

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

**FORM 10-K**

**Annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934**

For the fiscal year ended December 31, 2003

Or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-13782

**WESTINGHOUSE AIR BRAKE TECHNOLOGIES  
CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**25-1615902**

(IRS Employer  
Identification No.)

**1001 Air Brake Avenue  
Wilmerding, Pennsylvania 15148**

(Address of principal executive offices, including zip code)

**(412) 825-1000**

(Registrant's telephone number)

**Securities registered pursuant to Section 12(b) of the Act:**

Title of Class

Name of Exchange on which registered

**Common Stock, par value \$.01 per share**

**New York Stock Exchange**

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

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 and (2) has been subject to such filing requirements for at least the past 90 days. Yes  No .

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes  No

The registrant estimates that as of June 30, 2003, the aggregate market value of the voting shares held by non-affiliates of the registrant was approximately \$448 million based on the closing price on the New York Stock Exchange for such stock.

As of March 11, 2004, 44,687,830 shares of Common Stock of the registrant were issued and outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE:**

Portions of the Proxy Statement for the registrant's Annual Meeting of Stockholders to be held on May 19, 2004 are incorporated by reference into Part III of this Form 10-K.

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## PART I

### Item 1. BUSINESS

#### General

Westinghouse Air Brake Technologies Corporation, doing business as Wabtec Corporation, is a Delaware corporation with headquarters at 1001 Air Brake Avenue in Wilmerding, Pa. Our telephone number is 412-825-1000, and our website is located at [www.wabtec.com](http://www.wabtec.com). All references to “we”, “our”, “us”, the “Company” and “Wabtec” refer to Westinghouse Air Brake Technologies Corporation and its subsidiaries. Originally founded by George Westinghouse in 1869, Westinghouse Air Brake Company (“WABCO”) was formed in 1990 when it acquired certain operations from American Standard, Inc. (ASI). The current business includes the combined assets from the November 1999 merger of WABCO and MotivePower Industries, Inc. (“MotivePower”).

Wabtec is one of the world’s largest providers of value-added, technology-based equipment and services for the global rail industry. We believe we hold a greater than 50% market share in North America for our primary braking-related equipment and a number 1 or number 2 position in North America for most of our other product lines. Our highly engineered products, which are intended to enhance safety, improve productivity and reduce maintenance costs for customers, can be found on virtually all U.S. locomotives, freight cars and passenger transit vehicles. We are a “Tier 1” supplier with approximately 44% of our net sales in 2003 to Original Equipment Manufacturers (OEMs). In 2003, the Company had sales of \$717.9 million and net income of \$22.7 million.

Management and insiders of the Company own approximately 12% of Wabtec’s outstanding shares, with the balance held by investment companies and individuals. Executive management incentive compensation focuses on earnings, cash flow and working capital targets to align management interests with those of outside shareholders.

#### Industry Overview

The Company primarily serves the worldwide freight and passenger transit rail industries. The worldwide market for rail equipment has been estimated at about \$70 billion annually, and it is estimated to grow at about 4% annually for the next five years. Our operating results are largely dependent on the level of activity, financial condition and capital spending plans of the global railroad industry. Many factors influence the industry, including general economic conditions; rail traffic, as measured by freight tonnage and passenger ridership; government investment in public transportation; and investment in new technologies by freight and passenger rail systems. Customers in North America account for about 79% of Wabtec’s sales.

In North America, railroads carry about 42% of intercity freight, as measured by ton-miles, which is more than any other mode of transportation. They are an integral part of the continent’s economy and transportation system, serving nearly every industrial, wholesale and retail sector. Through direct ownership and operating partnerships, U.S. railroads are part of an integrated network that includes railroads in Canada and Mexico, forming what is regarded as the world’s most-efficient and lowest-cost freight rail service. There are more than 500 railroads operating in North America, with the largest railroads, referred to as “Class I,” accounting for more than 90% of the industry’s revenues. Although the railroads carry a wide variety of commodities, coal accounts for the most tons and revenues (about 45% and about 20%, respectively, in 2003). Intermodal traffic – the movement of trailers or containers by rail in combination with another mode of transportation – has been the railroads’ fastest-growing market segment in the past 10 years. Railroads operate in a competitive environment, especially with the trucking industry, and are always seeking ways to improve safety, cost and reliability. New technologies offered by Wabtec and others in the industry can provide some of these benefits.

Outside of North America, most of the rail systems have historically been focused on passenger transit, rather than freight. In recent years, however, railroads in countries such as Australia, India and China have been investing capital to expand and improve both their freight and passenger rail systems. Throughout the world, government-owned railroads are being sold to private owners, who often look to improve the efficiency of the rail system by investing in new equipment and new technologies. These investment programs represent additional opportunities for Wabtec to provide products and services.

In the U.S., public transportation is a \$32 billion industry, dependent largely on funding from federal, state and local governments, and from fare box revenues. With about 40% of the nation’s transit vehicles, New York City is the largest transit market in the U.S. Transit ridership is near an all-time high, after increasing throughout the 1990’s due to steady growth in the U.S. economy. Ridership declined 1.3% in 2002, however, as the economy slowed. Based on preliminary figures for 2003, ridership is expected to decline at about the same rate. In response to lower fare box revenues and government funding cutbacks, transit authorities have delayed capital expenditures for new equipment and deferred maintenance on existing equipment. New York City, however, has continued to invest in new equipment, as demonstrated by its order for up to 1,700 new subway vehicles, including options, which are expected to be delivered beginning in 2006.

Demand for our products and services in North America are driven by a number of factors, including:

- *Rail traffic.* The Association of American Railroads (AAR) compiles statistics that gauge the level of activity in the freight rail industry. Two important statistics are revenue ton-miles and carloadings, which are generally referred to as “rail traffic”. According to preliminary AAR estimates for 2003, revenue ton-miles increased about 1.9% and carloadings increased about 0.4% compared to

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2002. This is the first year since 1999 that both measures increased in the same year, which we believe should maintain an improving marketplace for Wabtec. As rail traffic increases, we believe that our customers will increase their level of spending on equipment and equipment maintenance.

- *Demand for new locomotives.* Currently, the active locomotive fleet in the North American market is about 20,000 units. The average number of new locomotives delivered over the past 10 years was about 1,000 annually. In 2003, about 750 new, heavy-haul locomotives were delivered, down from 969 in 2002. In 2004, we expect the industry to deliver about 1,050 new locomotives, as railroads opt to purchase new units before stricter U.S. federal government emissions standards take effect in January 2005.
- *Demand for new freight cars.* Currently, the active freight car fleet in North America is about 1.3 million units. The average number of new freight cars delivered over the past 10 years was about 50,000 annually. In 2003, new freight car deliveries were substantially below the 10-year average for the third consecutive year (about 31,400 compared to about 17,700 in 2002). We expect that about 37,500 new units will be delivered in 2004 and that the rate of new deliveries will continue to increase by about 10% in the next several years to meet railroad demand.

Demand for North American transit products is driven by a number of factors, including:

- *Replacement, building and/or expansion programs of transit authorities.* These programs are funded in part by national and local government programs. Currently, the U.S. federal government is considering a new spending proposal, known as SAFETEA, that would provide federal funding for transit projects for the fiscal years 2004-09. Although the amount of future funding is yet to be finalized, the current proposal calls for a funding level of about \$7.2 billion in fiscal year 2004 (about the same as in fiscal year 2003), with annual increases of about 2% per year through fiscal year 2009. The amount of funding in the legislation will have an impact on the capital spending plans of transit authorities. In recent years, U.S. federal funding for transit projects has generally served as a countercyclical balance during the downturn in our freight rail markets. The average annual number of new transit car deliveries over the past 10 years was about 600 units. In 2003, we estimate that about 670 transit vehicles were delivered compared to 1,320 in 2002. The decrease was due to the completion of a major multiple-year car replacement program for New York City. In late 2002, New York City placed another major order for new subway cars, with deliveries expected to begin in 2006. Management expects the annual transit vehicle delivery rate to be in the range of 500-800 units for the next several years as disclosed under item 7 of this report.
- *Ridership levels.* Ridership on U.S. transit vehicles increased steadily from 1995-2001. In 2002, ridership decreased for the first time since 1995 due to higher unemployment levels in the U.S. The lower ridership level, as well as government funding cutbacks, negatively impacted aftermarket spending in 2002 and 2003. We anticipate that the current underspending will create a pent-up demand for maintenance and service work when ridership and funding levels increase in future years.

### **Business Segments and Products**

We provide our products and services through two principal business segments, the Freight Group and the Transit Group. The Freight Group manufactures and services components for new and existing freight cars and locomotives, while the Transit Group does the same for passenger transit vehicles, typically subways and buses. Both business segments serve OEMs and provide aftermarket services with the aftermarket accounting for about 56% of net sales. In 2003, the Freight Group accounted for 73% of our total net sales, and the Transit Group accounted for the remaining 27%. In 2003, the Freight Group generated 39% of its net sales from OEMs and Class I railroads and 61% of its net sales from the aftermarket, while the Transit Group generated 59% of its net sales from OEMs and 41% of its net sales from the aftermarket. A summary of our leading product lines across both of our business segments is outlined below.

- Brakes and related components
- Brake assemblies
- Draft gears, couplers and slack adjusters
- Air compressors and dryers
- Railway electronics, including event recorders, control and monitoring equipment, and end of train devices
- Friction products
- Rail and bus door assemblies
- Heat exchangers and cooling systems
- Sanitation systems and locomotive refrigerators
- Switcher and commuter locomotives
- Heating, ventilation and air conditioning systems

We manufacture, sell and service high-quality electronics for railroads in the form of on-board systems and braking for locomotives and freight cars. We harden our products to protect them from severe conditions, including extreme temperatures and high-vibration environments. Recently, we have concentrated our new product development on extending electronic technology to braking and control systems.

We have become a leader in the rail industry by capitalizing on the strength of our existing products, technological capabilities and new product innovation. Our new product development effort has focused on electronic technology for brakes and controls. Over the past several years, we introduced a number of significant new products including electronic brakes and Positive Train Control equipment that encompasses onboard digital data and global positioning communication protocols. The Transit Group also focuses on new product development

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and has introduced a number of new products during the past several years. Supported by our technical staff of over 500 engineers and specialists, we have extensive experience in a broad range of product lines, which enables us to provide comprehensive, systems-based solutions for our customers. We currently own over 2,000 active patents worldwide and 500 U.S. patents. During the last three years, we have filed for more than 150 U.S. patents in support of our new and evolving product lines.

