are obligations that are in lieu of, or reduce, a property tax or other payment obligation that itself would have been secured by a Lien permitted hereunder.

"PERSON" means any entity, whether an individual, trustee, corporation, general partnership, limited partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, Governmental Agency, or otherwise.

"PLATFORM" has the meaning set forth in Section 13.25(b).

"PROPERTY" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"PRO RATA SHARE" means, with respect to each Bank, with respect to the Commitment, and any Loan made under any portion of the Commitment, the percentage set forth opposite the name of that Bank and that portion of the Commitment on Schedule 2.1 as modified from time to time.

"REFERENCE BANKS" means Citibank and Barclays.

"REGISTER" has the meaning set forth in Section 13.9(v).

"REGULATION D" means Regulation D, as at any time amended, of the Board of Governors of the Federal Reserve System, or any other regulation in substance substituted therefor.

"REGULATION U" means Regulation U, as at any time amended, of the Board of Governors of the Federal Reserve System, or any other regulation in substance substituted therefor.

"REQUEST FOR LETTER OF CREDIT" means a written request for a Letter of Credit substantially in the form of Exhibit E, together with the standard form of application for letter of

credit used by the Issuing Bank, signed by a Senior Officer of the applicable Borrower and properly completed to provide all information required to be provided therein.

"REQUEST FOR LOAN" means a written request for a Loan substantially in the form of Exhibit F, signed by a Senior Officer of the applicable Borrower and properly completed to provide all information required to be included therein.

"REQUIREMENT OF LAW" means, as to any Person, the articles or certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any Law, or judgment, award, decree, writ or determination of a Governmental Agency, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies or any successor thereto.

"SECURITIES" means any capital stock, share, voting trust certificate, bond, debenture, note or other evidence of indebtedness, limited partnership interest, or any warrant, option or other right to purchase or acquire any of the foregoing.

"SENIOR OFFICER" means the (a) chief executive officer, (b) chief operating officer, (c) chief financial officer, (d) corporate controller, (e) treasurer or (f) assistant treasurer, in each case whatever the title nomenclature may be, of the Person designated.

"SHAREHOLDERS' EQUITY" means, as of any date of determination, shareholders' equity as of that date determined in accordance with Generally Accepted Accounting Principles; provided that there shall be excluded from Shareholders' Equity any amount attributable to capital stock that is, directly or indirectly, required to be redeemed or repurchased by the issuer thereof at a specified date or upon the occurrence of specified events or at the election of the holder thereof.

"SIGNIFICANT SUBSIDIARY" has the meaning set forth in Section 4.4.

"SUBSIDIARY" means, as of any date of determination and with respect to any Person, any corporation, partnership or joint venture, whether now existing or hereafter organized or acquired: (a) in the case of a corporation, of which a majority of the securities having ordinary voting power for the election of directors or other governing body (other than securities having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person and/or one or more Subsidiaries of such Person, or (b) in the case of a partnership or joint venture, of which such Person or a Subsidiary of such Person is a general partner or joint venturer or of which a majority of the partnership or other ownership interests are at the time beneficially owned by such Person and/or one or more of its Subsidiaries, excluding any partnership or joint venture over which the Person or Subsidiary of such Person does not exercise actual control.

SWAP AGREEMENT" means a written agreement between the Company and one or more financial institutions providing for "SWAP", "COLLAR" or other interest rate protection (other than "caps") with respect to any Indebtedness.

"SYNDICATION AGENT" means Barclays, when acting in its capacity as the syndication agent under any of the Loan Documents.

"TANGIBLE NET WORTH" means, as of any date of determination, the Shareholders' Equity of the Company and its Consolidated Subsidiaries on that date, minus the book value of any Intangible Assets of the Company and its Consolidated Subsidiaries on that date.

"TARGET DAY" means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) System (or, if such clearing system ceases to be operative, such other clearing system (if any) determined by the Administrative Agent to be a suitable replacement) is operating.

"TAXES" has the meaning set forth in Section 3.12(d)(i).

"TOTAL OUTSTANDINGS" means, as of any date of determination, the sum on that date of (a) the aggregate Dollar Equivalent of the outstanding principal amount of the Advances, plus (b) the aggregate then undrawn portion of Letters of Credit which are issued and outstanding, plus (c) the aggregate unreimbursed drawings under Letters of Credit.

"TYPE" when used with respect to any Loan or Advance, means the designation of whether such Loan or Advance is a Base Rate Advance or a EURO Rate Advance.

"UNUSED PORTION" means the Commitment, less Total Outstandings as to the Commitment.

1.2 USE OF DEFINED TERMS. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any one or more of the members of the relevant class.

1.3 ACCOUNTING TERMS. All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, Generally Accepted Accounting Principles applied on a consistent basis, except as otherwise specifically prescribed herein and except for changes concurred in by the Company's independent public accountants.

1.4 ROUNDING. Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed in this Agreement and rounding the result up or down to the nearest number (with a round-up if there is no nearest number) to the number of places by which such ratio is expressed in this Agreement.

1.5 EXHIBITS AND SCHEDULES. All Exhibits and Schedules to this Agreement, either as originally existing or as the same may from time to time be supplemented, modified or amended, are incorporated herein by this reference. A matter disclosed on any Schedule shall be deemed disclosed on all Schedules.

1.6 REFERENCES TO "THE COMPANY AND ITS SUBSIDIARIES". Any reference herein to "the Company and its Subsidiaries" or the like shall refer solely to the Company during such times, if any, as the Company shall have no Subsidiaries.

1.7 MISCELLANEOUS TERMS. The term "or" is disjunctive; the term "and" is conjunctive. The term "shall" is mandatory; the term "may" is permissive. Masculine terms also apply to females; feminine terms also apply to males. The term "including" is by way of example and not limitation.

1.8 EXCHANGE RATES; ALTERNATIVE CURRENCY EQUIVALENTS. On each Calculation Date, the Administrative Agent shall determine the exchange rate as of such Calculation Date to be used for calculating relevant Dollar Equivalent and Alternative Currency Equivalent amounts. The exchange rates so determined shall become effective on such Calculation Date and shall for all purposes of this Agreement (other than any provision expressly requiring the use of a current exchange rate) be the exchange rates employed in converting any amounts between the applicable currencies. Wherever in this Agreement in connection with an Advance, conversion or continuation of a Loan, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Advance or Loan is denominated in the Alternative Currency, such amount shall be the Alternative Currency Equivalent of such Dollar amount (rounded to the nearest 1,000 units of the Alternative Currency), as determined by the Administrative Agent. Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may, with the approval of the Company (not to be unreasonably withheld), from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

ARTICLE 2
LOANS AND LETTERS OF CREDIT

2.1 ADVANCES - GENERAL.

(a) Subject to the terms and conditions set forth in this Agreement, at any time and from time to time from the Closing Date through the Maturity Date, each Bank shall, according to its Pro Rata Share of the Commitment, make Advances to the Borrowers under the Commitment in such amounts in Dollars or in the Alternative Currency as the Borrowers may request that do not exceed in the aggregate at any one time outstanding the amount of that Bank's Pro Rata Share of the Commitment; provided that, giving effect to the Loan of which such Advance is a part, (i) the Total Outstandings shall not exceed the Commitment and (ii) the sum of all Advances then outstanding plus the face amount of all Letters of Credit then outstanding plus the sum of all unreimbursed drawings under Letters of Credit shall not exceed the Commitment. Subject to the limitations set forth herein, the Borrowers may borrow and repay under the Commitment without premium or penalty.

(b) Subject to the next sentence, each Loan under this Section 2.1 shall be made pursuant to a Request for Loan which shall specify the requested (i) date of such Loan, (ii) type of Loan, (iii) amount of such Loan and (iv) Interest Period for such Loan. Unless the Administrative Agent has notified, in its sole and absolute discretion, the Borrowers to the

contrary, a Loan may be requested by telephone by a Senior Officer of the Borrower, in which case the Borrower shall promptly confirm such request by transmitting a telecopy of, or at the Administrative Agent's request by mailing, a Request for Loan executed by a Senior Officer of such Borrower conforming to the preceding sentence to the Administrative Agent.

(c) Promptly following receipt of a Request for Loan (or the receipt of a substitute request permitted under the second sentence of Section 2.1(b)), the Administrative Agent shall notify each Bank by telephone (so long as such notice by telephone is followed by a notice in writing) or telecopier (the method of notice shall be at the Administrative Agent's option) of the date and type of the Loan, the applicable Interest Period and the amount of that Bank's Pro Rata Share of the Loan. Not later than 2:00 p.m., New York time, on the date specified for any Loan subject to the provisions of Sections 2.2 and 2.3, each Bank shall make its Pro Rata Share of the Loan in immediately available funds available to the Administrative Agent at the Administrative Agent's Office. Upon fulfillment of the applicable conditions set forth in Article 8 and subject to the provisions of Sections 2.2 and 2.3, all Advances shall be credited in immediately available funds to the Designated Deposit Account.

(d) Each Loan under the Commitment shall be in a minimum amount of $2,000,000 (or (EURO)2,000,000, if the applicable borrowing is in Euros) and multiples of $1,000,000 or (euro)1,000,000, as applicable, in excess of that amount.

(e) If so requested by any Bank by written notice to the Company (with a copy to the Administrative Agent) at least two Banking Days prior to the Closing Date or at any time thereafter, each Borrower shall execute and deliver to such Bank (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Bank pursuant to Section 13.9) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after the Company's receipt of such notice) a promissory note or promissory notes to evidence such Bank's Advances under its Pro Rata Share of the Commitment, substantially in the form of Exhibit B.

(f) A Request for Loan shall be irrevocable upon the Administrative Agent's first notification thereof.

2.2 BASE RATE ADVANCES. Each request by a Borrower for a Base Rate Advance shall be made pursuant to a Request for Loan (or telephonic request for Loan referred to in the second sentence of Section 2.1(b), if applicable) received by the Administrative Agent, at the Administrative Agent's Office, not later than 11:00 a.m., New York time, on the date of a proposed Base Rate Advance. All Advances denominated in Dollars shall constitute Base Rate Advances unless properly designated as Eurodollar Rate Advances pursuant to Section 2.3.

2.3 EURO RATE ADVANCES.

(a) Each request by a Borrower for a Eurodollar Rate Advance shall be made pursuant to a Request for Loan (or telephonic request for Loan referred to in the second sentence of Section 2.1(b), if applicable) received by the Administrative Agent, at the Administrative Agent's Office, not later than 1:00 p.m., New York time, at least three (3) Eurocurrency Banking Days before the first day of the applicable Eurocurrency Period. Each request by a Borrower for

a EURIBOR Rate Advance shall be made pursuant to a Request for Loan (or telephonic request for Loan referred to in the second sentence of Section 2.1(b), if applicable) received by the Administrative Agent, at the Administrative Agent's Office, not later than 9:30 a.m., London time, at least three (3) Eurocurrency Banking Days before the first day of the applicable Eurocurrency Period.

(b) On the second Eurocurrency Banking Day before the first day of the applicable Eurocurrency Period in the case of Eurodollar Rate Advances and EURIBOR Rate Advances, the Administrative Agent shall determine the applicable Eurodollar Rate or EURIBOR Rate, as the case may be (which determination shall be conclusive in the absence of manifest error), and prior to 1:00 p.m., New York time on that same day shall give notice of the same to the applicable Borrower and the Banks by telephone or telecopier (the method of notice shall be at the Administrative Agent's option).

(c) Unless all of the Banks otherwise consent, no EURO Rate Advance may be requested during the continuance of an Event of Default.

(d) Prior to the submission of a Request for Loan with respect to a EURO Rate Advance, any Borrower may request the Administrative Agent to provide a non-binding estimate of the Eurodollar Rate or EURIBOR Rate that would then apply in the event the Borrower submitted a Request for Loan.

2.4 VOLUNTARY REDUCTION OF COMMITMENT. The Company shall have the right, at any time and from time to time, without penalty or charge, upon at least two (2) days' prior written notice to the Administrative Agent, to voluntarily reduce, permanently and irrevocably, in a minimum amount of $5,000,000 and multiples of $1,000,000 in excess thereof, or to terminate, all or a portion of the then Unused Portion of the Commitment; provided that any such reduction or termination shall be accompanied by payment of all accrued and unpaid facility fees with respect to the portion of the Commitment being reduced or terminated.

2.5 VOLUNTARY CONVERSION OR CONTINUATION OF ADVANCES.

(a) The Borrower may on any Banking Day upon notice given to the Administrative Agent not later than 12:00 noon (New York City time) on the third Eurocurrency Banking Day prior to the date of the proposed Conversion or continuance (a "NOTICE OF CONVERSION/CONTINUATION") and subject to the provisions of Section 2.3, (1) Convert all or any portion of Advances of one Type into Advances of another Type and (2) upon the expiration of any Interest Period applicable to Advances which are EURO Rate Advances, continue all (or, subject to Section 2.3, any portion of) such Advances as EURO Rate Advances and the succeeding Interest Period(s) of such continued Advances shall commence on the last day of the Interest Period of the Advances to be continued; provided, however, that any Conversion of any EURO Rate Advances into Base Rate Advances shall be made on, and only on, the last day of an Interest Period for such EURO Rate Advances. Each such Notice of Conversion/Continuation shall, within the restrictions specified above, specify (i) the date of such continuation or Conversion, (ii) the Advances (or, subject to Section 2.3, any portion thereof) to be continued or Converted, (iii) if such continuation is of, or such Conversion is into, EURO Rate Advances, whether such EURO Rate Advance is a Eurodollar Advance or a EURIBOR Rate Advance and

the duration of the Interest Period of each such Advance, and (iv) in the case of a continuation of or a Conversion into a EURO Rate Advance, that no Event of Default has occurred and is continuing. Each Conversion or continuation shall be in a minimum amount of $2,000,000 or (EURO)2,000,000, as applicable, and multiples of $1,000,000 or (EURO)1,000,000, as applicable.

(b) If upon the expiration of the then existing Interest Period applicable to any Advance which is a EURO Rate Advance, the Borrower shall not have delivered a Notice of Conversion/Continuation in accordance with this Section 2.5, then such Advance if it is an Advance of Dollars shall upon such expiration automatically be continued as a Eurodollar Rate Advance with an Interest Period of one month; provided, however, that in the case of a failure to timely request a continuation of Advances denominated in the Alternative Currency, such Advances shall be continued as EURIBOR Rate Advances in the Alternative Currency with an Interest Period of one month. No Eurodollar Rate Advance may be converted into or continued as a EURIBOR Rate Advance, but instead must be prepaid in Dollars and reborrowed in the Alternative Currency, and no EURIBOR Rate Advance may be converted into or continued as a Eurodollar Rate Advance, but instead must be prepaid in the Alternative Currency and reborrowed in Dollars.

(c) After the occurrence of and during the continuation of an Event of Default, the Borrower may not elect to have an Advance be made or continued as, or Converted into, a EURO Rate Advance after the expiration of any Interest Period then in effect for that Advance.

2.6 LETTERS OF CREDIT.

(a) Subject to the terms and conditions hereof, at any time and from time to time from the Closing Date through the date that is thirty (30) days before the Maturity Date, the Issuing Bank shall issue such Letters of Credit denominated in Dollars as a Borrower may request by delivering a Request for Letters of Credit to the Issuing Bank; provided that, giving effect to such Letter of Credit, (i) the aggregate effective face amounts of all outstanding Letters of Credit will not exceed $150,000,000, (ii) the sum of all Advances then outstanding plus the face amount of all Letters of Credit then outstanding plus the sum of all unreimbursed drawings under Letters of Credit shall not exceed the Commitment, and (iii) Total Outstandings will not exceed the Commitment. Letters of Credit issued under the Commitment may be issued for terms up to five (5) years from the date of issuance but in no event shall the term of any such Letter of Credit extend beyond the Maturity Date. Each Letter of Credit shall be in a minimum amount of $500,000, unless otherwise consented to by the Issuing Bank. The issuance of any Letter of Credit shall constitute usage of the Commitment. Subject to the limitations set forth herein, the Borrowers may request Letters of Credit, reimburse drawings under Letters of Credit and request further Letters of Credit without premium or penalty.

(b) The Issuing Bank shall not Issue any Letter of Credit if it has received written notice from the Majority Banks, the Administrative Agent or the Company on or prior to the Banking Day prior to the requested date of issuance of such Letter of Credit, that one or more of the applicable conditions contained in Section 8.2 is not then satisfied. The Issuing Bank is under no obligation to Issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Agency or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law applicable to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Agency with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of Letters of Credit generally or such Letter of Credit in particular; or

(ii) any requested Letter of Credit is not in form reasonably acceptable to the Issuing Bank, or the issuance of a Letter of Credit shall violate any generally applicable policies of the Issuing Bank.

(c) Each Request for Letter of Credit shall be submitted to the Issuing Bank at least three (3) Banking Days prior to the date when the issuance of a Letter of Credit is requested. Upon issuance of a Letter of Credit, the Issuing Bank shall promptly notify the Banks of the amount and terms thereof. Any Letter of Credit issued shall conform with the Issuing Bank's generally applicable policies regarding form and substance.

(d) Upon the issuance of a Letter of Credit, each Bank shall be deemed to have irrevocably purchased from the Issuing Bank, without recourse to or warranty from the Issuing Bank, a pro rata undivided participation in the Letter of Credit, in an amount equal to that Bank's Pro Rata Share of the Commitment. Without limiting the scope and nature of each Bank's participation in any Letter of Credit, to the extent that the Issuing Bank has not been reimbursed by the Borrower, in accordance with Section 2.6(e), for any payment made by the Issuing Bank under any Letter of Credit, each Bank shall reimburse the Issuing Bank promptly upon demand for the amount of such payment in accordance with its Pro Rata Share of the Commitment, as the case may be. The obligation of each Bank to so reimburse the Issuing Bank shall be absolute and unconditional and shall not be affected by the occurrence of an Event of Default or any other occurrence or event. Any such reimbursement shall not relieve or otherwise impair the obligation of the Borrower to reimburse the Issuing Bank for the amount of any payment made by the Issuing Bank under any Letter of Credit together with interest as hereinafter provided.

(e) After any drawing on a Letter of Credit, the Issuing Bank shall notify the applicable Borrower and the Administrative Agent by telephone or telecopier of such drawing by 2:00 p.m., New York time, on the date such payment is to be made and the Borrower shall reimburse the Issuing Bank, in immediately available funds for any amount paid or to be paid by the Issuing Bank under such Letter of Credit by 4:00 p.m., New York time on the date of such notice.