For additional information on our business segments, see Note 20 of “Notes to Consolidated Financial Statements” included in Part IV, Item 15 of this report.

### **Competitive Strengths**

Our key strengths include:

- *Leading market positions in core products.* Dating back to 1869 and George Westinghouse’s invention of the air brake, we are an established leader in the development and manufacture of pneumatic braking equipment for freight and passenger transit vehicles. We have leveraged our leading position by focusing on research and engineering to expand beyond pneumatic braking system components to supplying integrated parts and assemblies for the whole locomotive through the end-of-train. We are a recognized leader in the development and production of electronic recording, measuring and communications systems, highly engineered compressors and heat exchange systems for locomotives and a leading manufacturer of freight car components, including electronic braking equipment, draft gears, brake shoes and electronic end-of-train devices. Additionally, we are a leading provider of complete door systems and couplers for passenger and transit vehicles.
- *Breadth of product offering with a stable mix of OEM and aftermarket business.* We believe that our substantial installed base of products to the OEMs is a significant competitive advantage for providing products and services to the aftermarket because end-users often look to purchase safety and performance-related replacement parts from the original supplier. In addition, we believe our product portfolio is one of the broadest in the rail industry, as we offer a wide selection of quality parts, components and assemblies across the entire train. Over the last several years, approximately 50% of our total net sales have come from our aftermarket products and services business.
- *Leading design and engineering capabilities.* We believe a hallmark of our relationship with our customers has been our leading design and engineering practice, which has, in our opinion, assisted in the improvement and modernization of global railway equipment. We believe both our customers and the federal transit authorities value our technological capabilities and commitment to innovation, as we seek not only to enhance the efficiency and profitability of our customers, but also to improve the overall safety of the railways through continuous product improvement.
- *Significant barriers to entry.* We believe that there are a number of company- and industry-specific factors that represent meaningful barriers to entry:
  - *Proprietary product offering.* We have an established record of product improvements and new product development. We have assembled a wide range of patented products, which we believe provides us with a competitive advantage.
  - *Substantial installed base.* We believe our installed base presents a meaningful barrier to entry in both the new product market and the aftermarket. As OEMs and Class I railroad operators attempt to modernize fleets with new products designed to improve and maintain safety and efficiency, new products must be designed to be interoperable with existing equipment. We believe our dedicated research and development staff and comprehensive product offering enables us to leverage our installed base to maintain our leadership position with OEMs and the Class I railroads. Similarly, we believe our substantial installed base makes us a preferred supplier in the aftermarket, as end-users typically prefer to source performance and safety-related replacement parts and service from the original product supplier.
  - *Regulatory nature of the rail industry.* Oversight of the U.S. rail industry is governed by a number of federal regulatory agencies, including the National Transportation Safety Board (NTSB), the Federal Railroad Administration (FRA) and the AAR. These groups mandate rigorous manufacturer certification and new product testing and approval processes that we believe are difficult for new entrants to meet cost-effectively and efficiently without the scale and extensive experience we possess.
- *Experienced management team.* Our management team has over 150 years of combined experience with the Company, and implemented numerous initiatives that enabled us to manage the sharp cyclical downturn in the rail supply market in 2001 and 2002. Our management team has implemented the Wabtec Quality and Performance System (QPS), an ongoing program that focuses on “lean manufacturing” principles and continuous improvement across all aspects of our business. In addition, in 2001, we completed a plan to eliminate excess manufacturing capacity by closing several facilities, realigning operations, reducing head count and divesting certain non-core assets. Since 2000, we have also reduced our debt by approximately \$350 million, lowering our percentage of debt to book capitalization from 73% at December 31, 2000 to 43% at December 31, 2003. As a result of these initiatives, our management team has improved our cost structure, operating leverage and financial flexibility and placed us

in an excellent position to benefit from growth opportunities in an improving market environment.

### **Business strategy**

We are focused on executing the following four-point growth strategy:

- *Expand systems offerings as “Tier 1” supplier.* We are currently a “Tier 1” supplier to OEMs in certain markets, but desire to expand our business with these customers to become an even more integral part of their operations. We plan to focus on integrating our electronic, pneumatic and mechanical technologies within and across business units and combining them as a complete package. Increasingly, customers will be able to purchase complete assemblies from us, rather than purchasing individual components from multiple suppliers. This will likely improve reliability and reduce product integration issues. We expect this capability to strengthen our position against competitors that do not have the breadth and depth of our product line. In addition, we will have the opportunity to service these assemblies in the aftermarket when they require replacement, upgrade or repair. In this way, we expect to increase the installed base of our products over time.
- *Accelerate new product and service development.* During the recent industry downturn, we maintained research and development spending at historical levels and continued to fund major development projects, and we will continue to emphasize research and development to create new and improved products. We are focusing on technological advances, especially in the areas of electronics, braking products and other on-board equipment, as a means of new product growth. We seek to provide customers with incremental technological advances that offer immediate benefits with cost effective investments. In addition, we are focused on expanding the level and type of aftermarket services that we currently provide to customers. In this way, we expect to take advantage of the industry trend toward outsourcing, as railroads and transit authorities’ focus on their core function of transporting goods and people, rather than maintaining and servicing their equipment.
- *Expand globally.* Our net sales outside of North America totaled 21% in 2003, up from 16% in 2002, and we believe that international markets represent a significant opportunity for future growth. We intend to increase our existing international sales through strategic acquisitions, direct sales of products through our existing subsidiaries and licensees and joint ventures with railway suppliers having a strong presence in their local markets. We are specifically targeting markets that operate significant fleets of U.S.-style locomotives and freight cars, including Australia, China, India, Russia, South Africa, South America and select areas within Europe.
- *Continuous improvement through lean principles.* We intend to build on what we consider to be a leading position as a low-cost producer in the industry while maintaining world-class product quality, technology and customer responsiveness. Through QPS and employee-directed initiatives such as Kaizen, a Japanese-developed team concept, we continuously strive to improve quality, delivery and productivity, and to reduce costs. These efforts enable us to streamline processes, improve product quality and customer satisfaction, reduce product cycle times and respond more rapidly to market developments. Over time, we expect these lean initiatives to enable us to increase profit margins, which would improve cash flow and strengthen our ability to invest in new product and service programs.

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In 2003, 56% of our sales came from aftermarket orders. Aftermarket orders typically carry lead times of less than 30 days, so they are not recorded in backlog for a significant period of time. As such, the Company's backlog is primarily an indicator of future original equipment sales, not expected aftermarket activity.

The Company's contracts are subject to standard industry cancellation provisions, including cancellations on short notice or upon completion of designated stages. Substantial scope-of-work adjustments are common. For these and other reasons, completion of the Company's backlog may be delayed or cancelled, so backlog should not be relied upon as an indicator of the Company's future performance. The railroad industry, in general, has historically been subject to fluctuations due to overall economic conditions and the level of use of alternative modes of transportation.

The backlog of customer orders as of December 31, 2003, and December 31, 2002, and the expected year of completion are as follows.

*In thousands*

	Total Backlog 12/31/03	Expected Delivery		Total Backlog 12/31/02	Expected Delivery	
		2004	Other Years		2003	Other Years
<b>Freight Group</b>	\$ 177,963	\$ 111,545	\$ 66,418	\$ 237,654	\$ 151,583	\$ 86,071
<b>Transit Group</b>	284,006	151,116	132,890	180,942	127,002	53,940
<b>Total</b>	<b>\$ 461,969</b>	<b>\$ 262,661</b>	<b>\$ 199,308</b>	<b>\$ 418,596</b>	<b>\$ 278,585</b>	<b>\$ 140,011</b>

## **Engineering and Development**

To execute our strategy to develop new products, we invest in a variety of engineering and development activities. For the fiscal years ended December 31, 2003, 2002, and 2001, we invested about \$32.9 million, \$33.6 million and \$33.2 million, respectively, on product development and improvement activities. Approximately 40% of these costs comprise activities solely devoted to new product development in any given year. These engineering and development expenditures, in total, represent about 4.6%, 4.8% and 4.2% of net sales for the same periods, respectively. Sometimes we conduct specific research projects in conjunction with universities, customers and other railroad product suppliers.

Our engineering and development program is largely focused upon train control and new braking technologies, with an emphasis on applying electronics to traditional pneumatic equipment. Electronic braking has been used in the transit industry for a long time, but freight railroads have been slower to accept the technology due to issues over interchangeability, connectivity and durability. We are proceeding with efforts to enhance the major components for existing hard-wired braking equipment and development of new electronic technologies for the freight railroads.

We use our Product Development System (PDS) to develop and monitor all new product programs. The system requires the product development team to follow consistent steps throughout the development process, from concept to launch, to ensure the product will meet customer expectations and internal profitability targets.

## **Intellectual Property**

We have more than 2,000 active patents worldwide. We also rely on a combination of trade secrets and other intellectual property laws, nondisclosure agreements and other protective measures to establish and protect our proprietary rights in our intellectual property.

Certain trademarks, among them the name WABCO<sup>®</sup>, were acquired or licensed from American Standard Inc. in 1990 at the time of our acquisition of the North American operations of the Railway Products Group of American Standard.

We are a party, as licensor and licensee, to a variety of license agreements. We do not believe that any single license agreement is of material importance to our business or either of our business segments as a whole.

We entered into a license agreement with SAB WABCO Holdings B.V. (SAB) on December 31, 1993, pursuant to which SAB granted us a license to the intellectual property and know-how related to the manufacturing and marketing of certain disc brakes, tread brakes and low noise and resilient wheel products. SAB is a former affiliate of Wabtec, since both were owned by the same parent company in the early 1990s. In 2002, SAB was purchased by Vestar Capital Partners IV, L.P., an affiliate of Vestar Equity Partners, L.P. and Vestar Capital Partners, Inc., both of which were then significant shareholders of Wabtec.

In November 2003, Vestar Equity Partners and Vestar Capital Partners sold their entire stake in Wabtec, consisting of 2,440,000 Wabtec common shares, in a registered secondary offering. The SAB license expired December 31, 2003, but has been renewed for an additional one-year term as provided in the license agreement. The license may be renewed for additional one-year terms.

We have issued licenses to the two sole suppliers of railway air brakes and related products in Japan, NABCO Ltd. and Mitsubishi Electric Company. The licensees pay annual license fees to us and also assist us by acting as liaisons with key Japanese passenger transit vehicle builders for projects in North America. We believe that our relationships with these licensees have been beneficial to our core transit business and customer relationships in North America.

## **Customers**

Our customers include railroads throughout North America, as well as in Australia, South Africa, India, Italy and the United Kingdom; manufacturers of transportation equipment, such as locomotives, freight cars, subway vehicles and buses; lessors of such equipment; and passenger transit authorities, primarily those in North America.

In 2003, about 79% of our sales were to customers in North America, but we also shipped products to more than 62 countries throughout the world. About 56% of our sales were in the aftermarket, with the rest of our sales to OEMs of locomotives, freight cars, subway vehicles and buses.

Our top five customers, Northeast Illinois Railroad Corporation (Metra), General Electric Transportation Systems, Bombardier, Burlington Northern Santa Fe and Alstom accounted for 26% of our net sales in 2003. Our top customer, Metra, represented 7% of consolidated sales. We believe that we have strong relationships with all of our key customers.

## **Competition**

We believe that we hold a greater than 50% market share in North America for our primary braking-related equipment and a No. 1 or No. 2 market position in North America for most of our other product lines. Nonetheless, we operate in a highly competitive marketplace. Price competition is strong because we have a relatively small number of customers and they are very cost-conscious.

In addition to price, competition is based on product performance and technological leadership, quality, reliability of delivery, and customer service and support. Our principal competitors vary to some extent across product lines, but most competitors are smaller, privately held companies. Within North America, New York Air Brake Company, a subsidiary of the German air brake producer Knorr-Bremse AG, is our principal overall OEM competitor. Our competition for locomotive, freight and passenger transit service and repair is



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primarily from the railroads' and passenger transit authorities' in-house operations, the Electro-Motive Division of General Motors, General Electric Transportation Systems, and New York Air Brake/Knorr. We believe our key strengths, which include leading market positions in core products, breadth of product offering with a stable mix of OEM and aftermarket business, leading design and engineering capabilities, significant barriers to entry and an experienced management team enable us to compete effectively in this marketplace.

### **Employees**

At December 31, 2003, we had 4,482 full-time employees, approximately 36% of whom were unionized. A majority of the employees subject to collective bargaining agreements are within North America and these agreements generally extend through late 2004, 2005 and 2006.

We consider our relations with our employees and union representatives to be good, but cannot assure that future contract negotiations will be favorable to us.

### **Regulation**

In the course of our operations, we are subject to various regulations of agencies and other entities. In the United States, these include principally the FRA and the AAR.

The FRA administers and enforces federal laws and regulations relating to railroad safety. These regulations govern equipment and safety standards for freight cars and other rail equipment used in interstate commerce.

The AAR oversees a wide variety of rules and regulations governing safety and design of equipment, relationships among railroads with respect to railcars in interchange and other matters. The AAR also certifies railcar builders and component manufacturers that provide equipment for use on railroads in the United States. New products generally must undergo AAR testing and approval processes.

As a result of these regulations and regulations in other countries in which we derive our revenues, we must maintain certain certifications as a component manufacturer and for products we sell.

### **Effects of Seasonality**

Our business is not typically seasonal, although the third quarter results may be impacted by vacation and plant shutdowns at several of its major customers during this period.

### **Environmental Matters**

Information on environmental matters is included in Note 19 of "Notes to Consolidated Financial Statements" included in Part IV, Item 15 of this report.

### **Available Information**

We maintain an Internet site at [www.wabtec.com](http://www.wabtec.com). Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to such reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as well as the annual report to stockholders and other information, are available free of charge on this site. The Internet site and the information contained therein or connected thereto are not incorporated by reference into this Form 10-K. Our Corporate Governance Guidelines, the charters of our Audit, Compensation and Nominating and Corporate Governance Committees, our Code of Conduct, which is applicable to all employees, and our Code of Ethics for Senior Officers, which is applicable to all of our executive officers, are also available free of charge on this site and are available in print to any shareholder who requests them.

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### Item 2. PROPERTIES

#### Facilities

The following table provides certain summary information about the principal facilities owned or leased by the Company. The Company believes that its facilities and equipment are generally in good condition and that, together with scheduled capital improvements, they are adequate for its present and immediately projected needs. Leases on the facilities are long-term and generally include options to renew. The Company's corporate headquarters are located at the Wilmerding, PA site.

<u>Location</u>	<u>Primary Use</u>	<u>Segment</u>	<u>Own/Lease</u>	<u>Approximate Square Feet</u>
<b>Domestic</b>				
Wilmerding, PA	Manufacturing/Service	Freight Group	Own	365,000 <sup>(1)</sup>
Boise, ID	Manufacturing	Freight Group	Own	294,700
Lexington, TN	Manufacturing	Freight Group	Own	170,000
Jackson, TN	Manufacturing	Freight Group	Own	150,000
Chicago, IL	Manufacturing	Freight Group	Own	111,500
Laurinburg, NC	Manufacturing	Freight Group	Own	105,000
Greensburg, PA	Manufacturing	Freight Group	Own	97,800
Germantown, MD	Manufacturing/Service	Freight Group	Own	80,000
Willits, CA	Manufacturing	Freight Group	Own	70,000
Kansas City, MO	Manufacturing	Freight Group	Lease	55,900
Columbia, SC	Service Center	Freight Group	Lease	40,250
Cedar Rapids, IA	Manufacturing	Freight Group	Lease	37,000
Racine, WI	Engineering/Office	Freight Group	Lease	32,500
Carson City, NV	Service Center	Freight Group	Lease	22,000
Chicago, IL	Service Center	Freight Group	Lease	19,200
Spartanburg, SC	Manufacturing/Service	Transit Group	Lease	183,600
Buffalo Grove, IL	Manufacturing	Transit Group	Lease	115,570
Plattsburgh, NY	Manufacturing	Transit Group	Lease	64,000
Elmsford, NY	Service Center	Transit Group	Lease	28,000
Baltimore, MD	Service Center	Transit Group	Lease	7,200
Richmond, CA	Service Center	Transit Group	Lease	5,400
Sun Valley, CA	Service Center	Transit Group	Lease	4,000
Atlanta, GA	Service Center	Transit Group	Lease	1,200
Mountaintop, PA	Idle		Own	225,000 <sup>(2)</sup>
St. Louis, MO	Idle		Own	62,000
<b>International</b>				
Doncaster, UK	Manufacturing/Service	Freight Group	Own	330,000
Stoney Creek, (Ontario), Canada	Manufacturing/Service	Freight Group	Own	189,200
Wallaceburg, (Ontario), Canada	Foundry	Freight Group	Own	127,600
San Luis Potosi, Mexico	Manufacturing	Freight Group	Own	48,600
San Luis Potosi, Mexico	Foundry	Freight Group	Own	24,500
Wetherill Park, Australia	Manufacturing	Freight Group	Lease	73,100
Kolkatta, India	Manufacturing	Freight Group	Lease	32,000
Schweighouse, France	Manufacturing	Freight Group	Lease	30,000
Tottenham, Australia	Manufacturing	Freight Group	Lease	26,900
Sydney, Australia	Sales Office	Freight Group	Lease	11,250
St. Laurent, (Quebec), Canada	Manufacturing	Transit Group	Own	106,000
Jiangsu, China	Manufacturing	Transit Group	Own	80,000
Sassuolo, Italy	Manufacturing	Transit Group	Lease	30,000
Pointe-aux-Trembles, (Quebec), Canada	Manufacturing	Transit Group	Lease	20,000
Burton on Trent, UK	Manufacturing	Transit Group	Lease	18,000
Etobicoke, (Ontario), Canada	Service Center	Transit Group	Lease	3,800
Calgary, (Alberta), Canada	Idle		Own	32,000 <sup>(3)</sup>

<sup>(1)</sup> Approximately 250,000 square feet are currently used in connection with the Company's corporate and manufacturing operations. The remainder is leased to third parties.

<sup>(2)</sup> As of January 2004, this property is under contract for sale.

<sup>(3)</sup> As of February 2004, this property is under contract for sale.

**Item 3. LEGAL PROCEEDINGS**

Information with respect to legal proceedings is included in Note 19 of “Notes to Consolidated Financial Statements” included in Part IV, Item 15 of this report.

**Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

**EXECUTIVE OFFICERS AND DIRECTORS**

The following table provides information on our executive officers and directors. Messrs. Brooks, Kassling and Miscoll will serve as directors until the 2004 annual meeting of stockholders and until their successors have been duly elected and qualified. Messrs. Fernandez, Foster and Napier will serve as directors until the 2005 annual meeting of the stockholders and until they or their successors have been duly elected and qualified. Messrs. Davies, Davis and Howell will serve as directors until the 2006 annual meeting of stockholders and until their successors have been duly elected and qualified. The executive officers are elected annually by our Board of Directors, at an organizational meeting held immediately after each annual meeting, and serve at the discretion of the Board.

<u>Name</u>	<u>Age</u>	<u>Position</u>
William E. Kassling	60	Director and Chairman of the Board
Gregory T. H. Davies	57	Director, President and Chief Executive Officer
Robert J. Brooks	60	Director and Executive Vice President — Strategic Development
Alvaro Garcia-Tunon	51	Senior Vice President, Chief Financial Officer and Secretary
Anthony J. Carpani	51	Vice President, Group Executive, Friction
Patrick D. Dugan	37	Vice President and Controller
Paul E. Golden	34	Vice President, Group Executive, Freight
Robert P. Haag	39	President, Railway Electronics
Timothy J. Logan	50	Vice President, International
James E. McClaine	62	Vice President, Railroad Service
Barry L. Pennypacker	43	Vice President, Performance First
Gary P. Prasser	46	Vice President, Group Executive, Transit
George A. Socher	55	Vice President, Internal Audit and Taxation
Scott E. Wahlstrom	40	Vice President, Human Resources
Mark S. Warner	49	Vice President and General Manager, MotivePower, Inc.
Timothy R. Wesley	42	Vice President, Investor Relations and Corporate Communications

*William E. Kassling* has been a director and Chairman of the Board of Directors since 1990 and served as Chief Executive Officer until February 2001. Mr. Kassling was also President of WABCO from 1990 through February 1998. From 1984 until 1990 he headed the Railway Products Group of American Standard Inc. Between 1980 and 1984 he headed American Standard’s Building Specialties Group, and between 1978 and 1980 he headed Business Planning for American Standard. Mr. Kassling is a director of Aearo Corporation, Scientific-Atlanta, Inc. and Parker Hannifin Corporation.

*Gregory T. H. Davies* has served as a director since February 1999 and Chief Executive Officer since February 2001. Mr. Davies joined us in March 1998 as President and Chief Operating Officer. Prior to March 1998, Mr. Davies had been with Danaher Corporation since 1988, where he was Vice President and Group Executive responsible for its Jacobs Vehicle Systems, Delta Consolidated Industries and A.L. Hyde Corporation operating units. Prior to that, he held executive positions at Cummins Engine Company and Ford Motor Company.