(f) If the applicable Borrower fails to make the payment required by Section 2.6(e), the Administrative Agent shall notify the Banks by telephone or telecopier (the method of notification shall be at the Administrative Agent's option) of the unreimbursed amount of such payment. Each Bank irrevocably and unconditionally agrees (irrespective of the occurrence of an Event of Default or any other circumstance) that it shall make available to the Administrative Agent (for the account of the applicable Issuing Bank) an amount equal to its respective participation in same day funds, at the Administrative Agent's Office, not later than the close of business (New York time) on the date notified by the Administrative Agent. In the event that any Bank fails to make available to the Administrative Agent the amount of such Bank's participation in such Letter of Credit as provided above, the Issuing Bank (through the Administrative Agent) shall be entitled to recover such amount on demand from such Bank together with interest thereon, for each day from the date of such payment until the date such amount is paid to the Issuing Bank, at the rate per annum equal to the Base Rate plus 1%; provided that if such failure is solely the result of an administrative error (which determination shall be made by the Administrative Agent in its sole discretion) or is solely the result of the Bank receiving notice too late in the day to make payment to the Administrative Agent on that day, then the interest rate for the first day of such delay shall be the overnight federal funds rate. Any amount made available by a Bank to the Administrative Agent as such Bank's participation in such Letter of Credit shall constitute a demand loan to the Borrower bearing interest at a rate per annum equal to (i) from the date of any payment made by the Issuing Bank through the date ten days after such payment, the Base Rate, and (ii) thereafter, the Base Rate plus 2%; provided, that if a Bank is prevented from making such demand loans by the provisions of the United States Bankruptcy Code or otherwise, the amount so paid to the Issuing Bank by such Bank shall constitute a funding and purchase by it of a participation in such Letter of Credit disbursement by the Issuing Bank and all obligations of the Borrower with respect thereto, including interest thereon to the extent accruing from the date of such purchase. The Administrative Agent shall promptly pay to the Issuing Bank all funds paid by the Banks to reimburse the Issuing Bank for the payment made by it under the Letter of Credit.

(g) The issuance of any supplement, modification, amendment, renewal, or extension to or of any Letter of Credit shall be treated for the purposes of Article 8 the same as the issuance of a new Letter of Credit.

(h) If, for any reason, a Bank fails to pay its liability on a Letter of Credit in accordance with the provisions of Section 2.6(f), then the Issuing Bank shall be automatically subrogated to the right of such defaulting Bank to any prepayment, in full, of any loan created by virtue of a drawing on such Letter of Credit, or such defaulting Bank's right to any reimbursement by the Borrower with respect to any drawing, or any other right of such defaulting Bank in connection with or resulting from the drawing on such Letter of Credit, prior to distribution of any payments hereunder to the defaulting Bank.

(i) The obligation of the Borrowers to reimburse the Issuing Bank for the amount of any payment made by the Issuing Bank under any Letter of Credit, and the obligations of the Banks under their respective participations under the Letters of Credit, shall be absolute, unconditional, and irrevocable and shall not be affected by any of the following circumstances:

(i) any lack of validity or enforceability of the Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) any amendment or waiver of or any consent to departure from the Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(iii) the existence of any claim, setoff, defense, or other rights which any Borrower may have at any time against any Bank, any beneficiary of the Letter of Credit (or any persons or entities for whom any such beneficiary may be acting) or any other Person, whether in connection with the Letter of Credit, this Agreement, or any other agreement or instrument relating thereto, or any unrelated transactions;

(iv) any demand, statement, or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever so long as any such document appeared to comply with the terms of the Letter of Credit;

(v) the solvency or financial responsibility of any party issuing any documents in connection with a Letter of Credit;

(vi) any failure or delay in notice of shipments or arrival of any property;

(vii) any error in the transmission of any message relating to a Letter of Credit not caused by the Issuing Bank, or any delay or interruption in any such message;

(viii) any error, neglect or default of any correspondent of any Bank in connection with a Letter of Credit;

(ix) any consequence arising from acts of God, war, insurrection, disturbances, labor disputes, emergency conditions or other causes beyond the control of the Issuing Bank;

(x) so long as the Issuing Bank in good faith determines that the draft, contract or document appears to comply with the terms of the Letter of Credit, the form, accuracy, genuineness or legal effect of any contract or document referred to in any document submitted to the Issuing Bank in connection with a Letter of Credit; and

(xi) where the Issuing Bank has acted in good faith and without gross negligence or willful misconduct and observed general banking usage, any other circumstance whatsoever.

(j) the Issuing Bank shall be entitled to the protection accorded to the Administrative Agent pursuant to Section 10.6, mutatis mutandis.

(k) As between the Borrower and the Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of any Letter of Credit by, the respective beneficiaries of the Letters of Credit. In furtherance and not in limitation of the foregoing, the

Issuing Bank shall not be responsible: (1) for the validity, genuineness or legal effect of any document submitted by any party in connection with the issuance of or any drawing under the Letters of Credit, even if it should in fact prove to be in any or all respects invalid, fraudulent or forged; (2) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (3) for errors in interpretation of technical terms; (4) for the misapplication by the beneficiary of any Letter of Credit of the proceeds of any drawing under such Letter of Credit; provided that none of the events set forth in the foregoing clauses (1) through (4) shall have been caused by the gross negligence or willful misconduct of the Issuing Bank; and (5) for any consequences arising from causes beyond the control of the Issuing Bank. None of the above shall affect, impair, or prevent the vesting of any of the Issuing Bank's rights or powers hereunder. In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by an Issuing Bank under or in connection with the Letters of Credit, if taken or omitted in good faith, without gross negligence or willful misconduct, shall not put the Issuing Bank under any resulting liability to the Borrowers or the Banks.

(l) The Issuing Bank shall have no obligation whatsoever to make any factual or legal determinations as to the correctness of any demand or payment under any Letter of Credit strictly complying with the terms of such Letter of Credit before the Issuing Bank makes any payment under the Letter of Credit. The Borrowers and the Banks hereby waive (A) diligence, presentment, demand, protest or notice of any kind, (B) any requirement that the Issuing Bank exhaust any right or remedy against the Borrowers, the Administrative Agent, any other participant in the credit, or any other Person, and (C) any claim or defense based on any time or other indulgence granted to the Borrower, the Administrative Agent or any other Person and any right of subrogation to any rights or remedies of the Issuing Bank in respect of any of the Letters of Credit or any defense that the Issuing Bank has impaired any such right of subrogation.

(m) In the event that any payment made by or on behalf of the Borrower pursuant to or in connection with any Letter of Credit is rescinded or must otherwise be restored or returned to the Borrower or other relevant party, as applicable, including as a result of any insolvency, bankruptcy or reorganization or similar proceedings in respect of the Borrower, the obligations of the Banks under this Section 2.6(m) in respect of such rescinded, restored or returned payment shall be reinstated in full and the Banks shall be liable to indemnify the Issuing Bank hereunder as fully as if such payment had never been made. The provision of this Section 2.6(m) shall survive the payment of the obligations of the Borrowers under the Letters of Credit.

(n) All amounts to be paid to the Issuing Bank by the Banks under this Agreement shall be paid by the Banks to the Administrative Agent for the account of the Issuing Bank, without any set-off or counterclaim whatsoever and free and clear of any without deduction for or on account of any taxes, duties or other charges whatsoever, and without any liability therefor.

2.7 ADMINISTRATIVE AGENT'S RIGHT TO ASSUME FUNDS AVAILABLE FOR ADVANCES. Unless the Administrative Agent shall have been notified by any Bank no later than

the Banking Day prior to the funding by the Administrative Agent of any Loan that such Bank does not intend to make available to the Administrative Agent such Bank's Pro Rata Share of the total amount of such Loan, the Administrative Agent may assume that such Bank has made such amount available to the Administrative Agent on the date of the Loan and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If the Administrative Agent has made funds available to the Borrower based on such assumptions and such corresponding amount is not in fact made available to the Administrative Agent by such Bank, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Bank, which demand shall be made in a reasonably prompt manner. If such Bank does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent promptly shall notify the Borrower and the Borrower shall pay such corresponding amount to the Administrative Agent. The Administrative Agent also shall be entitled to recover from such Bank interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to the actual cost to the Administrative Agent of funding such amount as notified by the Administrative Agent to such Bank. Nothing herein shall be deemed to relieve any Bank from its obligation to fulfill its Pro Rata Share of the Commitment or to prejudice any rights that the Administrative Agent or the Borrower may have against any Bank as a result of any default by such Bank hereunder.

2.8 INCREASED COMMITMENTS; ADDITIONAL BANKS.

(a) On a single occasion during each year subsequent to the Closing Date, the Company may, upon at least thirty (30) days' notice to the Administrative Agent (which shall promptly provide a copy of such notice to the Banks), propose to increase the amount of the Commitments in an aggregate minimum amount of $10,000,000 and an aggregate maximum amount not to exceed $200,000,000 (the amount of any such increase, the "INCREASED COMMITMENTS") provided that (i) at the time of and after giving effect to such Increased Commitments, the Company maintains at least a Level 4 and (ii) the Administrative Agent shall have received a Certificate of a Senior Officer from the Company dated as of the date of such increase in form and substance satisfactory to the Administrative Agent stating that the representations and warranties contained in Section 5 are true and correct in all material respects on and as of such date and that no Default or Event of Default has occurred and is continuing. Each Bank party to this Agreement at such time shall have the right (but no obligation), for a period of fifteen (15) days following receipt of such notice, to elect by notice to the Company and the Administrative Agent to increase its Commitment by a principal amount which bears the same ratio to the Increased Commitments as its then Commitment bears to the aggregate Commitments then existing.

(b) If any Bank party to this Agreement shall not elect to increase its Commitment pursuant to subsection (a) of this Section, the Company may designate another bank or other banks (which may be, but need not be, one or more of the existing Banks, but which shall be an Eligible Assignee), which at the time agree to (i) in the case of any such Bank that is an existing Bank, increase its Commitment and (ii) in the case of any other such Bank (an "ADDITIONAL BANK"), become a party to this Agreement, provided that the Commitment of each such bank or banks equals or exceeds $10,000,000. The sum of the increases in the

Commitments of the existing Banks pursuant to this subsection (b) plus the Commitments of the Additional Banks shall not in the aggregate exceed the unsubscribed amount of the Increased Commitments.

(c) An increase in the aggregate amount of the Commitments pursuant to this Section 2.8 shall become effective upon the receipt by the Administrative Agent of an agreement in form and substance satisfactory to the Administrative Agent signed by the Company, by each Additional Bank and by each other Bank whose Commitment is to be increased, setting forth the new Commitments of such Banks and setting forth the agreement of each Additional Bank to become a party to this Agreement and to be bound by all the terms and provisions hereof, together with such evidence of appropriate corporate authorization on the part of the Company with respect to the Increased Commitments and such opinions of counsel for the Company with respect to the Increased Commitments as the Administrative Agent may reasonably request.

ARTICLE 3
PAYMENTS AND FEES

3.1 PRINCIPAL AND INTEREST.

(a) Interest shall be payable on the outstanding daily unpaid principal amount of each Loan from the date thereof until payment in full is made and shall accrue and be payable at the rates set forth herein before and after default, before and after maturity, before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law, with interest on overdue interest to bear interest at the Default Rate to the fullest extent permitted by applicable Laws.

(b) Interest accrued on each Base Rate Advance shall be payable quarterly in arrears on the last day of each March, June, September and December commencing on the first such date to occur after the Closing Date. Except as otherwise provided in Section 3.9, the unpaid principal amount of any Base Rate Advance shall bear interest at a fluctuating rate per annum equal to the Base Rate. Each change in the interest rate hereunder shall take effect simultaneously with the corresponding change in the Base Rate. Each change in the Base Rate shall be effective as of 12:01 a.m., New York time, on the Banking Day on which the change in the Base Rate is announced, unless otherwise specified in such announcement, in which case the change shall be effective as so specified.

(c) Interest accrued on each EURO Rate Advance the Eurocurrency Period for which is three months or less shall be due and payable on the last day of the applicable Eurocurrency Period. Interest accrued on each other EURO Rate Advance shall be due and payable on every three month anniversary of the date which is three months after the date such EURO Rate Advance was made, converted or continued pursuant to Section 2.5 and on the last day of the Eurocurrency Period. Except as otherwise provided in Section 3.9, (i) the unpaid principal amount of any Eurodollar Rate Advance shall bear interest at a rate per annum equal to the Eurodollar Rate for that Eurodollar Rate Advance plus the weighted average of the Daily Margin for each day during the applicable period and (ii) the unpaid principal amount of any EURIBOR Rate Advance shall bear interest at a rate per annum equal to the EURIBOR Rate for

that EURIBOR Rate Advance plus the weighted average of the Daily Margin for each day during the applicable period.

(d) If not sooner paid, the principal amount of each Loan shall be payable on the Maturity Date.

(e) If the Administrative Agent notifies the Company at any time that the Dollar Equivalent of the Total Outstandings exceeds the Commitment, by reason of fluctuations in exchange rates or otherwise, the Borrowers shall, within two Business Days after receipt of such notice, prepay Loans in an aggregate amount sufficient to reduce the Dollar Equivalent thereof as of the date of such payment to an amount not to exceed the Commitment then in effect.

(f) The Loans may, at any time and from time to time, voluntarily be paid or prepaid in whole or in part without premium or penalty, except that with respect to any voluntary prepayment under this subsection, (i) any partial prepayment shall be in minimum amount of $2,000,000 and (euro)2,000,000 and multiples of $1,000,000 and (euro)1,000,000, as applicable, in excess thereof, (ii) the Administrative Agent shall have received written notice of any prepayment by (x) 11:00 a.m. (New York time) on the date of prepayment (which shall be a Banking Day), in the case of a Base Rate Advance, (y) by 1:00 p.m. (New York time) three (3) Banking Days before the date of prepayment, in the case of a Eurodollar Rate Advance, and (z) by 9:30 a.m. (London time) three (3) Banking Days before the date of prepayment, in the case of a EURIBOR Rate Advance, which notice shall identify the date and amount of the prepayment and the Loan(s) being prepaid, (iii) each prepayment of principal shall be accompanied by payment of interest accrued through the date of payment on the amount of principal paid and (iv) in any event, any payment or prepayment of all or any part of any EURO Rate Advance on a day other than the last day of the applicable Interest Period shall be subject to Section 3.8(c).

3.2 FACILITY FEE. The Company agrees to pay to the Administrative Agent for the account of each Bank a facility fee on such Bank's daily average Commitment, whether used or unused, from the Closing Date in the case of each Bank and from the effective date specified in the Assignment Agreement pursuant to which it became a Bank in the case of each other Bank until the Maturity Date, payable quarterly in arrears on the last day of each March, June, September and December, commencing on September 30, 2004, in an amount equal to the product of (i) such Bank's daily average Commitment, whether such Commitment is used or unused, in effect during the period for which such payment that is to be made times (ii) the weighted average rate per annum that is derived from the following rates: (a) a rate of 0.05% per annum with respect to each day during such period that the ratings with respect to Long-Term Debt were at Level 1, (b) a rate of 0.06% per annum with respect to each day during such period that such ratings were at Level 2, (c) a rate of 0.08% per annum with respect to each day during such period that such ratings were at Level 3, (d) a rate of 0.09% per annum with respect to each day during such period that such ratings were at Level 4, (e) at the rate of 0.125% per annum with respect to each day during such period that such ratings were at Level 5 and (f) at the rate of 0.150% per annum with respect to each day during such period that such ratings were at Level 6. If any change in the rating established by S&P or Moody's with respect to Long-Term Debt shall result in a change in the Level, the change in the facility fee shall be effective as of the date on which such rating change is publicly announced. If the ratings established by S&P or Moody's

with respect to Long-Term Debt are unavailable for any reason for any day, then the applicable Level for purposes of calculating the facility fee for such day shall be deemed to be Level 6 (or, if the Majority Banks consent in writing, such other Level as may be reasonably determined by the Majority Banks from a rating with respect to Long-Term Debt for such day established by another rating agency reasonably acceptable to the Majority Banks).

3.3 ARRANGER FEES AND AGENCY FEES. On the Closing Date, the Company shall pay to the Arrangers fees in the amounts agreed upon by a letter agreement dated the date hereof among the Company and the Arrangers. Such fees are for the sole account of the Arrangers and are fully earned upon receipt and non-refundable. The Company shall pay to the Administrative Agent, agency fees in the amounts agreed upon by letter agreements dated the date hereof between the Company and the Administrative Agent. Such agency fees shall be payable quarterly in advance as set forth in such letter agreements. The agency fees are for the sole account of the Administrative Agent and are fully earned upon receipt and non-refundable; provided, however that in the event the facilities hereunder are terminated, the agency fees deemed earned shall be pro rated over the number of days from the last quarterly date on which the agency fees were paid to the termination date of the facilities.

3.4 LC ISSUANCE FEE. The Company shall pay, on the last day of each Fiscal Quarter, a LC Issuance Fee to the Administrative Agent for the account of the Issuing Bank, in the amounts agreed upon by letter agreements dated the date hereof between the Company and the Issuing Bank. The LC Issuance Fees are for the sole account of the applicable Issuing Bank and are fully earned upon receipt and non-refundable.

3.5 LC REIMBURSEMENT FEE. The Company shall pay, on the last day of each Fiscal Quarter, a LC Reimbursement Fee to the Administrative Agent, for the pro rata benefit of the Banks in accordance with their respective Pro Rata Shares of the Commitment, in an amount equal to the average daily face amount of Letters of Credit outstanding during such Fiscal Quarter times the weighted average of the Daily Margin for EURO Rate Advances (as if the Utilization Ratio were greater than 0.50:1.00) for each day during such period.

3.6 LC DRAWING FEE. The Company shall pay a drawing fee to the Issuing Bank in the amount of $250 for each drawing under any of its Letters of Credit, payable on the date of such drawing or promptly upon notice to the Company of the draw under any Letter of Credit.