*Robert J. Brooks* has served as a director since 1990 and Executive Vice President-Strategic Development since March 2003. Mr. Brooks was Executive Vice President, Chief Financial Officer and Secretary of the Company from 1990 until March 2003. From 1986 until 1990 he served as worldwide Vice President, Finance for the Railway Products Group of American Standard, Inc. Mr. Brooks is a director of Crucible Materials Corporation.

*Alvaro Garcia-Tunon* has been Senior Vice President, Chief Financial Officer and Secretary of the Company since March 2003. Mr. Garcia-Tunon was Senior Vice President,

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Finance of the Company from November 1999 until March 2003 and Treasurer of the Company from August 1995 until November 1999. From 1990 until August 1995, Mr. Garcia-Tunon was Vice President of Business Development of Pulse Electronics, Inc.

*Anthony J. Carpani* has been Vice President, Group Executive, Friction since June 2000. Previously, Mr. Carpani was Managing Director of our Australian-based subsidiary, F.I.P. Ltd. (formerly known as Futuris Brakes, International) from 1992 until June 2000.

*Patrick D. Dugan* joined Wabtec as Vice President, Corporate Controller in November 2003. Prior to joining Wabtec, Mr. Dugan served as Vice President and Chief Financial Officer of CWI International, Inc. from December 1996 to November 2003. Prior to 1996, he worked for PricewaterhouseCoopers providing business assurance and advisory services.

*Paul E. Golden* has been Vice President, Group Executive, Freight, since February of 2001. Prior to that, he was President of the Company's Cardwell Westinghouse business unit from November 1999 until February of 2001. Previously, Mr. Golden served as Vice President and General Manager of the Cardwell Westinghouse business unit and as Director of WABCO Performance Systems from June 1998 until November 1999. Prior to 1998, Mr. Golden held management and operations positions with Danaher Corporation and Federal-Mogul Corporation.

*Robert P. Haag*, President of Railway Electronics, joined Wabtec in 1999. He has over 18 years' experience in communications and systems requirements analysis. Before joining Wabtec, Mr. Haag was employed at GTE where he developed telephone switching systems.

*Timothy J. Logan* has been the Vice President, International, since August 1996. Previously, from 1987 until August 1996, Mr. Logan was Vice President, International Operations for Ajax Magnethermic Corporation and from 1983 until 1987 he was President of Ajax Magnethermic Canada, Ltd.

*James E. McClaine* joined Wabtec with the Pulse Electronics acquisition in 1995 and became President of Wabtec's Railway Electronics division. Mr. McClaine now serves as Vice President of Railroad Service.

*Barry L. Pennypacker* has been Vice President, Performance First since February 2004. Previously, from 1999 until 2004, Mr. Pennypacker was Vice President of Quality and Performance Systems. From 1997 to 1999, Mr. Pennypacker was director of manufacturing of Stanley Works. He has been a practitioner of lean manufacturing principles for almost 20 years in both private and public organizations.

*Gary P. Prasser* has served as Vice President, Group Executive, Transit, since September 2003. From October 2001 to September 2003, he served as President of the Company's Cardwell Westinghouse business unit and Vice President, Manufacturing of the Company's Freight Group. He joined Wabtec in August 1999 and served as President of the Company's Motor Coils subsidiary from November 1999 to October 2001. From January 1996 to July 1999, Mr. Prasser was President of Joslyn Manufacturing, a subsidiary of Danaher Corporation.

*George A. Socher* has been Vice President, Internal Audit and Taxation, of the Company since November 1999. From July 1995 until November 1999, Mr. Socher was Vice President and Corporate Controller of the Company. From 1994 until June 1995, Mr. Socher was Corporate Controller and Chief Accounting Officer of Sulcus Computer Corp. From 1988 until 1994 he was Corporate Controller of Stuart Medical, Inc.

*Scott E. Wahlstrom* has been Vice President, Human Resources, since November 1999. Previously, Mr. Wahlstrom was Vice President, Human Resources & Administration of MotivePower Industries, Inc. from August 1996 until November 1999. From September of 1994 until August of 1996, Mr. Wahlstrom served as Director of Human Resources for MotivePower Industries, Inc.

*Mark S. Warner* has served Wabtec as Vice President and General Manager of MotivePower, Inc. since July 2000. Mr. Warner became Vice President, Operations and Maintenance, Motive Power Industries, Inc. which he was responsible for from 1994 until July 2000. From 1991 until 1994, Mr. Warner was Division Materials Manager for MK Rail Corporation.

*Timothy R. Wesley* has been Vice President, Investor Relations and Corporate Communications, since November 1999. Previously, Mr. Wesley was Vice President, Investor and Public Relations of MotivePower Industries, Inc. from August 1996 until November 1999. From February 1995 until August 1996, he served as Director, Investor and Public Relations of MotivePower Industries, Inc. From 1993 until February 1995, Mr. Wesley served as Director, Investor and Public Relations of Michael Baker Corporation.

**PART II****Item 5. MARKET FOR REGISTRANT'S COMMON STOCK AND RELATED STOCKHOLDER MATTERS**

The Common Stock of the Company is listed on the New York Stock Exchange. As of March 11, 2004, there were 44,687,830 shares of Common Stock outstanding held by 991 holders of record. The high and low sales price of the shares and dividends declared per share were as follows:

<u>2003</u>	<u>High</u>	<u>Low</u>	<u>Dividends</u>
First Quarter	\$14.28	\$10.16	\$ 0.01
Second Quarter	\$14.97	\$11.15	\$ 0.01
Third Quarter	\$16.83	\$13.30	\$ 0.01
Fourth Quarter	\$18.44	\$14.44	\$ 0.01
<u>2002</u>	<u>High</u>	<u>Low</u>	<u>Dividends</u>
First Quarter	\$15.48	\$11.85	\$ 0.01
Second Quarter	\$15.99	\$12.50	\$ 0.01
Third Quarter	\$14.15	\$11.80	\$ 0.01
Fourth Quarter	\$14.73	\$12.85	\$ 0.01

The Company's credit agreement restricts the ability to make dividend payments, with certain exceptions. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" and see Note 9 of "Notes to Consolidated Financial Statements" included in Part IV, Item 15 of this report.

At the close of business on March 11, 2004, the Company's Common Stock traded at \$14.47 per share.

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**Item 6. SELECTED FINANCIAL DATA**

The following table shows selected consolidated financial information of the Company and has been derived from audited financial statements. This financial information should be read in conjunction with, and is qualified by reference to, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the Consolidated Financial Statements of the Company and the Notes thereto included elsewhere in this Form 10-K.

<i>In thousands, except per share amounts</i>	Year Ended December 31,				
	2003	2002	2001	2000	1999
<b>Income Statement Data</b>					
Net sales	\$ 717,924	\$ 696,195	\$ 783,698	\$ 811,178	\$ 844,079
Gross profit <sup>(1)</sup>	189,450	179,471	209,926	235,662	274,910
Operating expenses <sup>(2)</sup>	(137,741)	(131,937)	(152,145)	(139,669)	(144,255)
Merger and restructuring charge	—	—	(3,723)	(18,202)	(42,903)
<b>Income from operations</b>	<b>\$ 51,709</b>	<b>\$ 47,534</b>	<b>\$ 54,058</b>	<b>\$ 77,791</b>	<b>\$ 87,752</b>
Interest expense	\$ (10,377)	\$ (18,072)	\$ (33,501)	\$ (43,649)	\$ (44,109)
Other (expense) income <sup>(3)</sup>	(6,290)	(5,558)	(2,130)	3,776	428
Income from continuing operations before cumulative effect of accounting change	22,252	16,310	13,962	19,200	23,184
Income from discontinued operations (net of tax)	451	403	6,360	6,193	13,439
(Loss) gain on sale of discontinued operations (net of tax)	—	(529)	41,458	—	—
<b>Income before cumulative effect of accounting change</b>	<b>22,703</b>	<b>16,184</b>	<b>61,780</b>	<b>25,393</b>	<b>36,623</b>
<b>Net income (loss) <sup>(4)</sup></b>	<b>\$ 22,703</b>	<b>\$ (45,479)</b>	<b>\$ 61,780</b>	<b>\$ 25,393</b>	<b>\$ 36,623</b>
<b>Diluted Earnings per Common Share</b>					
Income from continuing operations before cumulative effect of accounting change	\$ 0.51	\$ 0.37	\$ 0.32	\$ 0.45	\$ 0.52
Net income (loss) <sup>(4)</sup>	\$ 0.52	\$ (1.04)	\$ 1.43	\$ 0.59	\$ 0.83
Cash dividends declared per share	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04

	As of December 31				
	2003	2002	2001	2000	1999
<b>Balance Sheet Data</b>					
Total assets	\$ 656,305	\$ 588,865	\$ 729,952	\$ 984,047	\$ 996,676
Cash	70,328	19,210	53,949	6,071	7,056
Total debt	190,225	195,151	241,870	540,197	568,587
Shareholders’ equity	248,293	199,262	245,271	196,371	181,878

<sup>(1)</sup> In 2000, includes charges for merger and restructuring plan of \$2 million and legal settlement of \$2 million. In 1999, includes charges for merger and restructuring plan of \$5.2 million.

<sup>(2)</sup> In 2003, includes \$1.6 million of write-offs relating to non-operating assets. In 2001, includes charges for asset writedowns of \$9.3 million. Goodwill and other indefinite life intangibles amortization was \$7 million, \$6.9 million and \$6.5 million in 2001, 2000 and 1999, respectively. There was no such amortization expense recorded in 2003 and 2002, respectively.

<sup>(3)</sup> In 2001, includes gain on asset sales of \$685,000. In 2000, includes gain on asset sale of \$4.4 million.

<sup>(4)</sup> Includes the items noted above, as well as the following: In 2002, a \$61.7 million, net of tax, cumulative effect of accounting change for goodwill. In 2001, a \$2 million tax benefit for research and development tax credits. In 2000, a write-off of \$5.1 million for a deferred tax asset relating to the termination of the Employee Stock Ownership Plan (ESOP).

**Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

**OVERVIEW**

Wabtec is one of the world's largest providers of value-added, technology-based products and services for the global rail industry. Our products are found on virtually all locomotives, freight cars and passenger transit vehicles in the U.S., as well as in certain markets throughout the world. Our products enhance safety, improve productivity and reduce maintenance costs for customers, and many of our core products and services are essential in the safe and efficient operation of freight rail and passenger transit vehicles.

Wabtec is a global company with operations in nine countries. In 2003, about 79 percent of the Company's revenues came from its North American operations, but Wabtec also sold products or services in 62 countries around the world.

*Management Review of 2003 and Future Outlook*

Wabtec's long-term financial goals are to generate free cash flow in excess of net income, maintain a strong credit profile while minimizing our overall cost of capital, increase margins through strict attention to cost controls, and increase revenues through a focused growth strategy. In addition, management monitors the Company's short-term operational performance through measures such as quality and on-time delivery.

In 2003, we achieved the following:

- Generated cash of \$56 million, more than double net income of \$23 million;
- Debt net of cash, was \$120 million at Dec. 31, 2003, compared to \$176 million at the end of 2002;
- Gross margin increased to 26.4% compared to 25.8% for 2002, as a favorable product mix and cost reductions more than offset the negative impact of foreign currency exchange rates;
- Revenues increased 3%, as higher sales of freight car original equipment in North America and higher international sales combined to offset lower sales of aftermarket components and transit original equipment;
- Product quality, as measured by first-time pass rate, improved by 40%;
- On-time delivery increased 8%.

We achieved these results despite continued weakness in demand for aftermarket products and services, and a 23% drop in sales in the Transit Group, which completed several major contracts in 2002. In addition, foreign currency exchange rates had a negative impact on the Company's Canadian operations.

We expect increased demand for our products as the U.S. economy recovers, government transit spending increases and Class I railroads, utilities and leasing companies begin to reinvest in their fleets after deferring capital spending during the difficult U.S. economic environment since 2001. We anticipate that this increased capital spending will positively impact rail industry fundamentals, which have shown gradual improvement over the past few quarters, as evidenced by better-than-expected freight car orders and backlog. For example, freight car deliveries increased to 9,170 in the fourth quarter of 2003, an increase of 11% over the prior quarter and up 91% over the prior year. The table below demonstrates the improving trends in the freight car segment of the rail industry:

	Orders	Deliveries	Backlog
First quarter 2002	2,637	3,855	24,055
Second quarter 2002	6,973	4,155	9,281
Third quarter 2002	10,135	4,925	14,491
Fourth quarter 2002	8,712	4,801	18,402
First quarter 2003	11,767	6,614	24,055
Second quarter 2003	16,693	7,365	33,383
Third quarter 2003	6,726	8,251	31,858
Fourth quarter 2003	12,063	9,170	33,967

*Source: Railway Supply Institute*

Freight car, locomotive and transit car deliveries for the industry are expected to trend upwards providing an expanding market for the Company:

	Actual		Forecast		
	2002	2003	2004	2005	2006
Freight car	17,714	31,400	37,500	41,500	45,000
Transit	1,322	669	754	540	798
Locomotive	969	749	1,050	785	980

*Based on company estimates*

In 2004, we expect demand to improve in two of our key markets (components for new freight cars and new locomotives), but we do not expect growth in the aftermarket, which represents about 56% of sales.

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Looking beyond 2004, we expect to generate increases in sales and earnings from executing our four-point growth strategy (see page 5 for more details):

- Expand sales of systems offerings as “Tier 1” supplier;
- Accelerate new product and service development;
- Expand globally;
- Continuous improvement through lean principles.

In 2004 and beyond, we will continue to face many challenges, including increased costs for raw materials, especially steel; higher costs for medical and insurance premiums; and foreign currency fluctuations. In addition, we face general economic risks, as well as the risk that our customers could curtail spending on new and existing equipment. Risks associated with our four-point growth strategy include the level of investment that customers are willing to make in new technologies developed by the industry and the Company, and risks inherent in global expansion. When necessary, we will modify our financial and operating strategies to reflect changes in market conditions and risks.

### RESULTS OF OPERATIONS

The following table shows our Consolidated Statements of Operations for the years indicated.

<i>In millions</i>	Year Ended December 31,		
	2003	2002	2001
Net sales	\$ 717.9	\$ 696.2	\$ 783.7
Cost of sales	(528.5)	(516.7)	(573.8)
Gross profit	189.4	179.5	209.9
Selling, general and administrative expenses	(100.5)	(93.0)	(96.7)
Merger and restructuring charges	—	—	(3.7)
Engineering expenses	(32.9)	(33.6)	(33.2)
Asset writedowns	—	—	(9.3)
Amortization expense	(4.3)	(5.3)	(13.0)
Total operating expenses	(137.7)	(131.9)	(155.9)
Income from operations	51.7	47.6	54.0
Interest expense	(10.4)	(18.1)	(33.5)
Other expense net	(6.3)	(5.6)	(2.1)
Income from continuing operations before income taxes and cumulative effect of accounting change	35.0	23.9	18.4
Income tax expense	(12.8)	(7.6)	(4.4)
Income from continuing operations before cumulative effect of accounting change	22.2	16.3	14.0
Discontinued operations			
Income from discontinued operations (net of tax)	0.5	0.4	6.4
(Loss) gain on sale of discontinued operations (net of tax)	—	(0.5)	41.4
Income before cumulative effect of accounting change	22.7	16.2	61.8
Cumulative effect of accounting change for goodwill, net of tax	—	(61.7)	—
Net income (loss)	\$ 22.7	\$ (45.5)	\$ 61.8



2003 COMPARED TO 2002

The following table summarizes the results of operations for the period:

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	Percent Change
Net sales	\$ 717,924	\$ 696,195	3.1%
Income from operations	51,709	47,534	8.8%
Income before cumulative effect of accounting change	22,703	16,184	40.3%
Net income (loss)	22,703	(45,479)	149.9%

In 2002, we completed fair value assessments of goodwill and wrote down the carrying value of goodwill by \$90 million (\$83.2 million for the Freight Group and \$6.8 million for the Transit Group) in accordance with the adoption of SFAS No. 142 "Goodwill and Other Intangible Assets." The total impact of the writedown, net of taxes, was \$61.7 million.

The following table shows the Company's net sales by business segment:

<i>In thousands</i>	For the year ended December 31,	
	2003	2002
Freight Group	\$522,279	\$443,443
Transit Group	195,645	252,752
Net sales	\$717,924	\$696,195

*Net sales.* Net sales for 2003 increased \$21.7 million, or 3.1%, as compared to 2002. The increased sales in the Freight Group more than offset lower sales in the Transit Group. The Freight Group's increased sales reflected higher sales of components for new freight cars and locomotives, and commuter locomotives, as well as higher international sales. Industry deliveries of new freight cars for 2003 increased to about 31,400 units as compared to about 17,700 in 2002. The Transit Group's decreased sales were due to the completion of a contract to supply components for New York City subway cars in 2002 and lower aftermarket sales.

*Gross profit.* Gross profit increased to \$189.5 million in 2003 compared to \$179.5 million in 2002. Gross profit is dependent on a number of factors including pricing, sales volume and product mix. Gross profit, as a percentage of sales, was 26.4% compared to 25.8% in 2002. The increase in gross profit percentage is primarily due to higher sales and favorable product mix, which more than offset the negative impact of the weakening U.S. dollar versus the Canadian dollar.

The following table shows our operating expenses:

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	Percent Change
Selling, general and administrative expenses	\$ 100,503	\$ 93,023	8.0%
Engineering expenses	32,929	33,592	(2.0)%
Amortization expense	4,309	5,322	(19.0)%
Total operating expenses	\$ 137,741	\$ 131,937	4.4%

*Operating expenses.* Operating expenses increased \$5.8 million in 2003 as compared to 2002 due to the write-off of non-operating assets of \$1.6 million, and higher medical and insurance premiums, partially offset by reduced amortization expense. Amortization expense decreased due to certain intangible assets having been fully amortized.

*Income from operations.* Income from operations totaled \$51.7 million (or 7.2% of sales) in 2003 compared with \$47.5 million (or 6.8% of sales) in 2002. Higher operating income resulted from increased sales and gross margins, but was partially offset by increased operating expenses in 2003.

*Interest expense.* Interest expense decreased 42.6% in 2003 as compared to 2002 primarily due to a substantial decrease in debt.

*Other expense.* The Company recorded foreign exchange losses from the translation of balance sheet accounts of \$2.8 million and \$1.2 million, respectively, in 2003 and 2002.

*Income taxes.* The effective income tax rate was 36.5% for 2003 and 32% for 2002. The change in the effective tax rate was due to a higher effective state tax rate and increased statutory rates in foreign jurisdictions. Also, increased income has reduced the significance of the favorable impact the Company's utilization of foreign tax credits has on the effective tax rate.

*Net income.* Net income for 2003 increased \$68.2 million, compared with 2002, which included a \$61.7 million, net of tax, write off of goodwill. Income before the cumulative effect of an accounting change increased \$6.5 million, compared with 2002. The increase was due to increased sales, improved margins, and lower interest expense.

## 2002 COMPARED TO 2001

The following table summarizes the results of operations for the period:

<i>In thousands</i>	For the year ended December 31,		
	2002	2001	Percent Change
Net sales	\$ 696,195	\$ 783,698	(11.2)%
Income from operations	47,534	54,058	(12.1)%
Income before cumulative effect of accounting change	16,184	61,780	(73.8)%
Net (loss) income	(45,479)	61,780	(173.6)%

A number of events occurred over the comparative period that impacted our results of operations and financial condition including:

- In 2002, we completed fair value assessments of goodwill and wrote down the carrying value of goodwill by \$90 million (\$83.2 million for the Freight Group and \$6.8 million for the Transit Group) in accordance with the adoption of SFAS No. 142 "Goodwill and Other Intangible Assets." The total impact of the writedown, net of tax was \$61.7 million.
- In July 2002, we redeemed at par (face) \$175 million of the 9.375% senior notes due in 2005 through the use of cash on hand and additional borrowings under the credit agreement. This redemption resulted in a non-cash loss of \$1.9 million, relating to a write-off of deferred debt issuance costs, which was recorded as interest expense.
- In November 2001, we sold certain assets to GE Transportation Systems for \$238 million in cash. The assets sold primarily included locomotive aftermarket products and services for which we were not the OEM. The sale resulted in an after-tax gain of \$48.7 million, which is reflected on the income statement as a gain, net of tax, on the sale of discontinued operations.
- In the fourth quarter of 2001, we decided to exit certain businesses. The net amount of these businesses was written down to their estimated realizable value. This resulted in a pre-tax charge of \$9.3 million and an after-tax charge of \$7.2 million.