3.7 CAPITAL ADEQUACY. If any Bank (including an Issuing Bank) determines in good faith that compliance with any Law or regulation or with any guideline or request (excluding any published as of the date hereof or currently scheduled to take effect) from any central bank or other Governmental Agency (whether or not having the force of Law), in each case adopted or effective after the date hereof has or would have the effect of reducing the rate of return on the capital of such Bank or any corporation controlling such Bank as a consequence of, or with reference to, such Bank's Pro Rata Share of any portion of the Commitment or its making or maintaining of Advances, or its issuance of any Letter of Credit, below the rate which such Bank or such other corporation could have achieved but for such compliance (taking into account the policies of such Bank or corporation with regard to capital), then the Company shall from time to time, upon demand by such Bank (with a copy of such demand to the

Administrative Agent), immediately pay to such Bank additional amounts sufficient to compensate such Bank or other corporation for such reduction. A certificate as to such amounts, setting forth in reasonable detail the basis for such calculations, submitted to the Company and the Administrative Agent by such Bank, shall be conclusive and binding for all purposes, absent manifest error. Each Bank agrees promptly to notify the Company and the Administrative Agent of any circumstances that would cause the Company to pay additional amounts pursuant to this Section 3.7. If any Bank shall have been compensated pursuant to this Section 3.7, the Company shall have the right, upon 30 days prior notice to the Administrative Agent, with the assistance (but not the obligation) of the Administrative Agent, to seek a substitute bank or banks (which may be one or more of the Banks) satisfactory to the Company, the Administrative Agent and the Issuing Bank to assume the Commitment of such Bank and to purchase the Notes of such Bank and all amounts owing to such Bank in respect of Advances and Letters of Credit under this Agreement pursuant to Section 13.9.

3.8 INCREASED COSTS.

(a) If, after the date hereof, by reason of (i) the adoption of any Law by any Governmental Agency, central branch or comparable authority with respect to activities in the Eurocurrency Market, or (ii) any change in the interpretation or administration of any existing Law by any Governmental Agency, central bank or comparable authority charged with the interpretation or administration thereof, or (iii) compliance by any Bank or its Eurocurrency Lending Office or the Issuing Bank with any request or directive (whether or not having the force of Law) of any such Governmental Agency, central bank or comparable authority, or (iv) the existence or occurrence of circumstances affecting the Eurocurrency Market generally that are beyond the reasonable control of the Banks:

(1) (A) any reserve (including, without limitation, any reserve imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirements shall be imposed, modified or deemed applicable against assets of, deposits with or for the account of, or credit extended by, any Bank or its Eurocurrency Lending Office or the Issuing Bank; or

(B) any Bank or its Eurocurrency Lending Office or the Eurocurrency Market or the Issuing Bank shall have imposed on it any other condition affecting any Advance, any of its Notes, its obligation to make Advances or this Agreement, or its obligation to make or maintain Letters of Credit hereunder, or any of the same shall otherwise be adversely affected;

and the result of any of the foregoing, as determined by such Bank, increases the cost to such Bank or its Eurocurrency Lending Office of making or maintaining any Advance or in respect of any Advance, any of its Notes or its obligation to make Advances or the issuance or maintenance of any Letter of Credit or reduces the amount of any sum received or receivable by such Bank or its Eurocurrency Lending Office with respect to any Advance, any of its Notes or its obligation to make Advances (assuming such Bank's Eurocurrency Lending Office had funded 100% of its EURO Rate Advance in the Eurocurrency Market) or in respect of Letters of Credit or its participation therein, then, upon demand by such Bank or the Issuing Bank (with a copy to the Administrative

Agent), the Company shall pay to such Bank or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Bank or the Issuing Bank, as the case may be, for such increased cost or reduction. A statement of any Bank or the Issuing Bank claiming compensation under this subsection and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. Each Bank and the Issuing Bank agree to endeavor promptly to notify the Company of any event of which it has actual knowledge (and, in any event, within 90 days from the date on which it obtained such knowledge), occurring after the Closing Date, which will entitle such Bank or the Issuing Bank to compensation pursuant to this Section, and agrees to designate a different Eurocurrency 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 or the Issuing Bank, otherwise be disadvantageous to such Bank or the Issuing Bank. If any Bank claims compensation under this Section, the Company may at any time, upon at least four (4) Banking Days' prior notice to the Administrative Agent and Banks and upon payment in full of the amounts provided for in this Section through the date of such payment plus any fee required by Section 3.8(c), pay in full all Advances or request that all EURO Rate Advances be converted to Base Rate Advances or all Base Rate Advances be converted to EURO Rate Advances. If any Bank shall have been compensated pursuant to this Section 3.8(a), the Company shall have the right, upon 30 days prior notice to the Administrative Agent, with the assistance (but not the obligation) of the Administrative Agent, to seek a substitute bank or banks (which may be one or more of the Banks) satisfactory to the Company, the Administrative Agent and the Issuing Bank to assume the Commitment of such Bank and to purchase the Notes of such Bank and all amounts owing to such Bank in respect of Advances and Letters of Credit under this Agreement pursuant to Section 13.9.

(2) If any Bank shall have reasonably determined that it shall be unlawful for such Bank or its Eurocurrency Lending Office to make, maintain or fund its portion of any EURO Rate Advance, or the authority of such Bank to purchase or sell, or to take deposits of, Dollars or Euros in the Eurocurrency Market, or to determine or charge interest rates based upon the Eurodollar Rate or EURIBOR Rate has become unlawful, then such Bank shall so notify the Administrative Agent and the other Banks, and such Bank's obligation to make EURO Rate Advances shall be suspended for the duration of such illegality and the Administrative Agent forthwith shall give notice thereof to the Company and such Bank shall make a Base Rate Advance as part of any successive EURO Rate Advance. Upon receipt of such notice, the outstanding principal amount of all EURO Rate Advances made by such Bank, together with accrued interest thereon, automatically shall be converted to Base Rate Advances with Interest Periods corresponding to the EURO Rate Advances of which such EURO Rate Advances were a part and, if, on the date of any such conversion, any such EURO Rate Advance is an Alternative Currency Loan, it shall be redenominated into a Dollar Loan in a principal amount equal to the Dollar Equivalent of the amount of such Alternative Currency Loan on either (A) the last day of the Eurocurrency Period(s) applicable to such EURO Rate Advances if the affected Bank may lawfully continue to maintain and fund such EURO Rate Advances to such day(s) or (B) immediately if the affected Bank may not lawfully continue to fund and

maintain such EURO Rate Advances to such day(s), provided that in such event the conversion shall not be subject to payment of a fee under Section 3.8(c).

(b) If, with respect to any proposed EURO Rate Advance:

(i) the Reference Banks reasonably determine that, by reason of circumstances affecting the Eurocurrency Market generally that are beyond the reasonable control of the Banks, deposits in Dollars or Euros (in the applicable amounts) are not being offered to each of the Banks in the Eurocurrency Market for the applicable Eurocurrency Period; or

(ii) the Reference Banks advise the Administrative Agent that the Eurodollar Rate or EURIBOR Rate, as the case may be, as determined by the Administrative Agent (1) does not represent the effective pricing to such Banks for deposits in Dollars or Euros, as the case may be, in the Eurocurrency Market in the relevant amount for the applicable Eurocurrency Period, or (2) will not adequately and fairly reflect the cost to such Banks of making the applicable EURO Rate Advances;

then the Administrative Agent forthwith shall give notice thereof to the Company and the Banks, whereupon until the Administrative Agent notifies the Company that the circumstances giving rise to such suspension no longer exist, the obligation of the Banks to make any future EURO Rate Advances shall be suspended. If at the time of such notice there is then pending a Request for Loan that specifies a EURO Rate Advance, such Request for Loan shall be deemed to specify a Base Rate Advance in Dollars.

(c) The Company shall compensate each Bank for any loss sustained by that Bank in connection with the liquidation or re-employment of funds, excluding any loss of margin, and, without duplication, all actual out-of-pocket expenses (excluding allocations of any expense internal to such Bank) reasonably attributable thereto that such Bank may sustain: (i) if for any reason (other than a default by that Bank) a borrowing of any EURO Rate Advance does not occur on a date or in the amount specified therefor in a Request for Loan or a telephonic request for loan or a Conversion to or continuation of any EURO Rate Advance does not occur on a date specified therefor in a Notice of Conversion/Continuation or a telephone request for Conversion or continuation; (ii) if any prepayment or other principal payment or any conversion (other than as a result of a conversion required under Section 3.8(a)(2)) of any of its EURO Rate Advances occurs on a date prior to the last day of an Interest Period applicable to that Loan, or (iii) if any prepayment of any of its EURO Rate Advances is not made on any date specified in a notice of prepayment given by the Company. Each Bank's determination of any amount payable under this Section 3.8(c) shall be conclusive in the absence of manifest error. Each Bank shall submit an invoice to the Administrative Agent of the amount payable by the Company under this Section 3.8(c) setting forth in reasonable detail the basis for such amount and the Administrative Agent shall notify the Company of such amount. The Company shall pay such amount to the Administrative Agent for the account of the relevant Bank, and the Administrative Agent shall promptly pay each relevant Bank the portion of the amount owed to it.

(d) Anything in this Agreement to the contrary notwithstanding, to the extent any notice under Section 3.7, 3.8 or 3.12 is given by any Bank more than 180 days after such

Bank has knowledge (or should have had knowledge) of the occurrence of the event giving rise to the additional cost, reduction in amounts, loss, tax or other additional amounts described in such Section 3.7, 3.8 or 3.12, as the case may be, such Bank shall not be entitled to compensation under such Section for any such amounts incurred or accruing prior to the giving of such notice.

3.9 DEFAULT RATE. Upon the occurrence and during the continuation of any Event of Default under Section 9.1(a) or (b), the outstanding principal amount of all Advances and, to the extent permitted by applicable law, any interest payments thereon not paid when due and any fees and other amounts then due and payable hereunder, shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to 2% in excess of the interest rate otherwise payable under this Agreement with respect to the applicable Advances (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable under this Agreement for Base Rate Advances), to the fullest extent permitted by applicable Laws; provided that, in the case of EURO Rate Advances, upon the expiration of the Eurocurrency Period in effect at the time any such increase in interest rate is effective such EURO Rate Advances shall thereupon become Base Rate Advances and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable under this Agreement for Base Rate Advances. Accrued and unpaid interest on past due amounts (including, without limitation, interest on past due interest) shall be compounded daily and shall be payable on demand, to the fullest extent permitted by applicable Laws.

3.10 COMPUTATION OF INTEREST AND FEES. Computation of interest on Base Rate Advances when the Base Rate is calculated by reference to Citibank's base commercial lending rate shall be calculated on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. Computation of all fees and other interest shall be calculated on the basis of a year of 360 days and the actual number of days elapsed. Any Advance that is repaid on the same day on which it is made shall bear interest for one day.

3.11 NON-BANKING DAYS. If any payment to be made by a Borrower or any other party under any Loan Document shall come due on a day other than a Banking Day, payment shall instead be considered due on the next succeeding Banking Day and the extension of time shall be reflected in computing the amount of such payment.

3.12 MANNER AND TREATMENT OF PAYMENTS.

(a) Except as set forth in the next sentence, each payment hereunder or on the Notes or under any other Loan Document in Dollars shall be made to the Administrative Agent, at the Administrative Agent's Office, for the account of each of the appropriate Banks or the Issuing Bank, as the case may be, in immediately available funds, without any set-off or counterclaim, not later than 2:00 p.m., New York time, on the day of payment (which must be a Banking Day). Each Borrower shall make each payment hereunder with respect to amounts denominated in the Alternative Currency not later than 2:00 p.m. (local time) (at the Alternative Currency Payment Office) on the day when due in such currency to the Administrative Agent in same day funds by deposit of such funds to the Administrative Agent's account maintained at the Alternative Currency Payment Office. All payments received after 2:00 p.m., New York time or local time (as the case may be), on any particular Banking Day, shall be deemed received on the

next succeeding Banking Day. The amount of all payments received by the Administrative Agent for the account of each Bank or Issuing Bank shall be promptly paid by the Administrative Agent to the applicable Bank or the Issuing Bank, as the case may be, in immediately available funds. All payments of principal and interest shall be made in the currency of the applicable Advance. All other payments shall be made in Dollars.

(b) Prior to the occurrence of any Event of Default, each payment or prepayment received by the Administrative Agent on account of any Loan shall be applied:

(i) To the Loans, pro rata in accordance with the aggregate principal amount thereof owed to each Bank,

(ii) Any mandatory prepayment of Loans shall be applied first to Base Rate Advances to the full extent thereof before application to EURO Rate Advances as determined by Administrative Agent, in each case in a manner which minimizes the amount of any payments required to be made by Company pursuant to Section 3.8(c).

(c) Each Bank shall use its best efforts to keep a record of Advances made by it and payments received by it with respect to its Loans and, subject to Section 10.6(g), such record shall be presumptive evidence of the amounts owing. Notwithstanding the foregoing sentence, no Bank shall be liable to any party for any failure to keep such a record.

(d) (i) Any and all payments by any Borrower to or for the account of the Administrative Agent or any Bank under this Agreement or any other Loan Document and by the Company acting in its capacity as guarantor under Article 11 shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the case of the Administrative Agent and each Bank, taxes imposed on or measured by its overall net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which the Administrative Agent or such Bank, as the case may be, is organized or maintains a lending office and, if the forms provided by a Foreign Bank pursuant to Section 13.27(a) at the time such Foreign Bank first becomes a party to this Agreement indicate a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes unless and until such Foreign Bank provides new forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such forms (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and liabilities being hereinafter referred to as "TAXES"). If any Borrower or the Company acting in its capacity as guarantor under Article 11 shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to the Administrative Agent or any Bank, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.12(d)), each of the Administrative Agent and such Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower or the Company shall make such deductions, (iii) such

Borrower or the Company shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within 30 days after the date of such payment, such Borrower or the Company shall furnish to the Administrative Agent (which shall forward the same to such Bank) the original or a certified copy of a receipt evidencing payment thereof (to the extent available).

(ii) In addition, any Borrower or the Company acting in its capacity as guarantor under Article 11 agrees to pay any and all present or future stamp, court or documentary taxes and any other excise or property taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (hereinafter referred to as "OTHER TAXES").

(iii) If any Borrower or the Company acting in its capacity as guarantor under Article 11 shall be required to deduct or pay any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to the Administrative Agent or any Bank, such Borrower or the Company shall also pay to the Administrative Agent or to such Bank, as the case may be, at the time interest is paid, such additional amount that the Administrative Agent or such Bank specifies is necessary to preserve the after-tax yield (after factoring in all taxes, including taxes imposed on or measured by net income) that the Administrative Agent or such Bank would have received if such Taxes or Other Taxes had not been imposed.

(iv) Each Borrower and the Company acting in its capacity as guarantor under Article 11 agrees to indemnify the Administrative Agent and each Bank for (i) the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 3.12) paid by the Administrative Agent and such Bank, (ii) amounts payable under Section 3.12(d)(iii) and (iii) any liability (including additions to tax, penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Agency. Payment under this Section 3.12(d)(iv) shall be made within 30 days after the date the Bank or the Administrative Agent makes a demand therefor.

(v) If a Borrower or the Company acting in its capacity as guarantor under Article 11 is required to pay additional amounts to or for the account of any Bank pursuant to this Section 3.12, 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 that may thereafter accrue and (ii) is not otherwise disadvantageous to such Bank.

3.13 FUNDING SOURCES. Nothing in this Agreement shall be deemed to obligate any Bank to obtain the funds for any Loan or Advance in any particular place or manner or to constitute a representation by any Bank that it has obtained or will obtain the funds for any Loan or Advance in any particular place or manner. Each of the Borrowers agrees that, for the purposes of any determination to be made under Section 3.8, each Bank shall be deemed to have

funded its EURO Rate Advances with Dollar or Euro deposits, as the case may be, in the London interbank market.

3.14 FAILURE TO CHARGE NOT SUBSEQUENT WAIVER. Any decision by any Bank not to require payment of any interest (including interest arising under Section 3.9), fee, cost or other amount payable under any Loan Document, or to calculate any amount payable by a particular method, on any occasion shall in no way limit or be deemed a waiver of such Bank's right to require full payment of any interest (including interest arising under Section 3.9), fee, cost or other amount payable under any Loan Document, or to calculate an amount payable by another method, on any other or subsequent occasion.

3.15 ADMINISTRATIVE AGENT'S RIGHT TO ASSUME PAYMENTS WILL BE MADE BY BORROWER. Unless the Administrative Agent shall have been notified by a Borrower prior to the date on which any payment to be made by that Borrower hereunder is due that such Borrower does not intend to remit such payment, the Administrative Agent may, in its discretion, assume that such Borrower has remitted such payment when so due and the Administrative Agent may, in its discretion and in reliance upon such assumption, make available to each Bank on such payment date an amount equal to such Bank's share of such assumed payment. If a Borrower has not in fact remitted such payment to the Administrative Agent, each Bank shall forthwith on demand repay to the Administrative Agent the amount of such assumed payment made available to such Bank, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Bank to the date such amount is repaid to the Administrative Agent at a rate per annum equal to the actual cost to the Administrative Agent of funding such amount as notified by the Administrative Agent to such Bank.

3.16 FEE DETERMINATION DETAIL. The Administrative Agent, the Issuing Bank and any Bank, shall provide reasonable detail to the Company regarding the manner in which the amount of any payment to the Banks, or that Bank, under Article 3 has been determined.

3.17 SURVIVABILITY. All of the Company's obligations under Sections 3.7 and 3.8 shall survive for thirty (30) days following the termination of this Agreement; provided, however, that such obligations shall not, from and after the termination of this Agreement, be deemed Obligations for any purpose under the Loan Documents.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

The Company represents and warrants to the Banks and each other Borrower represents and warrants to the Banks (with respect to itself only) that:

4.1 EXISTENCE AND QUALIFICATION; POWER; COMPLIANCE WITH LAWS. Each Borrower is an organization duly formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation. Each Borrower is duly qualified to transact business, and is in good standing, in any jurisdiction in which the conduct of its business or the ownership or leasing of its Properties makes such qualification or registration necessary, except where the failure so to qualify or register and to be in good standing would not constitute a Material

Adverse Effect. Each Borrower has all requisite corporate power and authority to conduct its business and to own and lease its Properties. Each Borrower has all requisite corporate power and authority to execute and deliver each Loan Document to which it is a party and to perform its Obligations. Each Borrower has obtained all authorizations, consents, approvals, orders, licenses and permits from, and has accomplished all filings, registrations and qualifications with, or obtained exemptions from any of the foregoing from, any Governmental Agency that are necessary for the transaction of its business, except where the failure so to comply, file, register, qualify or obtain exemptions does not constitute a Material Adverse Effect.

4.2 AUTHORITY; COMPLIANCE WITH OTHER AGREEMENTS AND INSTRUMENTS AND GOVERNMENT REGULATIONS. The execution, delivery and performance of the Loan Documents by such Borrower have been duly authorized by all necessary corporate action, and do not:

(a) Require any consent or approval not heretofore obtained of any partner, director, stockholder, security holder or creditor of such Borrower;

(b) Result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or leased or hereafter acquired by such Borrower;

(c) Violate, to the best knowledge of such Borrower, any Requirement of Law applicable to such Borrower;

(d) Result (or, with the giving of notice or passage of time or both, would result) in a breach of or default under, or cause or permit the acceleration of any obligation owed under any Contractual Obligation to which such Borrower is a party or by which such Borrower or any of its Property is bound or affected;

except where failure to receive such consent or approval or creation of such Lien or violation of, or default under, any such Requirement of Law or Contractual Obligation would not constitute a Material Adverse Effect.

4.3 NO GOVERNMENTAL APPROVALS REQUIRED. Subject to the representations of the Banks contained in Section 13.9, no authorization, consent, approval, order, license or permit from, or filing, registration or qualification with, any Governmental Agency is required to authorize or permit under applicable Laws the execution, delivery and performance of the Loan Documents by such Borrower.

4.4 SUBSIDIARIES. Schedule 4.4 hereto correctly sets forth as of the Closing Date the names of each Subsidiary of the Company that would constitute a Significant Subsidiary ("SIGNIFICANT SUBSIDIARY") under Rule 1-02(w) of Regulation S-X as adopted by the SEC under the provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 as in force on the date of this Agreement.

4.5 FINANCIAL STATEMENTS. The Company has furnished or made available to the Banks the audited consolidated financial statements of the Company and its Consolidated Subsidiaries as of December 31, 2003 and unaudited consolidated financial statements of the Company and its Subsidiaries as of March 31, 2004 and for the three months then ended. Such financial statements (including the footnotes thereto) fairly present in all material respects the

consolidated financial condition and the consolidated results of operations of the Company as of such dates and for such periods in accordance with Generally Accepted Accounting Principles (other than, in the case of the March 31, 2004 statements, any requirement for footnote disclosures and subject to normal year-end accruals and audit adjustments).

4.6 NO OTHER LIABILITIES; NO MATERIAL ADVERSE EFFECT. As of the Closing Date, the Company and its Consolidated Subsidiaries do not have any material liability or material contingent liability not reflected or disclosed in the consolidated balance sheet or notes thereto described in Section 4.5, other than liabilities and contingent liabilities arising in the ordinary course of business subsequent to December 31, 2003. There has been no event or circumstance that constitutes a Material Adverse Effect with respect to the Company and its Subsidiaries taken as a whole since December 31, 2003.

4.7 GOVERNMENTAL REGULATION. No Borrower is subject to regulation under the Investment Company Act of 1940.

4.8 LITIGATION. Except for (a) any matter fully covered (subject to applicable deductibles and retentions) by insurance for which the insurance carrier has assumed full responsibility, (b) matters described in public documents filed with Governmental Agencies and delivered to the Banks prior to the Closing Date, and (c) matters disclosed on Schedule 4.8 hereto, there are no actions, suits, proceedings or investigations pending as to which the Company or any of its Subsidiaries have been served or have received written notice or, to the best knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries or any Property of any of them before any Governmental Agency which could reasonably be expected to constitute a Material Adverse Effect.

4.9 BINDING OBLIGATIONS. Each of the Loan Documents will, when executed and delivered by such Borrower, constitute the legal, valid and binding obligation of such Borrower, enforceable against such Borrower in accordance with its terms, except as enforcement may be limited by Debtor Relief Laws or equitable principles relating to the granting of specific performance and other equitable remedies as a matter of judicial discretion.

4.10 NO DEFAULT. No event has occurred and is continuing that is a Default or Event of Default.

4.11 EMPLOYEE BENEFIT PLANS.

(a) The Company and each of its ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan, except where the failure to be in such compliance or to perform such obligation would not constitute a Material Adverse Effect.

(b) No ERISA Event that would constitute a Material Adverse Effect has occurred or is reasonably expected to occur.

(c) Except to the extent required under Section 4980B of the Code, no Employee Benefit Plan maintained by the Company or any of its Current ERISA Affiliates

provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employees of the Company or any of its Current ERISA Affiliates.

(d) As of the most recent valuation date for any Pension Plan with respect to which the Company or a Subsidiary has any financial liability (including potential joint and several liability) in the event any such Pension Plan were to terminate, the amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed $60,000,000.

4.12 REGULATION U. No part of the proceeds of any Advance hereunder will be used to purchase or carry, or to extend credit to others for the purpose of purchasing or carrying, any "margin stock" (as such term is defined in Regulation U) in violation of Regulation U. Neither the Company nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any such "margin stock."

4.13 DISCLOSURE. All written information heretofore supplied by the Company to the Administrative Agent for the purposes of this Agreement is true and accurate in all material respects on the date as of which such information is stated. The Company has disclosed to the Administrative Agent all facts which materially and adversely may, in the good faith opinion of the Company, affect (to the extent the Company can reasonably foresee) the financial condition of the Company and its Subsidiaries, taken as a whole, or the ability of the Company to perform its obligations under this Agreement.

4.14 TAX LIABILITY. Each of the Company and its Subsidiaries has filed or caused to be filed all tax returns which are required to have been filed by it, and has paid or caused to be paid, or made provision for the payment of, all taxes with respect to the periods, Property or transactions covered by said returns, or pursuant to any assessment received by the Company or any of its Subsidiaries, except (a) taxes for which the Company has been fully indemnified, (b) such taxes, if any, as are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established and maintained or (c) where the failure to so file or pay would not reasonably be expected to have a Material Adverse Effect.

4.15 ENVIRONMENTAL MATTERS. As of the Closing Date, except as set forth in the Company's annual report on Form 10-K for the year ended December 31, 2003 to the Securities and Exchange Commission, or as disclosed in Schedule 4.15 annexed hereto, (a) the Company and each Subsidiary have complied with all Environmental Laws, except to the extent that the failure to so comply would not be reasonably expected to result in a Material Adverse Effect, (b) the Company's and its Subsidiaries' facilities do not manage any hazardous wastes, hazardous substances, hazardous materials, toxic substances or toxic pollutants in any manner that would result in a violation of any Environmental Law, except for violations that would not be reasonably expected to result in a Material Adverse Effect and (c) the Company is aware of no events, conditions or circumstances involving environmental pollution or contamination or public or employee health or safety, in each case applicable to it or its Subsidiaries, that has resulted or would be reasonably expected to result in a Material Adverse Effect.

ARTICLE 5
AFFIRMATIVE COVENANTS
(OTHER THAN INFORMATION AND REPORTING REQUIREMENTS)

So long as any Advance remains unpaid, or any other Obligation remains unpaid or unperformed, or any portion of the Commitment remains in force, each Borrower shall, and shall cause each of its Subsidiaries to, unless the Administrative Agent (acting on the direction of the Majority Banks) otherwise consents in writing:

5.1 PAYMENT OF TAXES AND OTHER POTENTIAL LIENS. Pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon any of them, upon their respective Property or any part thereof, or upon their respective income or profits or any part thereof, except that the Company and its Subsidiaries shall not be required to pay or cause to be paid any tax, assessment, charge or levy (a) that is not yet past due, or is being contested in good faith by appropriate proceedings, so long as the relevant entity has established and maintains adequate reserves for the payment of the same and by reason of such nonpayment and contest no material item or portion of Property of the Company and its Subsidiaries, taken as a whole, is in jeopardy of being seized, levied upon or forfeited or (b) the nonpayment of which in the aggregate could not reasonably be expected to have a Material Adverse Effect.

5.2 PRESERVATION OF EXISTENCE. Preserve and maintain their respective existences in the jurisdiction of their formation and all authorizations, rights, franchises, privileges, consents, approvals, orders, licenses, permits, or registrations from any Governmental Agency that are necessary for the transaction of their respective business, and qualify and remain qualified to transact business in each jurisdiction in which such qualification is necessary in view of their respective business or the ownership or leasing of their respective Properties except where the failure to maintain such preservation or maintenance of existence, authorizations, rights, franchises, privileges, consents, approvals, orders, licenses, permits or registration or to do so qualify would not constitute a Material Adverse Effect and; provided that a merger permitted under Section 6.2 shall not constitute a violation of this covenant. Nothing herein contained shall prevent the termination of the business or corporate existence of any Subsidiary (other than a Borrower) that, in the judgment of the Company, is no longer necessary or desirable, as long as immediately after giving effect to any such transaction, no Default shall have occurred and be continuing.

5.3 MAINTENANCE OF PROPERTIES. Maintain, preserve and protect all of their respective depreciable Properties in good order and condition, subject to wear and tear in the ordinary course of business, and not permit any waste of their respective Properties, except that any failure to so maintain, preserve or protect such Properties that does not constitute a Material Adverse Effect shall not constitute a violation of this covenant.

5.4 MAINTENANCE OF INSURANCE. Maintain liability, casualty and other insurance (subject to customary deductibles and retentions), with responsible insurance companies in such amounts and against such risks as is carried by responsible companies engaged in similar businesses and owning similar assets in the general areas in which the Company and its Subsidiaries operate; provided that, notwithstanding the foregoing, the Company may self-insure if reasonable and consistent with sound business practice.

5.5 COMPLIANCE WITH LAWS. Comply with all Requirements of Law noncompliance with which constitutes a Material Adverse Effect, except that the Company and its Subsidiaries need not comply with a Requirement of Law then being contested by any of them in good faith by appropriate proceedings.

5.6 VISITATION. Upon reasonable notice permit the Administrative Agent or representatives of any Bank at the Administrative Agent's or such Bank's expense to visit any of its major properties, during normal business hours, to inspect and make abstracts from its financial and accounting records (other than materials protected by the attorney-client privilege and materials which are proprietary in nature or which may not be disclosed without violation of a binding confidentiality obligation), and to discuss its affairs and finances with its officers and independent public accountants, all at such reasonable times and as often as may reasonably be requested; provided that so long as no Default or Event of Default has occurred and is continuing, visitation by representatives of the Banks shall be limited to not more than one visit in any calendar year for each Bank.

5.7 KEEPING OF RECORDS AND BOOKS OF ACCOUNT. Keep adequate records and books of account reflecting all financial transactions in conformity with Generally Accepted Accounting Principles, and in material conformity with all applicable requirements of any Governmental Agency having regulatory jurisdiction over the Company or any of its Subsidiaries.

5.8 USE OF PROCEEDS. Use the proceeds of Advances only for general corporate purposes of the Borrowers; provided that proceeds of Advances shall not be used for any Hostile Acquisition. Use the Letters of Credit only for trade, commercial and standby letters of credit in the ordinary course of business.

ARTICLE 6
NEGATIVE COVENANTS

So long as any Advance remains unpaid, or any other Obligation remains unpaid or unperformed, or any portion of the Commitment remains in force, the Company shall not, and shall not permit any of its Subsidiaries to, unless the Administrative Agent (acting on the direction of the Majority Banks) otherwise consents in writing:

6.1 CHANGE IN NATURE OF BUSINESS. Make any material change in the nature of the business of the Company and its Subsidiaries, taken as a whole, as at present conducted.

6.2 MERGERS. Merge, consolidate or amalgamate with or into any Person, or convey substantially all of its Properties and assets to another Person, unless each of the following conditions are met:

(a) no Default or Event of Default exists or would exist immediately following the consummation of such merger, consolidation, amalgamation or conveyance;

(b) in a merger, consolidation or amalgamation of the Company with another Person or Persons, the Company is the surviving entity; and

(c) in the case of a conveyance of Properties and assets, the Properties and assets conveyed do not consist of substantially all of the Properties and assets of the Company and its Subsidiaries taken as a whole.

6.3 LIENS; NEGATIVE PLEDGES; SALES AND LEASEBACKS. Create, incur, assume or suffer to exist any Lien of any nature upon or with respect to any of their respective Properties, whether now owned or hereafter acquired, or engage in any sale and leaseback transaction with respect to its Property, except:

(a) Permitted Encumbrances;

(b) Liens in favor of the Administrative Agent or the Banks under the Loan Documents;

(c) Liens existing on the date hereof and listed on Schedule 6.3 and Liens on the same Property which secure Indebtedness which replaces or refinances the Indebtedness (or commitment) originally secured by those Liens; provided that the obligations secured thereby are not increased;

(d) pre-existing Liens on assets acquired by the Company or any of its Subsidiaries after the Closing Date; and

(e) Liens securing Indebtedness or obligations (including sale and leaseback transactions to which the Company or any Subsidiary is a party as vendor and lessee) incurred after the date hereof the outstanding amount of which Indebtedness or obligation does not in the aggregate exceed 35% of Consolidated Net Worth (measured as of the last day of the most recently ended Fiscal Quarter).

6.4 TRANSACTIONS WITH AFFILIATES. Enter into any transaction of any kind which is material to the Company and its Subsidiaries taken as a whole with any Affiliate of the Company other than (a) transactions between or among the Company and its Subsidiaries or between or among its Subsidiaries; provided that, for the purposes of this section, the term "Subsidiary" shall include any partnership and joint venture that is excluded from the definition of the term "Subsidiary" but as to which the Company or Subsidiary owns 50% or more of the ownership interests, (b) transactions on terms at least as favorable to the Company or its Subsidiaries as would be the case in an arm's-length transaction between unrelated parties of equal bargaining power, and (c) transactions approved by a majority of the disinterested members of the Board of Directors of Company or the applicable Subsidiary.

6.5 SUBSIDIARY INDEBTEDNESS. Permit Indebtedness of the Company's Subsidiaries (other than under this Agreement) at any time to exceed in the aggregate 35% of Consolidated Net Worth (measured as of the last day of the most recently ended Fiscal Quarter).

ARTICLE 7
INFORMATION AND REPORTING REQUIREMENTS

7.1 FINANCIAL AND BUSINESS INFORMATION. So long as any Advance remains unpaid, or any other Obligation remains unpaid or unperformed, or any portion of the

Commitment remains in force, the Company shall, unless the Administrative Agent (with the approval of the Majority Banks) otherwise consents in writing, deliver to the Banks and the Administrative Agent, at the Company's sole expense:

(a) As soon as practicable, and in any event within 45 days after the end of each Fiscal Quarter (other than the fourth Fiscal Quarter in any Fiscal Year), (i) the consolidated balance sheets of the Company and its Subsidiaries as at the end of such Fiscal Quarter, (ii) consolidated statements of income and (iii) consolidated statements of cash flow, in each case described in clauses (ii) and (iii) of the Company and its Subsidiaries for such Fiscal Quarter and for the portion of the Fiscal Year ended with such Fiscal Quarter, all in reasonable detail. Such financial statements shall be certified by a Senior Officer of the Company as fairly presenting the financial condition, results of operations and changes in financial position of the Company and its Subsidiaries in accordance with Generally Accepted Accounting Principles (other than any requirement for footnote disclosures), as at such date and for such periods, subject only to normal year-end accruals and audit adjustments;

(b) As soon as practicable, and in any event within 90 days after the end of each Fiscal Year, (i) the consolidated balance sheets of the Company and its Subsidiaries as at the end of such Fiscal Year, (ii) consolidated statements of income of the Company and its Subsidiaries for such Fiscal Year and (iii) consolidated statements of cash flow of the Company and its Subsidiaries for such Fiscal Year, all in reasonable detail. Such financial statements shall be prepared in accordance with Generally Accepted Accounting Principles, and such consolidated balance sheet and consolidated statements shall be accompanied by a report and opinion of Ernst & Young or other independent public accountants of recognized national standing selected by the Company, which report and opinion shall be prepared in accordance with generally accepted auditing standards as at such date;

(c) Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the shareholders of the Company generally, and copies of all annual, regular, periodic and special reports and registration statements which the Company or a Subsidiary of the Company may file or be required to file under Sections 13 or 15(d) of the Securities Exchange Act of 1934;

(d) Promptly, and in any event within five (5) Banking Days after a Senior Officer of the Company obtains actual knowledge of the existence of any condition or event which constitutes a Default or Event of Default, written notice specifying the nature and period of existence thereof and specifying what action the Company or any of its Subsidiaries is taking or proposes to take with respect thereto;

(e) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event defined in clauses (i) through (vii) or (xi) of the definition thereof involving Title IV or ERISA that could reasonably be expected to result in material liability to the Company or its Subsidiaries or any ERISA Event that could reasonably be expected to result in a Material Adverse Effect, a written notice specifying the nature thereof, what action the Company or any of its ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(f) With reasonable promptness, copies of (a) each Schedule B (Actuarial Information) to the annual report, if any (Form 5500 Series), filed by the Company or any of its Current ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (b) all notices received by the Company or any of its Current ERISA Affiliates from the sponsor of a Multiemployer Plan to which a Current ERISA Affiliate contributes concerning an ERISA Event defined in clauses (i) through (vii) or (xi) of the definition thereof; and (c) such other documents or governmental reports or filings relating to any Employee Benefit Plan as the Administrative Agent shall reasonably request; and

(g) Such other material information related to any Borrower's ability to meet its Obligations hereunder as from time to time may be reasonably requested by the Administrative Agent or the Majority Banks.

Documents required to be delivered pursuant to Section 7.1 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 13.7; or (ii) on which such documents are posted on the Company's behalf on IntraLinks/IntraAgency or another relevant website (including, without limitation, the EDGAR System), if any, to which each Bank and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Company shall deliver paper copies of any such document to the Administrative Agent or any Bank that requests the Company to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Bank and (ii) the Company shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Bank of the posting of any such documents. Notwithstanding anything contained herein, in every instance the Company shall be required to provide paper copies of the Compliance Certificates required by Section 7.2 to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request for delivery, and each Bank shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

7.2 COMPLIANCE CERTIFICATES. So long as any Advance remains unpaid, or any other Obligation remains unpaid or unperformed, or any portion of the Commitment remains outstanding, the Company shall, unless the Majority Banks otherwise consent, deliver to the Administrative Agent, at the Company's sole expense, concurrently with the financial statements required pursuant to Sections 7.1(a) and 7.1(b), a Compliance Certificate signed by a Senior Officer of the Company, including calculations as set forth therein.