*Merger and Restructuring Plan.* In 2001, the Company completed a merger and restructuring plan with costs totaling \$71 million pre-tax, with approximately \$2 million of the charge expensed in 2001, \$20 million in 2000 and \$49 million in 1999. The plan involved the elimination of duplicate facilities and excess capacity, operational realignment and related workforce reductions, and the evaluation of certain assets as to their perceived ongoing benefit to the Company.

The following table shows the Company's net sales by business segment:

<i>In thousands</i>	For the year ended December 31,	
	2002	2001
Freight Group	\$443,443	\$490,261
Transit Group	252,752	293,437
Net sales	\$696,195	\$783,698

*Net sales.* Net sales for 2002 decreased \$87.5 million or 11.2% to \$696.2 million as compared to the prior period. Both the Freight Group and Transit Group had lower sales. The Freight Group's decreased sales reflected lower sales of components for new freight cars and locomotives. In 2002, industry deliveries of new freight cars decreased to 17,717 units as compared to 34,247 in the same period in 2001. In 2002, industry deliveries of new locomotives decreased to 969 as compared to 1,085 in the same period in 2001. The Transit Group's decreased sales were primarily due to the completion of a supply contract for New York City subway cars in the third quarter of 2002.

*Gross profit.* Gross profit decreased to \$179.5 million (or 25.8% of sales) in 2002 compared to \$209.9 million (or 26.8% of sales) in the same period of 2001. The decrease in gross profit and margin is largely attributed to the effect of a decrease in sales volumes, which had a negative impact of about \$35 million.

The following table shows our operating expenses for the period:

<i>In thousands</i>	For the year ended December 31,		
	2002	2001	Percent Change
Selling, general and administrative expenses	\$ 93,023	\$ 96,723	(3.8)%
Merger and restructuring charges	—	3,723	NA
Engineering expenses	33,592	33,156	1.3%
Asset writedowns	—	9,253	NA
Amortization expense	5,322	13,013	(59.1)%
Total operating expenses	\$ 131,937	\$ 155,868	(15.4)%

*Operating expenses.* Operating expenses improved by \$23.9 million in 2002 as compared to 2001. Included in operating expenses for 2001 were goodwill amortization of \$7 million, \$9.3 million for asset writedowns, \$3.7 million for merger and restructuring charges and \$1.7 million for severance costs in 2001. The remaining decrease in operating expenses was due to a decrease in selling, general and administrative expenses.

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*Income from operations.* Income from operations totaled \$47.5 million in 2002 compared with \$54.1 million in 2001. Operating income would have been \$75.8 million in 2001 excluding the adjustments discussed in the prior paragraph. Lower operating income resulted from decreased sales volumes in 2002 (see Note 20 of "Notes to Consolidated Financial Statements" included in Part IV, Item 15 of this report).

*Interest expense.* Interest expense decreased 46.1% in 2002 as compared to 2001, primarily due to a decrease in debt and interest rates.

*Other expense.* The Company recorded foreign exchange losses of \$1.2 million and \$1.7 million, respectively, in 2002 and 2001 due to exchange rate fluctuations. Also in 2002, the Company wrote down a facility held for sale, resulting in a \$2 million charge.

*Income taxes.* The effective income tax rate for 2002 was 32% as compared to 24.2% in 2001. The rate includes the effect of research and development and foreign tax credits of \$772,000 and \$2 million respectively, for 2002 and 2001. Excluding these tax credits, the rate would have been 35% in both 2002 and 2001.

*Net income.* Net income decreased \$107.3 million, or 173.6%, compared with the same period the prior year. However, adjusting for the 2001 gain on sale of certain businesses of \$41.5 million, and the 2002 goodwill writedown of \$61.7 million (net of tax), net income declined \$4.1 million, principally the result of overall lower sales activity in 2002 compared to 2001.

### **Income taxes**

In the next three years cash outlays for income taxes will be less than income tax expense due to the amortization of goodwill and intangible assets which will continue to be amortized for tax purposes. The Company's current level of pre-tax income is sufficient to utilize the deferred tax assets. As of 2003 the Company has utilized all previous federal net operating losses, and a portion of the reported federal credits in the amount of \$3.2 million will be realized through a carry back regardless of current income generated. The Company engages in diverse foreign activity whereby certain funds could be repatriated to the U.S. This would afford the Company the opportunity to utilize certain assets more quickly. Management believes tax planning opportunities exist in various foreign countries that will allow the Company to utilize foreign net operating loss carryforwards. Any tax assets that are uncertain regarding realization have a valuation allowance in the full amount of the asset. Management believes the remaining assets will be realized in the normal course of business.

Significant differences between pre-tax earnings for financial reporting purposes and taxable income for income tax purposes consist of the following:

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	2001
Accrued environmental expense	\$ (800)	\$ (360)	\$ (850)
Deferred compensation expense and other benefits	(4,800)	3,650	(2,025)
Plant, equipment, and intangibles	(17,300)	(16,600)	(3,100)
Inventory reserves	925	250	(3,525)
Pension liabilities	2,600	145	2,700
Warranty reserves	(5,900)	2,800	(3,900)
Other reserves	(8,000)	(5,700)	(10,300)
Non-recurring items	(3,900)	—	—
Extraordinary/discontinued	—	90,000	40,800

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### Liquidity and Capital Resources

Liquidity is provided primarily by operating cash flow and borrowings under our credit facilities with a consortium of commercial banks (“credit agreement”). The following is a summary of selected cash flow information and other relevant data:

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	2001
Cash provided (used) by:			
Operating activities	\$ 55,904	\$ 15,658	\$ 119,097
Investing activities	(12,549)	(10,817)	227,413
Financing activities:			
Debt paydown	(4,949)	(45,941)	(298,280)
Other	14,125	1,887	1,093
Earnings before interest, taxes, depreciation and amortization (EBITDA)	71,154	67,363	132,807

The following is a reconciliation of EBITDA to net income (loss):

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	2001
Net income (loss)	\$ 22,703	\$ (45,479)	\$ 61,780
Interest expense	10,377	18,072	33,501
Income tax expense	12,790	7,594	4,465
Cumulative effect of accounting change, net of tax	—	61,663	—
Depreciation	20,975	20,191	20,048
Amortization	4,309	5,322	13,013
Earnings before interest, taxes, depreciation and amortization (EBITDA)	\$ 71,154	\$ 67,363	\$ 132,807

EBITDA is defined as earnings before deducting interest expense, income taxes and depreciation and amortization. Although EBITDA is not a measure of performance calculated in accordance with generally accepted accounting principles, management believes that it is useful to an investor in evaluating Wabtec because it is widely used as a measure to evaluate a Company’s operating performance and ability to service debt. Financial covenants in our credit facility include ratios based on EBITDA. EBITDA does not purport to represent cash generated by operating activities and should not be considered in isolation or as substitute for measures of performance in accordance with

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generally accepted accounting principles. In addition, because EBITDA is not calculated identically by all companies, the presentation here may not be comparable to other similarly titled measures of other companies. Management's discretionary use of funds depicted by EBITDA may be limited by working capital, debt service and capital expenditure requirements, and by restrictions related to legal requirements, commitments and uncertainties.

*Operating activities.* Operating cash flow in 2003 was \$55.9 million as compared to \$15.7 million in 2002. Working capital remained relatively unchanged, as receivables and inventory increased \$13.2 million, and accounts payable increased \$14.1 million.

Operating cash flow in 2002 was \$15.7 million as compared to \$119.1 million in the same period a year ago. Working capital decreased \$6 million in 2002, as inventory decreased by \$16 million while payables and accruals decreased by \$10 million. Cash from operating activities in 2001 was positively impacted by the sale of certain businesses and its corresponding reduction in working capital.

During 2002 and 2001, cash outlays for merger and restructuring activities were approximately \$2.5 million and \$6.8 million, respectively, and are reported as a reduction to cash provided by operating activities. Also, in 2002, \$30 million was paid in taxes related to the gain on the sale of locomotive aftermarket assets in 2001. The operating cash flow in 2002 excluding the \$30 million tax payment from 2001 was approximately \$46 million.

*Investing activities.* In 2003 and 2002, cash used in investing activities was \$12.5 and \$10.8 million, respectively, consisting almost entirely of capital expenditures, net of disposals. In 2001 cash provided by investing activities was \$227.4 million. Adjusting 2001 for the gross proceeds from the sale of certain businesses for \$238 million, cash used by investing activities would have been approximately \$10.6 million. In 2002 and 2001 we used \$1.7 million and \$3.7 million for certain business acquisitions. See Note 5 of "Notes to Consolidated Financial Statements" included in Part IV, Item 15 of this report, for further information.

Capital expenditures for continuing operations were \$17.5 million, \$14.1 million and \$20.7 million in 2003, 2002 and 2001, respectively. The majority of capital expenditures for these periods relates to upgrades to and replacement of existing equipment.

*Financing activities.* In 2003, cash provided by financing activities was \$9.2 million compared to cash used by financing activities of \$44.1 million in 2002.

In 2003, we issued \$150 million of Senior Notes due in August 2013 ("the Notes"). The Notes were issued at par and interest accrues at 6.875% and is payable semi-annually on January 31 and July 31 of each year, commencing on January 31, 2004. The proceeds were used to repay debt outstanding under the Company's then existing bank credit agreement, and for general corporate purposes.

The Notes are senior unsecured obligations of the Company and rank pari passu with all existing and future senior debt and senior to all our existing and future subordinated indebtedness of the Company. The indenture under which the Notes were issued contains covenants and restrictions which limit among other things, the following: the incurrence of indebtedness, payment of dividends and certain distributions, sale of assets, change in control, mergers and consolidations and the incurrence of liens.

In November 2003, we issued common stock in connection with the registration and sale of stock by certain selling shareholders. We issued 726,900 shares of common stock realizing total proceeds of about \$10 million. See "Prospectus Summary — Recent development."

Cash used for financing activities was \$44.1 million in 2002 versus \$297.2 million in 2001. During 2002, we reduced long-term debt by \$45.9 million. During 2001, we reduced long-term debt by \$298.3 million. We repaid \$175 million of senior notes in the third quarter of 2002 to take advantage of lower interest rates on our revolving credit agreement. Historically, we have financed the purchase of significant businesses utilizing cash flow generated from operations and amounts available under its credit facilities.

The following table shows our outstanding indebtedness at December 31, 2003 and 2002. The revolving credit note and other term loan interest rates are variable and dependent on market conditions.