ARTICLE 8
CONDITIONS

8.1 CONDITIONS TO EFFECTIVENESS. The Credit Agreement and the Commitments of the Banks hereunder shall be effective on the date on which each of the

following conditions precedent, (unless the Administrative Agent, acting at the direction of the Banks, otherwise consents in writing) shall have been satisfied:

(a) The Administrative Agent shall have received all of the following, each of which shall be originals unless otherwise specified, each in form and substance satisfactory to the Administrative Agent, the Issuing Bank and the Banks:

(1) executed counterparts of this Agreement, sufficient in number for distribution to the Banks and the Company;

(2) the Notes dated the Closing Date and executed by the Company in favor of each Bank, each in a principal amount equal to that Bank's Pro Rata Share of the Commitment if requested in accordance with Section 2.1(e);

(3) a certified copy of the Certificate of Incorporation of the Company, together with a good standing certificate from the Secretary of State of the State of incorporation of the Company and, to the extent generally available, a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of such state, each dated a recent date prior to the Closing Date;

(4) copies of the Company's Bylaws, certified as of the Closing Date by the corporate secretary or an assistant secretary of the Company;

(5) resolutions of the Board of Directors of the Company approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which the Company is a party, certified as of the Closing Date by the corporate secretary or an assistant secretary of the Company as being in full force and effect without modification or amendment;

(6) signature and incumbency certificates of the officers of the Company executing this Agreement and the other Loan Documents;

(7) the favorable written opinion of David J. Scott, Esq., Senior Vice President, General Counsel and Secretary to the Company, substantially in the form of Exhibit D-1, together with copies of any officer's certificate or opinion of another counsel or law firm specifically identified and expressly relied upon by such counsel in its opinion;

(8) the favorable written opinion of Latham & Watkins LLP, counsel to the Borrowers, substantially in the form of Exhibit D-3;

(9) the favorable written opinion of O'Melveny & Myers LLP, counsel to the Administrative Agent, substantially in the form of Exhibit D-2;

(10) a Certificate of a Senior Officer of the Company certifying that the conditions specified in Sections 8.1(b), 8.1(c), and 8.1(d) have been satisfied; and

(11) such other assurances, certificates, documents, consents or opinions as the Administrative Agent reasonably may require.

(b) The representations and warranties of the Borrowers contained in Article 4 shall be true and correct.

(c) Each Borrower shall be in compliance with all the terms and provisions of the Loan Documents.

(d) The Company shall have paid to the Arrangers and the Administrative Agent the fees payable on the date of this Agreement referred to in Section 3.3 and the fees, costs and expenses referred to in Section 13.3(a).

If the Closing Date has not occurred on or before August 15, 2004, no Bank shall have any obligation to make any Advances and the Issuing Bank shall have no obligation to issue any Letter of Credit under this Agreement.

8.2 ANY ADVANCE AND ANY LETTER OF CREDIT. The obligation of each Bank to make any Advance (including the initial Advance), and the obligation of the Issuing Bank to issue, amend or extend any Letter of Credit (including the initial Letter of Credit), is subject to the following conditions precedent (unless the Administrative Agent, acting at the direction of the Majority Banks, otherwise consents in writing):

(a) except as disclosed by the Company and approved in writing by the Administrative Agent, acting at the direction of the Majority Banks, the representations and warranties contained in Article 4, other than Sections 4.4, 4.6 and 4.8, shall be true and correct in all material respects on and as of the date of the Advance or the issuance, amendment or extension of the Letter of Credit, as the case may be, as though made on that date (except to the extent such representations and warranties specifically relate to an earlier date in which case they shall be true and correct in all material respects as of such earlier date) and no state of facts constituting a Default or an Event of Default shall have occurred and be continuing; and

(b) the Administrative Agent shall have timely received a Request for Loan in compliance with Article 2 (or telephonic request for loan referred to in the second sentence of Section 2.1(b), if applicable) or Request for Letter of Credit in compliance with Article 2, if applicable.

ARTICLE 9
EVENTS OF DEFAULT AND REMEDIES UPON EVENT OF DEFAULT

9.1 EVENTS OF DEFAULT. The existence or occurrence of any one or more of the following events, whatever the reason therefor and under any circumstances whatsoever, shall constitute an "EVENT OF DEFAULT":

(a) Any Borrower fails to pay any principal of any of the Loans, or any portion thereof, on the date when due; or

(b) Any Borrower (i) fails to pay any interest on any of the Loans, or any portion thereof, or (ii) fails to pay any other fee or amount payable to the Administrative Agent, the Banks or the Issuing Bank under any Loan Document, or any portion thereof, in each case within five (5) Banking Days after demand therefor; or

(c) Any failure to comply with Section 7.1(d); or

(d) Any Borrower fails to perform or observe any other covenant or agreement contained in any Loan Document on its part to be performed or observed within thirty (30) days after the giving of notice by the Administrative Agent or the Majority Banks of such Default; provided, however, that any failure to observe any of the covenants contained in Section 6.2 shall constitute an immediate Event of Default hereunder; provided, further, that any failure to observe any of the covenants contained in Section 6.3 shall constitute an Event of Default upon notice from the Administrative Agent (acting on the direction of the Majority Banks) to the Company; and provided further that any failure to observe any of the covenants contained in Section 6.5 shall constitute an Event of Default five (5) Banking Days after knowledge by the Company of such Default (other than as a result of the giving of notice by the Administrative Agent or the Majority Banks as hereinafter provided) or, if earlier, the giving of notice by the Administrative Agent or the Majority Banks of such Default; or

(e) Any representation or warranty made in this Agreement, any Notes, any Request for Loan, any Agreement to Participate or any Request for Letter of Credit was incorrect in any material respect when made or reaffirmed; or

(f) The Company or any of its Subsidiaries (i) fails to pay the principal, or any principal installment, or any interest or fees or any other amount of any present or future Indebtedness (other than under the Loan Documents) in an amount in excess of the Cross-Default Amount, or any guaranty of present or future Indebtedness in an aggregate amount in excess of the Cross-Default Amount, on its part to be paid, when due (and after expiration of any stated grace or notice period), whether at the stated maturity, upon acceleration, by reason of required prepayment or otherwise or (ii) fails to perform or observe any other material term, covenant or agreement on its part to be performed or observed, or suffers any event to occur, and such failure or event continues after the applicable grace period, if any, and is not waived, in connection with any present or future Indebtedness in an amount in excess of the Cross-Default Amount, or of any guaranty of present or future Indebtedness in excess of the Cross-Default Amount, if as a result of such failure or sufferance any holder or holders thereof (or an agent or trustee on its or their behalf) has the right to declare such Indebtedness or guaranty due before the date on which it otherwise would become due; or

(g) Any Loan Document, at any time after its execution and delivery and for any reason other than the agreement of the Banks or satisfaction in full of all the Obligations, ceases to be in full force and effect or is declared by a court of competent jurisdiction to be null and void, invalid or unenforceable in any respect which, in any such event in the reasonable opinion of the Majority Banks, is materially adverse to the interests of the Banks; or any Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind same; or

(h) A judgment against the Company or any of its Subsidiaries is entered for the payment of money in excess of $100,000,000 (to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) and, absent procurement of a stay of execution, such judgment remains unstayed, unbonded or unsatisfied for sixty (60) calendar days after the date of entry of judgment; or

(i) The Company, any Borrower or any other Subsidiary of the Company the Shareholder's Equity of which, as shown on the most recent consolidated balance sheet, equals or exceeds 10% of the Shareholder's Equity of the Company and its Consolidated Subsidiaries as shown on such consolidated balance sheet, institutes or consents to any proceeding under a Debtor Relief Law relating to it or to all or any substantial part of its Property, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any substantial part of its Property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of that Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under a Debtor Relief Law relating to any such Person or to all or any part of its Property is instituted without the consent of that Person and continues undismissed or unstayed for sixty (60) calendar days; or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against all or any material part of the Property of any such Person and is not released, vacated or fully bonded within sixty (60) calendar days after its issue or levy; or any order for relief shall be entered in respect of the Company or any Borrower or any such Subsidiary; or

(j) (i) Any Person or two or more Persons acting in concert shall acquire beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) directly or indirectly, of securities of the Company (or other securities convertible into such securities) representing 30% or more of the combined voting power of all securities of the Company entitled to vote in the election of directors, other than securities having such power only by reason of the happening of a contingency; or (ii) during any period of up to 12 consecutive months, commencing before or after the date of this Agreement, individuals who at the beginning of such 12-month period were directors of the Company, or whose nomination for election to the Board of Directors of the Company was recommended or approved by a vote of at least a majority of the directors then still in office who were directors of the Company on the first day of such period, shall cease for any reason to constitute a majority of the Board of Directors of the Company; or (iii) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement which upon consummation will result in its or their acquisition of, control over securities of the Company (or other securities convertible into such securities) representing 30% or more of the combined voting power of all securities of the Company entitled to vote in the election of directors, other than securities having such power only by reason of the happening of a contingency; provided, however, that there shall not be an Event of Default pursuant to subsections (i) or (iii) above with respect to any Persons who on the date hereof meet the requirements set forth in said subsections (i) or (iii); or

(k) there shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of the Company, a Subsidiary or any of their ERISA Affiliates in excess of $100,000,000 during the term of this Agreement; or there shall exist an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans with respect to which the Company or a Subsidiary has any financial liability, including potential joint and several liability in the event any such Pension Plan were to terminate (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), which exceeds $100,000,000 and Majority Banks determine that such event could reasonably be expected to have a Material Adverse Effect.

9.2 REMEDIES UPON EVENT OF DEFAULT. Without limiting any other rights or remedies of the Administrative Agent, the Issuing Bank or the Banks provided for elsewhere in this Agreement, or the Loan Documents, or by applicable Law, or in equity, or otherwise:

(a) Upon the occurrence, and during the continuance, of any Event of Default other than an Event of Default described in Section 9.1(i):

(1) the commitment to make Advances, Issue Letters of Credit and all other obligations of the Administrative Agent, the Banks or the Issuing Bank and all rights of the Borrowers and any other Parties under the Loan Documents shall be suspended without notice to or demand upon any Borrower, which are expressly waived by the Borrowers, except, subject to Section 9.2(a)(3), that the Majority Banks (or all of the Banks to the extent required by Section 13.2) may waive the Event of Default or, without waiving, determine, upon terms and conditions satisfactory to the Majority Banks (or all of the Banks, as the case may be), to reinstate the Commitment and make further Advances and issue additional Letters of Credit, which waiver or determination shall apply equally to, and shall be binding upon, all the Banks and the Issuing Bank; and

(2) the Majority Banks may request the Issuing Bank to, and the Issuing Bank thereupon shall, demand immediate deposit by the Borrowers into an account designated by the applicable Issuing Bank of Cash in an amount equal to the aggregate effective face amount of all outstanding Letters of Credit issued by it; and

(3) the Majority Banks may request the Administrative Agent to, and the Administrative Agent thereupon shall, terminate the Commitment and declare all or any part of the unpaid principal of all Loans, all interest accrued and unpaid thereon and all other amounts payable under the Loan Documents to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by the Borrowers.

(b) Upon the occurrence of any Event of Default described in Section 9.1(i):

(1) the commitment to make Advances, issue Letters of Credit and all other obligations of the Administrative Agent or the Banks and all rights of the Borrowers and any other Parties under the Loan Documents shall terminate without notice to or demand upon any Borrower, which are expressly waived by the Borrowers; and

(2) an amount equal to the aggregate effective face amount of all outstanding Letters of Credit shall be forthwith due and payable to the Issuing Bank, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are waived by the Borrowers; and

(3) the unpaid principal of all Loans, all interest accrued and unpaid thereon and all other amounts payable under the Loan Documents shall be forthwith due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by the Borrowers.

(c) Upon the occurrence of any Event of Default, subject to clause (d) below, the Banks and the Administrative Agent, or any of them, without notice to or demand upon any Borrower, which are expressly waived by the Borrowers, may proceed to protect, exercise and enforce their rights and remedies under the Loan Documents against the Borrowers and any other party and such other rights and remedies as are provided by Law or equity.

(d) The order and manner in which the Banks' rights and remedies are to be exercised shall be determined by the Majority Banks in their sole discretion, and all payments received by the Administrative Agent and the Banks, or any of them, shall be applied first to the costs and expenses (including attorneys' fees and disbursements covered by Section 13.3) of the Administrative Agent, acting as Administrative Agent, and of the Banks (to the extent covered by Section 13.3), and thereafter paid pro rata to the Banks in the same proportions that the aggregate Obligations owed to each Bank under the Loan Documents bear to the aggregate Obligations owed under the Loan Documents to all the Banks, without priority or preference among the Banks. Regardless of how each Bank may treat payments for the purpose of its own accounting, for the purpose of computing the Borrowers' Obligations hereunder and under the Notes, payments shall be applied first, to the costs and expenses of the Administrative Agent, acting as Administrative Agent, and the Banks, as set forth above, second, to the payment of accrued and unpaid interest due under any Loan Documents to and including the date of such application (ratably, and without duplication, according to the accrued and unpaid interest due under each of the Loan Documents), and third, to the payment of all other amounts (including principal and fees) then owing to the Administrative Agent or the Banks under the Loan Documents. No application of payments will cure any Event of Default, or prevent acceleration, or continued acceleration, of amounts payable under the Loan Documents, or prevent the exercise, or continued exercise, of rights or remedies of the Banks hereunder or thereunder or at law or in equity.

(e) Upon the occurrence of an Event of Default resulting from or resulting in the default by the Company in the repayment of its EURO Rate Advances when required by the terms of this Agreement, the Company shall compensate each Bank in accordance with Section 3.8(c).

Any amounts described in Section 9.2(a) and Section 9.2(b) above, when received by the Issuing Bank, shall be held by the Issuing Bank in a collateral account, which shall be established and maintained by the Issuing Bank and shall be under its sole dominion and control, as collateral security for the payment of all Obligations and applied as set forth below. If such collateral is provided pursuant hereto, the Issuing Bank, for the benefit of the Banks, shall have a security interest in such collateral account and all amounts at any time held in or acquired in connection with such collateral account, together with all proceeds thereof. Upon any drawing under any outstanding Letter of Credit, the Issuing Bank shall apply any amount in the collateral account to reimburse the Issuing Bank for the amount of such drawing. In the event of cancellation or expiration of any Letter of Credit, or in the event of any reduction in the maximum amount available under such Letter of Credit, the Issuing Bank shall apply the excess of any amount then on deposit in the collateral account over the maximum available amount that may at any time be drawn under all Letters of Credit immediately after such cancellation, expiration or reduction as provided in Section 9.2(d).

ARTICLE 10
THE ADMINISTRATIVE AGENT

10.1 APPOINTMENT AND AUTHORIZATION. Each Bank and the Issuing Bank hereby irrevocably appoints and authorizes the Administrative Agent and its Affiliates to take such action as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to the Administrative Agent by the terms thereof or are reasonably incidental, as determined by it, thereto. This appointment and authorization is intended solely for the purpose of facilitating the servicing of the Advances and does not constitute appointment of the Administrative Agent as trustee for any Bank or the Issuing Bank or as representative of any Bank or the Issuing Bank for any other purpose and, except as specifically set forth in the Loan Documents to the contrary, the Administrative Agent shall take such action and exercise such powers only in an administrative and ministerial capacity. The Administrative Agent is the agent of the Banks and the Issuing Bank only and does not assume any agency relationship with any Borrower, express or implied.

10.2 ADMINISTRATIVE AGENT AND AFFILIATES. The Administrative Agent and its Affiliates (and each successor Administrative Agent) have the same rights and powers under the Loan Documents as any other Bank and may exercise the same as though it were not the Administrative Agent to the extent either the Administrative Agent or an Affiliate has executed this Agreement as a Bank or has executed an Assignment Agreement as Assignee. The Administrative Agent and its Affiliates (and each successor Administrative Agent) may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Borrower, any Subsidiary thereof, or any Affiliate of the Company or any Subsidiary thereof, without any duty to account therefor to the Banks. The Banks acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive

information regarding the Borrowers, the Company or their respective Affiliates (including information that may be subject to confidentiality obligations in favor of such Borrowers, the Company or such Affiliates) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. CUSA (and each successor Administrative Agent) need not account to any Bank for any monies received by it for reimbursement of its costs and expenses as Administrative Agent hereunder, or for any monies received by it or any Affiliate in its capacity as a Bank hereunder. The Administrative Agent shall not be deemed to hold a fiduciary relationship with any Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Administrative Agent.

10.3 PROPORTIONATE INTEREST OF THE BANKS IN ANY COLLATERAL. The Administrative Agent, on behalf of all the Banks, shall hold in accordance with the Loan Documents all items of any collateral or interests therein received or held by the Administrative Agent. Subject to the Administrative Agent's and the Banks' rights to reimbursement for their costs and expenses hereunder (including attorneys' fees and disbursements and other professional services) and subject to the application of payments in accordance with Section 9.2(d), each Bank shall have an interest in any collateral or interests therein in the same proportions that the aggregate Obligations owed such Bank under the Loan Documents bear to the aggregate Obligations owed under the Loan Documents to all the Banks, without priority or preference among the Banks.

10.4 BANKS' CREDIT DECISIONS; DISCLOSURE OF INFORMATION BY THE ADMINISTRATIVE AGENT. Each Bank agrees that it has, independently and without reliance upon either Arranger, the Administrative Agent, the Syndication Agent, any other Bank or the directors, officers, agents, employees, attorneys or Affiliates of either Arranger, the Administrative Agent, the Syndication Agent or of any other Bank, and instead in reliance upon information supplied to it by or on behalf of the Borrowers and upon such other information as it has deemed appropriate, made its own independent credit analysis and decision to enter into this Agreement. Each Bank also agrees that it shall, independently and without reliance upon either Arranger, the Administrative Agent, the Syndication Agent, any other Bank or the directors, officers, agents, employees, attorneys or Affiliates of either Arranger, the Administrative Agent, the Syndication Agent, or of any other Bank, continue to make its own independent credit analyses and decisions in acting or not acting under the Loan Documents. Except for notices, reports and other documents expressly required to be furnished to the Banks by the Administrative Agent herein, none of the Arrangers, the Administrative Agent, the Syndication Agent, any other Bank or the directors, officers, agents, employees, attorneys or Affiliates of such Person shall have any duty or responsibility to provide any Bank with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or the Company or any of their respective Affiliates which may come into the possession of any such Person.