<i>In thousands</i>	December 31,	
	2003	2002
Revolving credit agreement due 2004	\$ 40,000	\$ 189,700
6.875% Senior notes	150,000	—
5.5% Industrial revenue bond due 2008	—	4,909
Other	225	542
<b>Total</b>	<b>190,225</b>	<b>195,151</b>
Less—current portion	—	833
<b>Long-term portion</b>	<b>\$ 190,225</b>	<b>\$ 194,318</b>

Cash balance at December 31, 2003 and 2002 was \$70.3 million and \$19.2 million, respectively. The financial statements have been prepared based on the terms of the Refinanced Credit Agreement.

*Credit agreements.* In November 1999, we refinanced the then existing unsecured MotivePower credit agreement (the "Credit Agreement") with a consortium of commercial banks. This unsecured Credit Agreement provided a \$275 million five-year revolving credit facility expiring in November 2004 and a 364-day \$275 million convertible revolving credit facility maturing in November 2004. In November 2001, we

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and the banks negotiated a reduction in the 364-day facility to \$100 million, as a result of the \$208 million, net of tax, cash proceeds from the sale of locomotive businesses to GE. In November 2002, we negotiated a further reduction in the 364-day facility from \$100 million to \$95 million. In July 2003, we and the banks negotiated a reduction in both facilities to a total of \$225 million as a result of the issuance of the Senior Notes. The \$225 million facility provided a reduced five-year facility of \$167.2 million and a reduced 364-day facility of \$57.8 million. In November 2003 we allowed the \$57.8 million 364-day facility to expire. At December 31, 2003, we had available bank borrowing capacity, net of \$19.6 million of letters of credit, of approximately \$107.7 million.

Under the Credit Agreement, we may elect a base rate, an interest rate based on the London Interbank Offered Rates of Interest (“LIBOR”), a cost of funds rate and a bid rate. The base rate is the greater of LaSalle Bank National Association’s prime rate or the federal funds effective rate plus 0.5% per annum. The LIBOR rate is based on LIBOR plus a margin that ranges from 87.5 to 200 basis points depending on our consolidated total indebtedness to cash flow ratios. The current margin is 137.5 basis points. The cost of funds rate is a fluctuating interest rate based on LaSalle Bank National Association’s then cost of funds. Under the bid rate option, any participating bank may propose the interest rate at which it will lend funds, which rate may either be a fixed rate or a floating rate based on LIBOR.

The Credit Agreement limits our ability to declare or pay cash dividends and prohibits us from declaring or making other distributions, subject to certain exceptions. The credit agreement contains various other covenants and restrictions including the following limitations: incurrence of additional indebtedness; mergers, consolidations and sales of assets and acquisitions; additional liens; sale and leasebacks; permissible investments, loans and advances; certain debt payments; capital expenditures; and imposes a minimum interest expense coverage ratio and a maximum debt to cash flow ratio.

The Credit Agreement contains customary events of default, including payment defaults, failure of representations or warranties to be true in any material respect, covenant defaults, defaults with respect to other indebtedness of the Company, bankruptcy, certain judgments against the Company, ERISA defaults and “change of control” of the Company.

Credit Agreement borrowings bear variable interest rates indexed to the indices described above. The maximum credit agreement borrowings, average credit agreement borrowings and weighted-average contractual interest rate on credit agreement borrowings were \$209 million, \$129.3 million and 2.68%, respectively for 2003. To reduce the impact of interest rate changes on a portion of this variable-rate debt, we entered into interest rate swaps which effectively convert a portion of the debt from variable to fixed-rate borrowings during the term of the swap contracts. On December 31, 2003, the notional value of interest rate swaps outstanding totaled \$40 million and effectively changed our interest rate from a variable rate to a fixed rate of 3.98%. The interest rate swap agreements mature in February 2006. We are exposed to credit risk in the event of nonperformance by the counterparties. However, since only the cash interest payments are exchanged, exposure is significantly less than the notional amount. The counterparties are large financial institutions and we do not anticipate nonperformance.

In January 2004, we refinanced the Credit Agreement with a consortium of commercial banks. This “Refinancing Credit Agreement” currently provides a \$175 million five-year revolving credit facility expiring in January 2009. Under the Refinancing Credit Agreement, we may elect a base rate or an interest rate based on the London Interbank Offered Rates of Interest (“LIBOR”). The base rate is the greater of LaSalle Bank National Association’s prime rate or the federal funds effective rate plus 0.5% per annum. The LIBOR rate is based on LIBOR plus a margin that ranges from 100 to 200 basis points depending on our consolidated total indebtedness to cash flow ratios. The current margin is 175 basis points.

The Refinancing Credit Agreement limits our ability to declare or pay cash dividends and prohibits us from declaring or making other distributions, subject to certain exceptions. The Refinancing Credit Agreement contains various other covenants and restrictions including the following limitations: incurrence of additional indebtedness; mergers, consolidations and sales of assets and acquisitions; additional liens; sale and leasebacks; permissible investments, loans and advances; certain debt payments; capital expenditures; and imposes a minimum interest expense coverage ratio and a maximum debt to cash flow ratio.

The Refinancing Credit Agreement contains customary events of default, including payment defaults, failure of representations or warranties to be true in any material respect, covenant defaults, defaults with respect to other indebtedness of the Company, bankruptcy, certain judgments against the Company, ERISA defaults and “change of control” of the Company. Financial covenants include Minimum Interest Coverage Ratio, Maximum Total Debt to EBITDA Ratio, Minimum Net Worth Measurement, and Capital Expenditures Limitations. The Company is in compliance with these measurements and covenants and expects that these measurements will not be any type of limiting factor in executing our operating activities. See Note 9 of “Notes to Consolidated Financial Statements” included in Part IV, Item 15 of this report.

We believe, based on current levels of operations and forecasted earnings, cash flow and liquidity will be sufficient to fund our working capital and capital equipment needs as well as meeting the debt service requirements. If our sources of funds were to fail to satisfy our cash requirements, we may need to refinance our existing debt or obtain additional financing. There is no assurance that such new financing alternatives would be

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available, and, in any case, such new financing, if available, would be expected to be more costly and burdensome than the debt agreements currently in place.

*Extinguishment of other debt.* In June 1995, the Company issued \$100 million of 9.375% Senior Notes due in 2005 (the “1995 Notes”). In January 1999, the Company issued an additional \$75 million of 9.375% Senior Notes due in 2005 (the “1999 Notes”). The 1995 Notes and the 1999 Notes were redeemed at par (face) on July 8, 2002 through the use of cash on hand and additional borrowings under the credit agreement. This redemption resulted in a non-cash loss of \$1.9 million relating to a write-off of deferred debt issuance costs.

In July 1998, a subsidiary of the Company entered into a 10 year \$7.5 million debt obligation for the purchase of a building used in the Company’s operations. The debt was repaid in September 2003.

### **Effects of Inflation**

General price inflation has not had a material impact on the Company’s results of operations. Some of our labor contracts contain negotiated salary and benefit increases and others contain cost of living adjustment clauses, which would cause our labor cost to automatically increase if inflation were to become significant.

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### Contractual Obligations and Off-Balance Sheet Arrangements

We are obligated to make future payments under various contracts such as debt agreements, lease agreements and have certain contingent commitments such as debt guarantees. We have grouped these contractual obligations and off-balance sheet arrangements into operating activities, financing activities, and investing activities in the same manner as they are classified in the Statement of Consolidated Cash Flows to provide a better understanding of the nature of the obligations and arrangements and to provide a basis for comparison to historical information. The table below provides a summary of contractual obligations and off-balance sheet arrangements as of December 31, 2003:

<i>In thousands</i>	<u>Total</u>	<u>2004</u>	<u>2005 to 2006</u>	<u>2007 to 2008</u>	<u>Thereafter</u>
<b>Operating activities:</b>					
Unconditional purchase obligations <sup>(1)</sup>	\$ —	\$ —	\$ —	\$ —	\$ —
Long-term purchase obligations <sup>(1)</sup>	—	—	—	—	—
Operating leases <sup>(2)</sup>	43,500	7,056	12,763	10,786	12,896
Estimated pension funding <sup>(3)</sup>	—	6,400	11,800	11,800	—
Postretirement benefit payments <sup>(4)</sup>	—	2,928	7,930	11,803	—
<b>Financing activities:</b>					
Long-term debt <sup>(5)</sup>	190,225	—	225	—	190,000
Dividends to shareholders <sup>(6)</sup>	—	—	—	—	—
<b>Investing activities:</b>					
Capital projects <sup>(7)</sup>	20,000	20,000	—	—	—
<b>Other:</b>					
Standby letters of credit <sup>(8)</sup>	19,563	19,563	—	—	—
Guarantees <sup>(9)</sup>	3,000	—	—	—	—
<b>Total</b>		<b>\$ 55,947</b>	<b>\$ 32,718</b>	<b>\$ 34,389</b>	

<sup>(1)</sup> Unconditional purchase obligations for the purposes of this disclosure have been defined as a contractual obligation to purchase utilities, electricity, natural gas that is in excess of \$100,000 annually, and \$200,000 in total. Long-term purchase obligations for the purposes of this disclosure have been defined as a contractual obligation to purchase raw materials or supplies that are non-cancelable, and are in excess of \$100,000 annually, and \$200,000 in total.

<sup>(2)</sup> Future minimum payments for operating leases are disclosed by year in Note 15 of the “Notes to Consolidated Financial Statements” included in Part IV, Item 15 of this report.

<sup>(3)</sup> Annual payments and funding are expected to continue into the foreseeable future at the amounts or ranges noted. Pension funding payments are based on actuarial estimates using current assumptions for discount rates, expected return on long-term assets and rate of compensation increases. See further disclosure in Note 10 of the “Notes to Consolidated Financial Statements” included in Part IV, Item 15 of this report.

<sup>(4)</sup> Annual payments and funding are expected to continue into the foreseeable future at the amounts or ranges noted. To estimate the funding requirements, historical benefit payments were utilized assuming 22 percent rate of inflation. See further disclosure in Note 10 of the “Notes to Consolidated Financial Statements” included in Part IV, Item 15 of this report.

<sup>(5)</sup> Scheduled principal repayments of outstanding loan balances (as refinanced subsequent to December 31, 2003) are disclosed by year in Note 9 of the “Notes to Consolidated Financial Statements” included in Part IV, Item 15 of this report.

<sup>(6)</sup> Shareholder dividends are subject to approval by the Company’s Board of Directors, currently at an annual rate of \$1.8 million.

<sup>(7)</sup> The annual capital expenditure budget is subject to approval by the Board of Directors. The 2004 budget amount of \$20 million was approved at the February 2004 Board of Directors meeting.