10.5 ACTION BY THE ADMINISTRATIVE AGENT.

(a) The Administrative Agent may assume that no Default has occurred and is continuing, unless the Administrative Agent has failed to receive any payment due from any Borrower hereunder within the time required under Section 9.1(a) or Section 9.1(b), or the

Administrative Agent has received notice from the Company stating the nature of the Default or has received notice from a Bank stating the nature of the Default and that such Bank considers the Default to have occurred and to be continuing.

(b) The Administrative Agent has only those obligations under the Loan Documents as are expressly set forth therein.

(c) Except for any obligation expressly set forth in the Loan Documents and as long as the Administrative Agent may assume that no Event of Default has occurred and is continuing, the Administrative Agent may, but shall not be required to, exercise its discretion to act or not act, except that the Administrative Agent shall be required to act or not act upon the instructions of the Majority Banks (or of all the Banks, to the extent required by Section 13.2) and those instructions shall be binding upon the Administrative Agent and all the Banks, provided that the Administrative Agent shall not be required to act or not act if to do so would be contrary to any Loan Document or to applicable Law or would result, in the reasonable judgment of the Administrative Agent, in substantial risk of liability to the Administrative Agent.

(d) If the Administrative Agent has received a notice specified in clause (a), the Administrative Agent shall give notice thereof to the Banks and shall act or not act upon the instructions of the Majority Banks (or of all the Banks, to the extent required by Section 13.2), provided that the Administrative Agent shall not be required to act or not act if to do so would be contrary to any Loan Document or to applicable Law or would result, in the reasonable judgment of the Administrative Agent, in substantial risk of liability to the Administrative Agent, and except that if the Majority Banks (or all the Banks, if required under Section 13.2) fail, for five (5) Banking Days after the receipt of notice from the Administrative Agent, to instruct the Administrative Agent, then the Administrative Agent, in its sole discretion, may act or not act as it deems advisable for the protection of the interests of the Banks.

(e) The Administrative Agent shall have no liability to any Bank for acting, or not acting, as instructed by the Majority Banks (or all the Banks, if required under Section 13.2), notwithstanding any other provision hereof.

10.6 LIABILITY OF THE ADMINISTRATIVE AGENT. Neither the Administrative Agent, nor any of its directors, officers, agents, employees, attorneys or Affiliates shall be liable for any action taken or not taken by them under or in connection with the Loan Documents, except for their own gross negligence or willful misconduct. Without limitation on the foregoing, the Administrative Agent and its directors, officers, agents, employees, attorneys and Affiliates:

(a) May treat the payee of any Note as the holder thereof until the Administrative Agent receives and accepts an Assignment Agreement entered into by the Bank which is the payee of such Advance, as assignor, and an Eligible Assignee, as assignee, as provided in Section 13.9, and may treat each Bank as the owner of that Bank's interest in the Obligations for all purposes of this Agreement until the Administrative Agent receives and accepts such Assignment Agreement.

(b) May consult with legal counsel (including in-house legal counsel), accountants (including in-house accountants) and other professionals or experts selected by it, or with legal counsel, accountants or other professionals or experts for the Company and/or its subsidiaries or the Banks, and shall not be liable for any action taken or not taken by it in good faith in accordance with any advice of such legal counsel, accountants or other professionals or experts.

(c) Shall not be responsible to any Bank for any statement, warranty or representation made in any of the Loan Documents or in any notice, certificate, report, request or other statement (written or oral) given or made in connection with any of the Loan Documents.

(d) Shall have no duty to ask or inquire as to the performance or observance by the Company or its Subsidiaries of any of the terms, conditions or covenants of any of the Loan Documents or to inspect any collateral or the Property, books or records of the Company or its Subsidiaries.

(e) Will not be responsible to any Bank for the due execution, legality, validity, enforceability, genuineness, effectiveness, sufficiency or value of any Loan Document, any other instrument or writing furnished pursuant thereto or in connection therewith, or any collateral.

(f) Will not incur any liability by acting or not acting in reliance upon any Loan Document, notice, consent, certificate, statement, request or other instrument or writing believed by it to be genuine and signed or sent by the proper party or parties.

(g) Will not incur any liability for any arithmetical error in computing any amount paid or payable by the Company or any Subsidiary or Affiliate thereof or paid or payable to or received or receivable from any Bank under any Loan Document, including, without limitation, principal, interest, facility fees, Advances and other amounts; provided that, promptly upon discovery of such an error in computation, the Administrative Agent, the Banks and (to the extent applicable) the Company and/or its Subsidiaries or Affiliates shall make such adjustments as are necessary to correct such error and to restore the parties to the position that they would have occupied had the error not occurred; provided further that, the obligations of Borrowers under this Section 10.6(g) shall survive for sixty (60) days following the termination of this Agreement and such obligations shall not, from and after the termination of this Agreement, be deemed Obligations for any purpose under the Loan Documents.

10.7 INDEMNIFICATION. Each Bank shall, ratably in accordance with its Pro Rata Share of the Commitment, indemnify and hold the Administrative Agent, its directors, officers, agents, employees, attorneys and Affiliates harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and disbursements) that may be imposed on, incurred by or asserted against them in any way relating to or arising out of the Loan Documents (other than losses incurred by reason of the failure of the Borrowers to pay the Obligations represented by the Loan Documents) or any action taken or not taken by it as Administrative Agent thereunder, except such as result from its own gross negligence or willful misconduct. Without limitation on the foregoing, each

Bank shall reimburse the Administrative Agent upon demand for that Bank's ratable share of any cost or expense incurred by the Administrative Agent in connection with the negotiation, preparation, execution, delivery, amendment, waiver, restructuring, reorganization (including a bankruptcy reorganization), enforcement or attempted enforcement of the Loan Documents, to the extent that the Company or any other party is required by Section 13.3 to pay that cost or expense but fails to do so upon demand. Nothing in this Section shall entitle the Administrative Agent to recover any amount from the Banks if and to the extent that such amount has theretofore been recovered from the Company or any of its Subsidiaries. The undertaking in this Section shall survive termination of the Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

10.8 SUCCESSOR ADMINISTRATIVE AGENT. The Administrative Agent may resign as such at any time upon prior written notice to the Company and the Banks, to be effective upon a successor's acceptance of appointment as Administrative Agent. The Majority Banks at any time may remove the Administrative Agent by written notice to that effect to be effective on such date as the Majority Banks designate. In either event: (a) the Majority Banks, with the written consent of the Company (such consent not to be unreasonably withheld), shall appoint a successor Administrative Agent, who must be from among the Banks, provided that any resigning Administrative Agent shall be entitled to appoint a successor Administrative Agent from among the Banks, subject to acceptance of appointment by that successor Administrative Agent, if the Majority Banks have not appointed a successor Administrative Agent within thirty (30) days after the date the resigning Administrative Agent gave notice of resignation; (b) upon a successor acceptance of appointment as Administrative Agent, the successor will thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent or the removed Administrative Agent; and (c) upon the effectiveness of any resignation or removal, the resigning Administrative Agent or the removed Administrative Agent thereupon will be discharged from its duties and obligations thereafter arising under the Loan Documents other than obligations arising as a result of any action or inaction of the resigning Administrative Agent or the removed Administrative Agent prior to the effectiveness of such resignation or removal. Notwithstanding the foregoing, no consent of the Company shall be required under this Section 10.8 in connection with any change in the Administrative Agent at any time when an Event of Default has occurred and is continuing under this Agreement.

10.9 NO OBLIGATIONS OF BORROWERS. Nothing contained in this Article 10 shall be deemed to impose upon the Borrowers any obligation in respect of the due and punctual performance by the Administrative Agent of its obligations to the Banks under any provision of this Agreement, and the Borrowers shall have no liability to the Administrative Agent or any of the Banks in respect of any failure by the Administrative Agent or any Bank to perform any of its obligations to the Administrative Agent or the Banks under this Agreement. Without limiting the generality of the foregoing, where any provision of this Agreement relating to the payment of any amounts due and owing under the Loan Documents provides that such payments shall be made by a Borrower to the Administrative Agent for the account of the Banks, such Borrower's obligations to the Banks in respect of such payments shall be deemed to be satisfied upon the making of such payments to the Administrative Agent in the manner provided by this Agreement.

10.10 OTHER AGENTS. Neither the Syndication Agent, the Arrangers, nor any of the Banks or other Persons identified on the facing page or signature pages of this Agreement as a "documentation agent," "co-documentation agent," "joint book runner," or "joint lead arranger" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such Banks, those applicable to all Banks as such. Without limiting the foregoing, none of the Syndication Agent, the Arrangers, the Banks or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Bank. Each Bank acknowledges that it has not relied, and will not rely, on any of the Bank or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

ARTICLE 11
COMPANY GUARANTY

11.1 THE GUARANTY. The Company hereby unconditionally guaranties the due and punctual payment of all obligations (including, without limitation, the obligation to pay the principal amount of and interest on each Advance) of each Borrowing Subsidiary arising under this Agreement when due, whether by required prepayment, declaration, demand or otherwise (including amounts which would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. Section 362(a)) (the "BORROWING SUBSIDIARY OBLIGATIONS"), and agrees to pay any and all costs and expenses (including reasonable fees and disbursements of counsel and allocated costs of internal counsel) incurred by the Administrative Agent and the Banks in enforcing any rights under this Article 11 (to the extent covered by Section 13.3). The obligations of the Company under this Article 11, as they may be amended, modified or supplemented from time to time, are sometimes referred to in this Article 11 as this "GUARANTY".

The Company agrees that this Guaranty constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be had by the Administrative Agent or any Bank to any security held for payment of the Borrowing Subsidiary Obligations or to any balance of any deposit account or credit on the books of the Administrative Agent or any Bank in favor of the Company or any Borrowing Subsidiary or any other Person.

The Company agrees, in furtherance of the foregoing and not in limitation of any other right which the Administrative Agent or any Bank may have at law or in equity against the Company by virtue hereof, upon the failure of any Borrowing Subsidiary to pay any of its Borrowing Subsidiary Obligations when and as the same shall become due, whether by required prepayment, declaration, demand or otherwise (including amounts which would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. Section 362(a)), the Company will forthwith pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of the Banks an amount equal to the sum of the unpaid principal amount of such Borrowing Subsidiary Obligations then due as aforesaid, accrued and unpaid interest on such Borrowing Subsidiary Obligations (including, without limitation, interest which, but for the filing of a petition in bankruptcy with respect to such Borrowing Subsidiary (including without limitation, the Company), would accrue on such Borrowing Subsidiary Obligations).

11.2 GUARANTY UNCONDITIONAL. The obligations of the Company under this Guaranty shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(a) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of any Borrowing Subsidiary under this Agreement, by operation of law or otherwise;

(b) any modification or amendment of or supplement to this Agreement;

(c) any release, non-perfection or invalidity of any direct or indirect security for any obligation of any Borrowing Subsidiary under this Agreement;

(d) the failure of the Administrative Agent or any Bank to assert any claim or demand or to enforce any right or remedy against any Borrowing Subsidiary, the Company or any other Person under the provisions of this Agreement or any other agreement or otherwise;

(e) any change in the corporate existence, structure or ownership of any Borrowing Subsidiary or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Borrowing Subsidiary or its assets or any resulting release or discharge of any obligation of any Borrowing Subsidiary contained in this Agreement;

(f) the existence of any claim, set-off or other rights which the Company may have at any time against any other Borrower, the Administrative Agent, any Bank or any other Person, whether in connection herewith or any unrelated transactions;

(g) the invalidity or unenforceability relating to or against any Borrowing Subsidiary for any reason of this Agreement, or any provision of applicable law or regulation purporting to prohibit the payment by any Borrowing Subsidiary of the principal of or interest on any Advance or any other amount payable by any Borrowing Subsidiary under this Agreement, or the termination of any Borrowing Subsidiary's status as a Borrowing Subsidiary hereunder;

(h) the termination of a Borrowing Subsidiary's status hereunder as a "Borrower" pursuant to Section 12.2; or

(i) any other act or omission to act or delay of any kind by any Borrowing Subsidiary, the Administrative Agent, any Bank or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the obligations of the Company hereunder.

The obligations of the Company under this Guaranty shall not be subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise of any of the Borrowing Subsidiary Obligations, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Borrowing Subsidiary Obligations, discharge of any Borrowing Subsidiary from any of the Borrowing Subsidiary Obligations in a bankruptcy or similar proceeding, or otherwise. Without limiting the generality of the foregoing, the obligations of the Company

under this Guaranty shall not be discharged or impaired or otherwise affected by the failure of the Administrative Agent or any Bank to assert any claim or demand or to enforce any remedy under this Agreement or any document or instrument executed by any Borrowing Subsidiary in connection herewith, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Borrowing Subsidiary Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Company or which would otherwise operate as a discharge of the Company as a matter of law or equity.

11.3 DISCHARGE ONLY UPON PAYMENT IN FULL; REINSTATEMENT IN CERTAIN CIRCUMSTANCES. The obligations of the Company under this Article 11 shall remain in full force and effect until the Commitments shall have terminated, all Letters of Credit have expired and the principal of and interest on the Advances and all other amounts payable by the Borrowers under this Agreement shall have been paid in full. If at any time any payment of the principal of or interest on any Advance or any other amount payable by the Borrowers under this Agreement is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise, the obligations of the Company under this Article 11 shall be reinstated as though such payment had been due but not made at such time.

11.4 WAIVERS BY THE COMPANY. With respect to this Article 11, the Company hereby waives for the benefit of the Administrative Agent and the Banks:

(a) any right to require the Administrative Agent or any Bank, as a condition of payment or performance by the Company under this Guaranty to (i) proceed against any Borrowing Subsidiary, any other guarantor of the obligations of any Borrowing Subsidiary under any other agreement or guaranty or any other Person, (ii) proceed against or exhaust any security held from any Borrowing Subsidiary, any other guarantor or any other Person, or (iii) pursue any other remedy in the power of the Administrative Agent or any Bank whatsoever;

(b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Borrowing Subsidiary including, without limitation, any defense based on or arising out of the lack of validity or unenforceability of the Borrowing Subsidiary Obligations or any agreement or instrument relating thereto or by reason of the cessation from any cause of the liability of any Borrowing Subsidiary other than indefeasible payment in full of the Borrowing Subsidiary Obligations;

(c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, or based upon the Administrative Agent's or any Bank's errors or omissions in the administration of the Borrowing Subsidiary Obligations, except behavior which amounts to bad faith;

(d) any (i) principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty, any legal or equitable discharge of its obligations hereunder and the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof, (ii) rights to set-offs, recoupments and counterclaims, (iii) rights to deferral or modification of the Company's obligations hereunder by reason of any bankruptcy,

reorganization, arrangement, moratorium or other debtor relief proceeding, (iv) promptness, diligence and any requirement that the Administrative Agent or any Bank protect, secure, perfect or insure any security interest or lien or any property subject thereto or exhaust any right or take any action against any Borrowing Subsidiary or any other Person or any collateral;

(e) notice, demand, presentment, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Guaranty, notices of default under this Agreement or any agreement or instrument related thereto, notice of any renewal, extension or modification of the Borrowing Subsidiary Obligations or any agreement related thereto, notice of any other extension of credit to any Borrowing Subsidiary; and

(f) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerates guarantors or sureties, or which may conflict with the terms of this Guaranty including, without limitation, the provisions of California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2846, 2847, 2848, 2849, 2850, 2899 and 3433. In accordance with Section 13.22 below, this Agreement shall be governed by, and shall be construed and enforced in accordance with, the internal laws of the State of New York, without regard to conflicts of laws principles. This clause (f) is included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Agreement or to any of the Borrowing Subsidiary Obligations.

11.5 SUBROGATION, ETC. Upon payment by the Company of any sum to the Administrative Agent for the ratable benefit of any Bank as provided above, so long as any of the Borrowing Subsidiary Obligations of a Borrowing Subsidiary shall remain outstanding hereunder, all rights of the Company against such Borrowing Subsidiary arising as a result thereof, by way of right of subrogation or otherwise, shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full of all the Borrowing Subsidiary Obligations of that Borrowing Subsidiary to the Administrative Agent and the Banks. In furtherance of the foregoing, and not in limitation thereof, the Company agrees that until the Borrowing Subsidiary Obligations of a Borrowing Subsidiary shall have been paid in full, the Commitment has terminated and all Letters of Credit issued for the account of such Borrowing Subsidiary have expired, the Company shall withhold exercise of any right of subrogation, or any right to enforce any remedy which the Administrative Agent or any Bank may have against that Borrowing Subsidiary. If any amount shall be paid to the Company on account of such subrogation rights at any time prior to the date when the Borrowing Subsidiary Obligations of such Borrowing Subsidiary have been paid in full, the Commitment has terminated and all Letters of Credit issued for the account of such Borrowing Subsidiary have expired, such amount shall be held in trust for the benefit of the Banks and shall be paid to the Administrative Agent for the benefit of the Banks to be credited and applied upon the Borrowing Subsidiary Obligations of such Borrowing Subsidiary, whether matured or unmatured, in accordance with the terms of the Credit Agreement or to be held by the Administrative Agent for the benefit of the Banks as collateral security for any Obligations thereafter existing.

ARTICLE 12
ADDITIONAL BORROWERS; TERMINATION OF BORROWERS

12.1 AGREEMENT TO PARTICIPATE. Any Eligible Subsidiary may become a party to this Agreement and become a "Borrower" for all purposes hereof on any date after the date hereof upon the satisfaction of the following conditions:

(a) receipt by the Administrative Agent on or before such date of an Agreement to Participate executed by such Eligible Subsidiary and acknowledged and consented to by the Administrative Agent (which consent shall not be unreasonably withheld);

(b) receipt by the Administrative Agent of a certificate dated such date from a Senior Officer of such Eligible Subsidiary to the effect that (i) no Default has occurred and is continuing on such date, (ii) the representations and warranties of such Eligible Subsidiary and its Subsidiaries contained in the Agreement to Participate executed by such Eligible Subsidiary are true, correct and complete in all material respects on and as of such date, and (iii) such Eligible Subsidiary is a wholly-owned Subsidiary;

(c) receipt by the Administrative Agent on or before such date of such additional documents it may reasonably request relating to the existence of such Eligible Subsidiary, the organizational power and authority of such Eligible Subsidiary, the validity of such Eligible Subsidiary's obligations under the Agreement to Participate executed by such Eligible Subsidiary and under this Agreement, and other matters relevant thereto and hereto, all in form and substance satisfactory to the Administrative Agent; and

(d) if requested in accordance with Section 2.1(e), receipt by the Administrative Agent on or before such date of the Notes dated such date and executed by such Eligible Subsidiary, one Note in favor of each Bank in a principal amount equal to that Bank's Pro Rata Share of the Commitment.

Each Bank hereby authorizes the Administrative Agent to sign on such Bank's behalf an Agreement to Participate delivered pursuant to clause (a) above, and the Company and each Bank hereby agree that, upon satisfaction by any Eligible Subsidiary of the conditions set forth in the preceding clauses (a), (b) and (c), such Eligible Subsidiary shall become a "Borrower" hereunder for all purposes hereof. The Administrative Agent shall promptly notify the Banks of whenever an Eligible Subsidiary becomes a Borrower.

12.2 NOTICE OF TERMINATION. Any Borrower, other than the Company, that has no Advances outstanding to any Bank and is not the account party on any Letter of Credit, may cease to be a "Borrower" for the purposes of this Agreement (and all commitments as to such Borrower shall thereupon terminate) upon notice, in form and substance satisfactory to the Administrative Agent, by such Borrower to the Administrative Agent; provided that such notice shall not affect any obligation of such Borrower theretofore incurred. The Administrative Agent shall send prompt written notice to each Bank of any Borrower ceasing, pursuant to this subsection, to be a Borrower.

ARTICLE 13
MISCELLANEOUS

13.1 CUMULATIVE REMEDIES; NO WAIVER. The rights, powers, privileges and remedies of the Administrative Agent, the Issuing Bank and the Banks provided herein or in any Note or other Loan Document are cumulative and not exclusive of any right, power, privilege or remedy provided by Law or equity. No failure or delay on the part of the Administrative Agent, the Issuing Bank or any Bank in exercising any right, power, privilege or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of the same or any other right, power, privilege or remedy. The terms and conditions of Article 8 hereof are inserted for the sole benefit of the Administrative Agent, the Issuing Bank and the Banks; the same may be waived in whole or in part, with or without terms or conditions, in respect of any Loan or Letter of Credit without prejudicing the Administrative Agent's, either Issuing Bank's or the Banks' rights to assert them in whole or in part in respect of any other Loan or Letter of Credit.

13.2 AMENDMENTS; CONSENTS. No amendment, modification, supplement, extension, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, and no consent to any departure by any Borrower or any other party therefrom, may in any event be effective unless the same shall be in writing and signed by the Majority Banks (or signed by the Administrative Agent at the direction of the Majority Banks) (and, in the case of amendments, modifications or supplements of or to any Loan Document to which a Borrower is a party, the approval in writing of such Borrower), and then only in the specific instance and for the specific purpose given; and, without the approval in writing of all the Banks directly affected by such amendment, modification, supplement, termination, waiver or consent, no amendment, modification, supplement, termination, waiver or consent may be effective:

(a) To extend scheduled payment dates of any Loan or Note beyond the Maturity Date, or reduce the rate of interest (other than any waiver of any increase in the interest rate applicable to any of the Loans pursuant to Section 3.9) or fees in respect of the Commitment, the Loans or the Letters of Credit, or extend the time of payment of interest or fees in respect thereof, or reduce the principal amount of the Obligations;

(b) To increase the Commitment of such Bank (except to the extent permitted by Section 2.8), or to amend or modify the provisions of the definitions of "Maturity Date", or "Majority Banks" or of this Section;

(c) To release the Company as guarantor; or

(d) To amend or modify any provision of this Agreement that expressly requires the consent or approval of all the Banks.

In addition, no amendment, modification, supplement, termination, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Banks required above to take such action, affect the rights or duties of the Administrative Agent acting in such capacity under this Agreement or any Note. No amendment, modification, supplement, termination,

waiver or consent shall, unless in writing and signed by the Issuing Bank, affect any provisions hereof relating to the Letters of Credit. Any amendment, modification, supplement, termination, waiver or consent pursuant to this Section shall apply equally to, and shall be binding upon, all the Banks, the Issuing Bank, the Administrative Agent and each Borrower. Copies of all amendments, modifications, supplements, terminations, waivers and consents shall be distributed to the Administrative Agent, each Bank, the Issuing Bank and each Borrower.

13.3 COSTS, EXPENSES AND TAXES. The Company shall pay on demand the reasonable costs and expenses (a) of each Arranger, the Administrative Agent and the Syndication Agent in connection with the negotiation, preparation, execution and delivery of the Loan Documents (including, without limitation, the reasonable legal fees and out-of-pocket expenses of O'Melveny & Myers LLP), and, (b) if a Borrower requests the amendment, waiver, supplement or modification the Loan Documents, of the Administrative Agent and the Issuing Bank in connection with any such amendment, waiver, supplement or modification (including, without limitation, the reasonable legal fees and out-of-pocket expenses of counsel to the Administrative Agent and the Issuing Bank), and (c) if any Event of Default has occurred and is continuing, of the Administrative Agent, the Issuing Bank and the Banks in connection with any workout, restructuring, reorganization (including a bankruptcy reorganization) and in any event enforcement or attempted enforcement of the Loan Documents, and any matter related thereto, including, without limitation, out-of-pocket expenses and the reasonable fees and out-of-pocket expenses of any legal counsel, independent public accountants and other outside experts retained by the Administrative Agent, the Issuing Bank or any Bank, and including, without limitation, any costs, expenses or fees incurred or suffered by the Administrative Agent, the Issuing Bank or any Bank in connection with or during the course of any bankruptcy or insolvency proceedings of the Company or any Subsidiary thereof. The Company shall pay any and all costs, expenses, fees and charges payable or determined to be payable in connection with the filing or recording of this Agreement, any other Loan Document or any other instrument or writing to be delivered hereunder or thereunder, or in connection with any transaction pursuant hereto or thereto, and shall reimburse, hold harmless and indemnify the Arrangers, the Administrative Agent, the Syndication Agent, the Issuing Bank and the Banks from and against any and all loss, liability or legal or other expense with respect to or resulting from any delay in paying or failure to pay any tax, cost, expense, fee or charge or that any of them may suffer or incur by reason of the failure of any party (other than any Arranger, the Administrative Agent, the Syndication Agent, the Issuing Bank or any Bank) to perform any of its Obligations.

13.4 OBLIGATION TO MAKE PAYMENTS IN DOLLARS OR ALTERNATIVE CURRENCY. The obligation of the Borrowers to make payments in Dollars or the Alternative Currency of the principal and interest becoming due and payable on each Loan, and to pay all other Obligations hereunder in Dollars, (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment, which is expressed in or converted into any currency other than Dollars or the Alternative Currency, as applicable, except to the extent that such tender or recovery shall result in the actual receipt by the Administrative Agent, the Banks and the Issuing Bank of the full amount of Dollars or the Alternative Currency, as applicable, expressed to be payable in respect of the principal and interest of each Loan and in respect of each other Obligation, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in Dollars or the Alternative Currency, as

applicable, the amount, if any, by which such actual receipt shall fall short of the full amount of Dollars or the Alternative Currency, as applicable, so expressed to be payable and (c) shall not be affected by judgment being obtained for any other sum due under this Agreement.

13.5 NATURE OF BANKS' OBLIGATIONS. The obligations of the Banks hereunder are several and not joint or joint and several. Nothing contained in this Agreement or any other Loan Document and no action taken by the Administrative Agent, the Issuing Bank or the Banks or any of them pursuant hereto or thereto may, or may be deemed to, make the Banks a partnership, an association, a joint venture or other entity, either among themselves or with the Company or any Affiliate of the Company. Each Bank's obligation to make any Advance pursuant hereto is several and not joint or joint and several, and is not conditioned upon the performance by all other Banks of their obligations to make Advances. If any Bank defaults in its obligation to make any Advance to a Borrower after the fulfillment of all conditions precedent to that Advance, then the Company may terminate this Agreement with respect to that Bank upon fulfillment of each of the following conditions:

(i) the Borrower shall have paid to the affected Bank the principal amount of all outstanding Advances made by that Bank, together with all accrued but unpaid interest, costs, fees and expenses related thereto; and

(ii) the Company shall have notified the Administrative Agent and each of the Banks of the termination.

A default by any Bank will not increase the amount of the Commitment attributable to any other Bank. If any Bank shall default as set forth above, the Company shall have the right to seek a substitute bank or banks (which may be one or more of the Banks) satisfactory to the Company, the Administrative Agent and the Issuing Bank to assume the Commitment of such defaulting Bank and to purchase the Notes of such Bank and all amounts owing to such Bank in respect of Advances and Letters of Credit under this Agreement pursuant to Section 13.9. Should the Company elect, as aforesaid, to terminate this Agreement with respect to any Bank, then the Commitment shall automatically be reduced by a percentage equal to the Pro Rata Share of the Commitment of the affected Bank, and the remaining Bank or Banks shall have that Pro Rata Share in the reduced Commitment which is allocable to their Advances.

13.6 SURVIVAL. All representations and warranties contained herein or in any other Loan Document, or in any certificate or other writing delivered by or on behalf of any one or more of the Parties to any Loan Document, will survive the making of the Advances hereunder and the execution and delivery of the Notes, and have been or will be relied upon by the Administrative Agent, the Issuing Bank and each Bank, notwithstanding any investigation made by the Administrative Agent, the Issuing Bank or any Bank or on their behalf. The obligations of the Company under Sections 3.7 and 3.8 shall survive for thirty (30) days following the termination of this Agreement and the repayment of the Notes.

13.7 NOTICES AND OTHER COMMUNICATIONS; FACSIMILE COPIES.

(a) General. Unless otherwise expressly provided in the Loan Documents, all notices, requests, demands, directions and other communications provided for hereunder or under any other Loan Document shall be in writing (including by facsimile transmission). All

such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or (subject to Section 13.25) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Borrower or the Company, the Administrative Agent or the Issuing Bank, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 13.7 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Bank, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrowers, the Company, the Administrative Agent and the Issuing Bank.

(b) Timing. All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four Banking Days after deposit in the United States mail, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail, (subject to the provisions of Sections 13.25(d) and (e)) when received; provided, however, that notices and other communications to the Administrative Agent and the Issuing Bank pursuant to Article 2 shall not be effective until actually received by such Person. In no event shall a voicemail message be effective as a notice, communication or confirmation hereunder.

(c) Effectiveness of Facsimile Documents and Signatures. Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually-signed originals and shall be binding on all Borrowers, the Company, the Administrative Agent and the Banks. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

(d) Reliance by the Administrative Agent and Banks. The Administrative Agent and the Banks shall be entitled to rely and act upon any notices purportedly given by or on behalf of a Borrower or the Company even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Company shall indemnify each Indemnitee from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Borrower or the Company. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

13.8 EXECUTION OF LOAN DOCUMENTS. Unless the Administrative Agent otherwise specifies with respect to any Loan Document, this Agreement and any other Loan Document may be executed in any number of counterparts and any party hereto or thereto may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Agreement or any other Loan Document, as the case may be, when taken together will be deemed to be but one and the same instrument. The execution of this Agreement or any other Loan Document by any party hereto or thereto will not become effective until counterparts hereof or thereof, as the case may be, have been executed by all the parties hereto or thereto.

13.9 BINDING EFFECT; ASSIGNMENT; ENTIRE AGREEMENT.

(i) This Agreement and the other Loan Documents shall be binding upon and shall inure to the benefit of the parties hereto and thereto and their respective successors and assigns, except that a Borrower, the Company and/or their respective Affiliates may not assign their rights hereunder or thereunder or any interest herein or therein without the prior written consent of all the Banks.

(ii) Each Bank may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment and the Advances owing to it); provided, however, that (i) each such assignment shall be of a constant, and not a varying, percentage of all of the assigning Bank's rights and obligations under this Agreement, (ii) after giving effect to any such assignment, (1) the assigning Bank shall no longer have any Commitment or (2) the amount of the Commitment of both the assigning Bank and the Eligible Assignee party to such assignment (in each case determined as of the date of the Assignment and Acceptance with respect to such assignment) shall not be less than $15,000,000 and assigned amounts must be in increments of $1,000,000, (iii) each such assignment shall be to an Eligible Assignee, (iv) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, an Assignment Agreement, and a processing and recordation fee of $3,500 to the Administrative Agent, and (v) the Company and the Administrative Agent shall have consented to such assignment, which consent shall not be unreasonably withheld; except that such consent shall not be required for an assignment to another Bank or an Affiliate of a Bank (but the assigning Bank shall give the Administrative Agent and the Company written notice thereof) and such consent by the Company shall not be required if an Event of Default has occurred and is continuing. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment Agreement, (y) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement, have the rights and obligations of a Bank hereunder and (z) the Bank assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Bank's rights and obligations under this Agreement, such Bank shall cease to be a party hereto). The Pro Rata Share of each Bank of the Commitments hereunder shall be modified to reflect the Pro Rata Share of the

Commitment of such assignee and, if any such assignment occurs while any Loan is outstanding and if requested in accordance with Section 2.1(e), new Notes shall, upon surrender of the assigning Bank's Notes, be issued to such assignee and to the assigning Bank as necessary to reflect the new Pro Rata Share of the Commitments of the Bank and of assignee. Notwithstanding any other provision set forth in this Agreement, any Bank may assign or pledge, as collateral or otherwise, all or any portion of its rights under this Agreement (including without limitation, rights to payments of principal and/or interest under the Notes held by it), but not its obligations, to any Federal Reserve Bank or any Affiliate in order that such Affiliate may assign or pledge such rights to any Federal Reserve Bank, in each case, without notice to or consent from any Borrower or the Administrative Agent; provided, however, that such Federal Reserve Bank or Affiliate shall not, by reason of such assignment, become a "Bank" hereunder for any purpose whatsoever and any such Bank shall not be released from any of its obligations hereunder as a result of such assignment or pledge.

(iii) By executing and delivering an Assignment Agreement, the Bank assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment Agreement, such assigning Bank makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with any of the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of any of the Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) such assigning Bank makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrowers or the Company or the performance or observance by the Borrowers or the Company of any of their obligations under any of the Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (iii) such assignee confirms that it has received a copy of the Loan Documents, together with copies of such financial statements and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment Agreement; (iv) such assignee will, independently and without reliance upon the Administrative Agent, the Syndication Agent or either Arranger, such assigning Bank 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 Loan Documents; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Bank.

(iv) Within five (5) days of its receipt of an Assignment Agreement executed by an assigning Bank and an assignee representing that it is an Eligible Assignee (together with a processing and recordation fee of $3,500 with respect thereto) and upon evidence of consent of the Company (to the extent required) and the Administrative Agent thereto, which consent shall not be unreasonably withheld, the

Administrative Agent shall, if such Assignment Agreement has been completed and is in substantially the form of Exhibit G hereto, (1) accept such Assignment Agreement and (2) record the information contained therein in the - Register. All communications with the Company with respect to such consent of the Company shall be sent pursuant to Section 13.7.

(v) The Administrative Agent shall maintain at its address referred to in Section 13.7 a copy of each Assignment Agreement delivered to and accepted by it and a register for the recordation of the names and addresses of the Banks and the Commitment of, the Maturity Date of, and with respect to each Borrower, the principal amount of the Advances owing to, each such Bank from time to time (the "REGISTER"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrowers, the Company, the Administrative Agent and the Banks may treat each Person whose name is recorded in the Register as a Bank hereunder for all purposes of the Loan Documents. The Register shall be available for inspection by the Borrowers, the Company or any Bank at any reasonable time and from time to time upon reasonable prior notice.

(vi) Each Bank may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment and the Advances owing to it); provided, however, that (a) such Bank's obligations under this Agreement (including, without limitation, its Commitment to the Borrowers hereunder) shall remain unchanged, (b) such Bank shall remain solely responsible to the other parties hereto for the performance of such obligations, (c) such Bank shall remain the holder of any such Advance for all purposes of this Agreement, (d) the Borrowers, the Company, the Administrative Agent and the other Banks shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under the Loan Documents, (e) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Borrower therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Notes or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, postpone the Maturity Date, or date fixed for payment of interest on, the Notes or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or release the Company from its Obligations under Article 11 hereof, (f) no Borrower shall be subject to any increased liability to any Bank pursuant to this Agreement by virtue of such participation and (g) the Person purchasing such participation shall not have any rights under this Agreement or any other Loan Document and shall agree to customary provisions relating to the confidentiality of non-public information received by such Person in connection with its purchase of the participation. A participant that would be a Foreign Bank if it were a Bank shall not be entitled to the benefits of Sections 3.08 and 3.12 unless each Borrower and the Company is notified of the participation sold to such participant and such participant agrees, for the benefit of the each Borrower and the Company, to comply with Section 13.27 as though it were a Bank.

(vii) Any Bank may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 13.9, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Borrowers or the Company furnished to such Bank by or on behalf of the Borrowers or the Company; provided that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree in writing to preserve the confidentiality of any confidential information relating to the Borrowers or the Company received by it from such Bank.

13.10 SETOFF RIGHTS. If an Event of Default has occurred and is continuing, the Administrative Agent, the Issuing Bank and each Bank and each of its Affiliates (but only with the consent of the Majority Banks) is hereby authorized to the fullest extent permitted by law to setoff and apply any funds in any deposit account maintained with it by any Borrower and/or any Property of any Borrower in its possession against the Obligations; provided that no funds in any deposit account maintained by any Borrowing Subsidiary and/or any Property of any Borrowing Subsidiary shall be setoff or applied against the Obligations of the Company or any other Borrower.

13.11 SHARING OF SETOFFS. Each Bank severally agrees that if it, through the exercise of any right of setoff, banker's lien or counterclaim against any Borrower, or otherwise, receives payment, through any means, of the Obligations held by it that is in excess of that Bank's proportionate share of the Total Outstandings as applied to such payment, then: (a) The Bank exercising the right of setoff, banker's lien or counterclaim or otherwise receiving such payment shall purchase, and shall be deemed to have simultaneously purchased, from the other Bank a participation in the Obligations held by the other Bank and shall pay to the other Bank a purchase price in an amount so that the share of the Obligations held by each Bank after the exercise of the right of setoff, banker's lien or counterclaim or receipt of payment shall be in the same proportion that existed prior to the exercise of the right of setoff, banker's lien or counterclaim or receipt of payment; and (b) such other adjustments and purchases of participations shall be made from time to time as shall be equitable to ensure that all of the Banks share any payment obtained in respect of the Obligations ratably in accordance with each Bank's share of the Obligations immediately prior to, and without taking into account, the payment; provided that, if all or any portion of a disproportionate payment obtained as a result of the exercise of the right of setoff, banker's lien, counterclaim or otherwise is thereafter recovered from the purchasing Bank by any Borrower or any Person claiming through or succeeding to the rights of any Borrower, the purchase of a participation shall be rescinded and the purchase price thereof shall be restored to the extent of the recovery, but without interest. Each Bank that purchases a participation in the Obligations pursuant to this Section shall from and after the purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Bank were the original owner of the Obligations purchased. Each Borrower expressly consents to the foregoing arrangements and agrees that any Bank holding a participation in an Obligation so purchased may exercise any and all rights of setoff, banker's lien or counterclaim with respect to the participation as fully as if the Bank were the original owner of the Obligation purchased; provided, however, that each Bank agrees that it shall not exercise any right of setoff, banker's lien or counterclaim without first obtaining the consent of the Majority Banks.

13.12 INDEMNITY BY THE COMPANY. The Company agrees to indemnify, save and hold harmless each Arranger, the Issuing Bank, the Administrative Agent, the Syndication Agent and each Bank and their Affiliates, directors, officers, agents, attorneys, advisors and employees (collectively the "INDEMNITEES") from and against: (a) any and all claims, demands, actions or causes of action asserted by any third party or by the Company or any Borrower if the claim, demand, action or cause of action arises out of or relates to the Commitment, the use or contemplated use of proceeds of any Advance, any drawing under any Letter of Credit, any transaction contemplated by this Agreement, or any relationship or relationship alleged to exist by any Borrower, its Affiliates or any other third party of any Indemnitee to any Borrower related to this Agreement; (b) any administrative or investigative proceeding by any Governmental Agency arising out of or related to a claim, demand, action or cause of action described in clause (a) above; and (c) any and all liabilities, losses, costs or expenses (including reasonable attorneys' fees and disbursements and other professional services) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action or cause of action; provided that no Indemnitee shall be entitled to indemnification for any loss caused by its own gross negligence or willful misconduct. If any claim, demand, action or cause of action is asserted against any Indemnitee, such Indemnitee shall promptly notify the Company, but the failure to so promptly notify the Company shall not affect the Company's obligations under this Section unless such failure materially prejudices the Company's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by the Company in writing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit the Company to participate in such contest. Any Indemnitee that proposes to settle or compromise any claim or proceeding for which the Company may be liable for payment of indemnity hereunder shall give the Company written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain the Company's prior written consent. In connection with any claim, demand, action or cause of action covered by this Section against more than one Indemnitee, all such Indemnitees shall be represented by the same legal counsel selected by the Indemnitees and reasonably acceptable to the Company; provided that, if such legal counsel determines in good faith that representing all such Indemnitees would or could result in a conflict of interest under Laws or ethical principles applicable to such legal counsel or that a defense or counterclaim is available to an Indemnitee that is not available to all such Indemnitees, then to the extent reasonably necessary to avoid such a conflict of interest or to permit unqualified assertion of such a defense or counterclaim, each Indemnitee shall be entitled to separate representation by legal counsel selected by that Indemnitee and reasonably acceptable to the Company, with all such legal counsel using reasonable efforts to avoid unnecessary duplication of effort by counsel for all Indemnitees; provided further that the amount of the legal fees to be reimbursed by the Company shall be limited to an amount reasonably determined following consultation among the Company, the Administrative Agent, the Banks and their respective legal counsel, to be equal to the amount that would have been expended if the Indemnitees have been represented by one counsel. Any obligation or liability of the Company to any Indemnitee under this Section shall survive the expiration or termination of this Agreement and the repayment of all Advances and the payment and performance of all other Obligations owed to the Banks.

13.13 NO THIRD PARTIES BENEFITED. This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of the Borrowers, the

Administrative Agent, the Issuing Bank and the Banks in connection with the Loans, Advances and Letters of Credit, and is made for the sole benefit of the Borrowers, the Administrative Agent, the Issuing Bank and the Banks, and the Administrative Agent's, the Issuing Bank's and the Banks' successors and assigns. Except as provided in Sections 13.9, 13.11 and 13.12, no other Person shall have any rights of any nature hereunder or by reason hereof.

13.14 CONFIDENTIALITY. Each of the Administrative Agent, the Issuing Bank and each Bank agrees to hold any confidential information that it may receive from any Borrower pursuant to this Agreement in confidence: except for disclosure: (a) to other Banks; (b) to legal counsel, accountants and other professional advisors to any Borrower or the Administrative Agent, the Issuing Bank or any Bank; (c) to regulatory officials having jurisdiction over the Administrative Agent, the Issuing Bank or a Bank; (d) as required by Law or legal process or in connection with any legal proceeding to which the Administrative Agent, the Issuing Bank or a Bank and that Borrower are adverse parties; (e) to Affiliates of the Administrative Agent by the Administrative Agent and (f) to Affiliates of a Bank or to another financial institution, in each case, in connection with a disposition or proposed disposition to that financial institution of all or part of that Bank's interests hereunder or a participation interest in its Loans or Letters of Credit, provided that such disclosure is made subject to an appropriate confidentiality agreement on terms substantially similar to this Section. For purposes of the foregoing, "confidential information" shall mean any information respecting the Company or its Subsidiaries reasonably considered by the Company to be confidential, other than (i) information previously filed with any Governmental Agency and available to the public, (ii) information previously published in any public medium from a source other than, directly or indirectly, that Bank, and (iii) information previously disclosed by a Borrower to any Person not associated with that Borrower without a written confidentiality agreement substantially similar to this Section. Nothing in this Section shall be construed to create or give rise to any fiduciary duty on the part of the Administrative Agent, the Issuing Bank or the Banks to the Borrowers.

13.15 FURTHER ASSURANCES. The Company and its Subsidiaries shall, at their expense and without expense to the Banks, the Issuing Bank or the Administrative Agent, do, execute and deliver such further acts and documents as any Bank, the Issuing Bank or the Administrative Agent from time to time reasonably requires for the assuring and confirming unto the Banks, the Issuing Bank or the Administrative Agent of the rights hereby created or intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of any Loan Document.

13.16 REMOVAL OF BANK. As of the date any Bank is removed at the request of the Company, whether pursuant to Section 3.7, Section 3.8, Section 13.27 or otherwise, (i) all obligations of such Bank under this Agreement shall be released and terminated and (ii) such Bank's Pro Rata Share of the Commitment shall be terminated, including such Bank's participation in any Letter of Credit. The removal of any such Bank shall be subject to the satisfaction of the following conditions:

(a) The Company shall compensate any such Bank so replaced for (i) any breakage costs incurred due to the removal of such Bank, as determined by such Bank in good faith, and (ii) all accrued interest and fees owing to such Bank pursuant to this Agreement as of the date such Bank is so replaced;

(b) Such Bank shall receive payment of principal of all Advances made to any Borrower hereunder; and

(c) A substitute bank or banks (which may be one or more of the Banks) satisfactory to the Company, the Administrative Agent and the Issuing Bank shall assume the Commitment of such Bank and purchase the Notes of such Bank and all amounts owing to such Bank in respect of Advances and Letters of Credit under this Agreement pursuant to Section 13.9.

13.17 INTEGRATION. This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and supersedes all prior agreements, written or oral, on the subject matter hereof. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control and govern; provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent, the Issuing Bank or the Banks in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

13.18 SEVERABILITY OF PROVISIONS. Any provision in any Loan Document that is held to be inoperative, unenforceable or invalid as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

13.19 INDEPENDENT COVENANTS. Each covenant in Articles 5, 6 and 7 is independent of the other covenants in those Articles; the breach of any such covenant shall not be excused by the fact that the circumstances underlying such breach would be permitted by another such covenant.

13.20 HEADINGS. Article and Section headings in this Agreement and the other Loan Documents are included for convenience of reference only and are not part of this Agreement or the other Loan Documents for any other purpose.

13.21 TIME OF THE ESSENCE. Time is of the essence of the Loan Documents.

13.22 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

13.23 CONSENT TO JURISDICTION AND SERVICE OF PROCESS. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST THE BORROWERS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY

OBLIGATIONS THEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK, BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH BORROWER, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY

(I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS;

(III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE COMPANY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 13.7;

(IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER SUCH BORROWER IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT;

(V) AGREES THAT THE ADMINISTRATIVE AGENT, THE BANKS, AND THE ISSUING BANK RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST SUCH BORROWER IN THE COURTS OF ANY OTHER JURISDICTION; AND

(VI) AGREES THAT THE PROVISIONS OF THIS SECTION 13.23 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1402 OR OTHERWISE.

13.24 WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE

MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 13.24 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

13.25 WEBSITE COMMUNICATIONS.

(a) The Company hereby agrees that it will provide to the Administrative Agent the Compliance Certificates that it is obligated to furnish to the Administrative Agent pursuant hereto by transmitting the Compliance Certificates in an electronic/soft medium in a format acceptable to the Administrative Agent to oploanswebadmin@citigroup.com.

(b) Each of the Borrowers and the Company further agrees that the Administrative Agent may make the Compliance Certificates available to the Banks by posting the Compliance Certificates on Intralinks or a substantially similar electronic transmission systems (the "PLATFORM").

(c) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMPLIANCE CERTIFICATES, OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMPLIANCE CERTIFICATES. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENT PARTIES IN CONNECTION WITH THE COMPLIANCE CERTIFICATES OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS OR REPRESENTATIVES (COLLECTIVELY, "AGENT PARTIES") HAVE ANY LIABILITY TO THE COMPANY, ANY BORROWER, ANY BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY BORROWER'S, THE COMPANY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMPLIANCE CERTIFICATES THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY AGENT PARTY IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH AGENT PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(d) The Administrative Agent agrees that the receipt of the Compliance Certificates by the Administrative Agent at its e-mail address set forth above shall constitute

effective delivery of the Compliance Certificates to the Administrative Agent for purposes of the Loan Documents. Each Bank agrees that notice to it (as provided in the next sentence) specifying that the Compliance Certificates have been posted to the Platform shall constitute effective delivery of the Compliance Certificates to such Bank for purposes of the Loan Documents. Each Bank agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Bank's e-mail address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.

Nothing herein shall prejudice the right of the Administrative Agent or any Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

13.26 JUDGMENT CURRENCY.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in any currency (the "ORIGINAL CURRENCY") into another currency (the "OTHER CURRENCY"), the parties hereto agree, to the fullest extent permitted by law, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent or a Bank could purchase the Original Currency with such Other Currency in New York, New York on the Banking Day immediately preceding the day on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of each Borrower and the Company in respect of any sum due from it to any agent or Bank hereunder shall, notwithstanding any judgment in such Other Currency, be discharged only to the extent that on the Banking Day following receipt by such agent or Bank of any sum adjudged to be so due in such Other Currency such agent or Bank may in accordance with normal banking procedures purchase the Original Currency with such Other Currency; if the Original Currency so purchased is less than the sum originally due such agent or Bank in the Original Currency, each of the Borrowers and the Company agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such agent or Bank against such loss, and if the Original Currency so purchased exceeds the sum originally due to such agent or Bank in the Original Currency, such agent or Bank shall remit such excess to such Borrower or the Company.

13.27 TAX FORMS.

(a) (i) Each Bank that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code (a "FOREIGN BANK") shall deliver to the Administrative Agent, prior to receipt of any payment subject to withholding under the Code (or upon accepting an assignment of an interest herein), two duly signed completed copies of either IRS Form W-8BEN or any successor thereto (relating to such Foreign Bank and entitling it to an exemption from, or reduction of, withholding tax on all payments to be made to such Foreign Bank by any Borrower or the Company acting in its capacity as guarantor under Article 11 pursuant to this Agreement) or IRS Form W-8ECI or any successor thereto (relating to all payments to be made to such Foreign Bank by such Borrower or the Company pursuant to this Agreement) or such other evidence satisfactory to such Borrower or the Company and the Administrative Agent that

such Foreign Bank is entitled to an exemption from, or reduction of, U.S. withholding tax, including any exemption pursuant to Section 881(c) of the Code. Thereafter and from time to time, each such Foreign Bank shall (A) promptly submit to the Administrative Agent such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is satisfactory to each Borrower, the Company and the Administrative Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Foreign Bank by such Borrower or the Company pursuant to this Agreement, (B) promptly notify the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (C) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Bank, and as may be reasonably necessary (including the re-designation of its lending office) to avoid any requirement of applicable Laws that such Borrower or the Company make any deduction or withholding for taxes from amounts payable to such Foreign Bank.

(ii) Each Foreign Bank, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Bank under any of the Loan Documents (for example, in the case of a typical participation by such Bank), shall deliver to the Administrative Agent on the date when such Foreign Bank ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of the Administrative Agent (in the reasonable exercise of its discretion), (A) two duly signed completed copies of the forms or statements required to be provided by such Bank as set forth above, to establish the portion of any such sums paid or payable with respect to which such Bank acts for its own account that is not subject to U.S. withholding tax, and (B) two duly signed completed copies of IRS Form W-8IMY (or any successor thereto), together with any information such Bank chooses to transmit with such form, and any other certificate or statement of exemption required under the Code, to establish that such Bank is not acting for its own account with respect to a portion of any such sums payable to such Bank.

(iii) Neither any Borrower nor the Company shall be required to pay any additional amount to any Foreign Bank under Section 3.12 (A) with respect to any Taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption such Bank transmits with an IRS Form W-8IMY pursuant to this Section 13.27(a) or (B) if such Bank shall have failed to satisfy the foregoing provisions of this Section 13.27(a); provided that if such Bank shall have satisfied the requirement of this Section 13.27(a) on the date such Bank became a Bank or ceased to act for its own account with respect to any payment under any of the Loan Documents, nothing in this Section 13.27(a) shall relieve any Borrower or the Company of its obligation to pay any amounts pursuant to Section 3.12 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Bank is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Bank or other Person for the account of which such Bank receives any sums payable under any of the Loan Documents is not subject to withholding or is subject to withholding at a reduced rate. If pursuant to this Section 13.27(a)(iii) any Borrower shall be required to pay any such amounts due to any such change in any applicable law, treaty or

governmental rule, regulation or order, or any change in the interpretation, administration or application thereof with respect to any Bank, the Company shall have the right, upon 30 days prior notice to the Administrative Agent, with the assistance (but not the obligation) of the Administrative Agent, to seek a substitute bank or banks (which may be one or more of the Banks) satisfactory to the Company, the Administrative Agent and the Issuing Bank to assume the Commitment of such Bank and to purchase the Notes of such Bank and all amounts owing to such Bank in respect of Advances and Letters of Credit under this Agreement pursuant to Section 13.9.

(iv) The Administrative Agent may, without reduction, withhold any Taxes required to be deducted and withheld from any payment under any of the Loan Documents with respect to which the Borrower or the Company is not required to pay additional amounts under this Section 13.27(a).

(b) Upon the request of the Administrative Agent, each Bank that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Administrative Agent two duly signed completed copies of IRS Form W-9. If such Bank fails to deliver such forms, then the Administrative Agent may withhold from any interest payment to such Bank an amount equivalent to the applicable back-up withholding tax imposed by the Code, without reduction.

(c) The Company, upon the request of the Administrative Agent, any Bank or the Issuing Bank, agrees to repay any amount paid over to the Company or any Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Agencies) to the Administrative Agent, such Bank or the Issuing Bank in the event the Administrative Agent, such Bank or the Issuing Bank is required to repay such refund to such Governmental Agency. The obligation of the Company under this Section shall survive the termination of the Commitments, repayment of all other Obligations hereunder and the resignation of the Administrative Agent.

13.28 LIMITATION ON BORROWING SUBSIDIARY OBLIGATIONS. Notwithstanding anything herein to the contrary, no provision of this Agreement shall render any Borrowing Subsidiary liable for the Obligations of the Company or any other Borrower.

13.29 WAIVER OF DAMAGES. To the extent permitted by applicable law, no party to this Agreement shall assert, and each party to this Agreement hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions contemplated hereby, any Loan or Letter of Credit or the use of the proceeds thereof.

[Signature Pages Begin On Following Page]

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

THE COMPANY:

AMGEN INC.

By: /s/ Richard D. Nanula

Title: Executive Vice President and
Chief Financial Officer

Address:

Amgen Inc.
One Amgen Center Drive
Thousand Oaks, California 91320-1799

Attn: Treasurer
cc: Secretary

Telecopier: (805) 499-2863
Telephone: (805) 447-1000

[Schedules and Exhibits on file with the Company
and the Administrative Agent]

EXHIBIT 31

CERTIFICATIONS

I, Kevin W. Sharer, Chairman of the Board, Chief Executive Officer and President of Amgen Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Amgen Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the periods covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

   (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the periods covered by this quarterly report based on such evaluation; and

   (c) Disclosed in this quarterly report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2004

/s/ KEVIN W. SHARER

Kevin W. Sharer
Chairman of the Board, Chief Executive Officer and President

CERTIFICATIONS

I, Richard D. Nanula, Executive Vice President and Chief Financial Officer of Amgen Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Amgen Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the periods covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

   (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the periods covered by this quarterly report based on such evaluation; and

   (c) Disclosed in this quarterly report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2004

/S/ RICHARD D. NANULA
- ---------------------
Richard D. Nanula
Executive Vice President
and Chief Financial Officer

EXHIBIT 32

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

Pursuant to 18 U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Amgen Inc. (the "Company") hereby certifies that:

(i) the accompanying Quarterly Report on Form 10-Q of the Company for the three and six months ended June 30, 2004 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 6, 2004

/S/ KEVIN W. SHARER

Kevin W. Sharer
Chairman of the Board, Chief Executive Officer and President

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 ("Section 906"), or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Amgen Inc. and will be retained by Amgen Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION OF CHIEF FINANCIAL OFFICER

Pursuant to 18 U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Amgen Inc. (the "Company") hereby certifies that:

(i) the accompanying Quarterly Report on Form 10-Q of the Company for the three and six months ended June 30, 2004 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 6, 2004

/S/ RICHARD D. NANULA

Richard D. Nanula
Executive Vice President
and Chief Financial Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 ("Section 906"), or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Amgen Inc. and will be retained by Amgen Inc. and furnished to the Securities and Exchange Commission or its staff upon request.