<sup>(8)</sup> The Company has \$19.6 million in outstanding letters of credit for performance and bid bond purposes, all of which expire in 2004.

<sup>(9)</sup> Guarantee for debt of former operating unit sold in 2001.

*Obligations for operating activities.* We have not entered into any material long-term non-cancelable materials and supply purchase obligations. Operating leases represent multi-year obligations for rental of facilities and equipment. Estimated pension funding and post retirement benefit payments are based on actuarial estimates using current assumptions for discount rates, expected return on long-term assets, rate of compensation increases and health care cost trend rates. Benefits paid for pension obligations were \$5.7 million and \$5.6 million in 2003 and 2002, respectively. Benefits paid for post retirement plans were \$2.1 million and \$1.9 million in 2003 and 2002, respectively. We expect these minimum levels of funding to continue in future periods.

*Obligations for financing activities.* Cash requirements for financing activities consist primarily of long-term debt repayments and dividend payments to shareholders. We have historically paid quarterly dividends to shareholders, subject to quarterly approval by our Board of Directors, currently at a rate of \$1.8 million annually.

In 2001, we sold a subsidiary to that unit’s management team. As part of the sale, we guaranteed approximately \$3 million of bank debt of the buyer, which was used for the purchase financing. In the event that the purchaser cannot repay or refinance the debt without a guarantee by us, the subsidiary would be returned to us. This debt is due in 2004. We have no reason to believe that this debt will not be repaid or refinanced.

*Obligations for investing activities.* Historically, we typically spend approximately \$15-20 million a year for capital expenditures, primarily related to facility expansion efficiency and modernization, health and safety, and environmental control.



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We expect annual capital expenditures in the future will be within this range. In 2004, we have two properties currently under contract for sale and expect to generate approximately \$5 million in sale proceeds once these transactions close.

### **Forward Looking Statements**

We believe that all statements other than statements of historical facts included in this report, including certain statements under “Business” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” may constitute forward-looking statements. We have based these forward-looking statements on our current expectations and projections about future events. Although we believe that our assumptions made in connection with the forward-looking statements are reasonable, we cannot assure you that our assumptions and expectations are correct.

These forward-looking statements are subject to various risks, uncertainties and assumptions about us, including, among other things:

#### **Economic and industry conditions**

- materially adverse changes in economic or industry conditions generally or in the markets served by us, including North America, South America, Europe, Australia and Asia;
- demand for freight cars, locomotives, passenger transit cars, buses and related products and services;
- reliance on major original equipment manufacturer customers;
- original equipment manufacturers’ program delays;
- demand for services in the freight and passenger rail industry;
- demand for our products and services;
- recovery in our industry, and in particular, orders either being delayed, cancelled, not returning to historical levels, or reduced or any combination of the foregoing;
- consolidations in the rail industry;
- continued outsourcing by our customers; industry demand for faster and more efficient braking equipment; or
- fluctuations in interest rates and foreign currency exchange rates;

#### **Operating factors**

- supply disruptions;
- technical difficulties;
- changes in operating conditions and costs;
- successful introduction of new products;
- labor relations;
- completion and integration of acquisitions; or
- the development and use of new technology;

#### **Competitive factors**

- the actions of competitors;

#### **Political/governmental factors**

- political stability in relevant areas of the world;
- future regulation/deregulation of our customers and/or the rail industry;
- levels of governmental funding on transit projects, including for some of our customers;
- political developments and laws and regulations; or
- the outcome of our existing or any future legal proceedings, including litigation involving our principal customers and any litigation with respect to environmental, asbestos-related matters and pension liabilities; and

#### **Transaction or commercial factors**

- the outcome of negotiations with partners, governments, suppliers, customers or others.

Statements in this 10-K apply only as of the date on which such statements are made, and we undertake no obligation to update any statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events.

### **Critical Accounting Policies**

The preparation of the financial statements in accordance with generally accepted accounting principles requires management to make judgments, estimates and assumptions regarding uncertainties that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities and the reported amounts of revenues and expenses. Areas of uncertainty that require judgments, estimates and assumptions include the accounting for derivatives, environmental matters, warranty reserves, the testing of goodwill and other intangibles for impairment, proceeds on assets to be sold, pensions and other postretirement benefits, and tax matters. Management uses historical experience and all available information to make these judgments and estimates, and actual results will inevitably differ from those estimates and assumptions that are used to prepare the Company’s financial statements at any given time. Despite these inherent limitations, management believes that Management’s Discussion and Analysis of Financial Condition and Results of Operations (MD&A) and the financial statements and related footnotes provide a meaningful and fair perspective of the Company. A discussion of the judgments and uncertainties associated with accounting for derivatives and environmental matters can be found in Note 2 in the “Notes to Consolidated Financial Statements” included in Part IV, Item 15 of this report.

A summary of the Company’s significant accounting policies is included in Note 2 in the “Notes to Consolidated Financial Statements” included in Part IV, Item 15 of this report. Management believes that the application of these policies on a consistent basis enables the Company to provide the users of the financial statements with useful and reliable information about the Company’s operating results and financial condition.

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In 2002, we adopted the new standard of accounting for goodwill and intangible assets with indefinite lives. The cumulative effect adjustment recognized on January 1, 2002, upon adoption of the new standard, was a charge of \$61.7 million (after tax). Also in 2002, amortization ceased for goodwill and intangible assets with indefinite lives. Total amortization expense for intangible assets recognized was \$3.4 million in 2003 and \$4 million in 2002. Additionally, goodwill and indefinite-lived intangibles are required to be tested for impairment at least annually. The evaluation of impairment involves comparing the current fair value of the business to the recorded value (including goodwill). We use a combination of a guideline public company market approach and a discounted cash flow model ("DCF model") to determine the current fair value of the business. A number of significant assumptions and estimates are involved in the application of the DCF model to forecasted operating cash flows, including markets and market share, sales volume and pricing, costs to produce and working capital changes. Management considers historical experience and all available information at the time the fair values of its business are estimated. However, actual fair values that could be realized in an actual transaction may differ from those used to evaluate the impairment of goodwill.

The allowance for doubtful accounts receivable reflects our best estimate of probable losses inherent in our receivable portfolio determined on the basis of historical experience, specific allowances for known troubled accounts and other currently available evidence.

Other areas of significant judgments and estimates include the liabilities and expenses for pensions and other postretirement benefits. These amounts are determined using actuarial methodologies and incorporate significant assumptions, including the rate used to discount the future estimated liability, the long-term rate of return on plan assets and several assumptions relating to the employee workforce (salary increases, medical costs, retirement age and mortality). The rate used to discount future estimated liabilities is determined considering the rates available at year-end on debt instruments that could be used to settle the obligations of the plan. The long-term rate of return is estimated by considering historical returns and expected returns on current and projected asset allocations and is generally applied to a five-year average market value of assets.

As a global company, Wabtec records an estimated liability or benefit for income and other taxes based on what it determines will likely be paid in various tax jurisdictions in which it operates. Management uses its best judgment in the determination of these amounts. However, the liabilities ultimately realized and paid are dependent on various matters including the resolution of the tax audits in the various affected tax jurisdictions and may differ from the amounts recorded. An adjustment to the estimated liability would be recorded through income in the period in which it becomes probable that the amount of the actual liability differs from the recorded amount. Management does not believe that such a charge would be material.

### **Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

#### **Interest Rate Risk**

In the ordinary course of business, we are exposed to risks that increases in interest rates may adversely affect funding costs associated with its variable-rate debt. After considering the effects of interest rate swaps, further described below, our variable rate debt represents 0% of total long-term debt at December 31, 2003 and 66% in 2002. Management has entered into pay-fixed, receive-variable interest rate swap contracts that mitigates the impact of variable-rate debt interest rate increases. At December 31, 2003, an instantaneous 100 basis point increase in interest rates would not reduce our annual earnings. We have adopted Statement of Financial Accounting Standards ("SFAS") No. 133, and as amended by SFAS 138, "Accounting for Derivative Instruments and Hedging Activities" effective January 1, 2001. In the application, we have concluded that our swap contracts qualify for "special cash flow hedge accounting" which permit recording the fair value of the swap and corresponding adjustment to other comprehensive income on the balance sheet (see Note 21 of "Notes to Consolidated Financial Statements" included in Part IV, Item 15 of this report). This fluctuation is not expected to have a material effect on our financial condition, results of operations and liquidity.

#### **Foreign Currency Exchange Risk**

We occasionally enter into several types of financial instruments for the purpose of managing our exposure to foreign currency exchange rate fluctuations in countries in which we have significant operations. As of December 31, 2003, we had several such instruments outstanding to hedge currency rate fluctuation in 2004.

We entered into foreign currency options and forward contracts to reduce the impact of changes in currency exchange rates. A currency option gives us the right but not the obligation to exchange currency at a pre-determined exchange rate either on a specific date or within a specific period of time. Forward contracts are agreements with a counterparty to exchange two distinct currencies at a set exchange rate for delivery on a set date at some point in the future. There is no exchange of funds until the delivery date. At the delivery date we can either take delivery of the currency or settle on a net basis. All outstanding forward contracts and option agreements are for the sale of U.S. Dollars (USD) and the purchase of Canadian Dollars (CAD). As of December 31, 2003, we had outstanding option agreements with a notional value of \$10.5 million CAD resulting in the recording of a current asset of \$270,000 and an increase in comprehensive income of \$171,000, net of tax and has forward contracts with a notional value of \$13.5 million CAD, resulting in the

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recording of a current asset of \$100,000 and an increase in comprehensive income of \$64,000, net of tax.

Subsequent to December 31, 2003, The Company entered into additional forward contracts to hedge its exposure to Canadian currency risk. Including the forwards outstanding at the end of 2003, the forward contracts currently have a total notional value of \$83 million CAD (or \$62 million USD), with an average exchange rate of \$0.747 USD per \$1 CAD.

We are also subject to certain risks associated with changes in foreign currency exchange rates to the extent our operations are conducted in currencies other than the U.S. dollar. For the year ended December 31, 2003, approximately 69% of Wabtec's net sales are in the United States, 9% in Canada, 1% in Mexico, and 21% in other international locations, primarily Europe. (See Note 20 of "Notes to Consolidated Financial Statements" included in Part IV, Item 15 of this report).

Our market risk exposure is not substantially different from our exposure at December 31, 2002.

### **Recent Accounting Pronouncements**

See note 2 of "Notes to Consolidated Financial Statements" included in Part IV, Item 15 of this report.

### **Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

Financial statements and supplementary data are set forth in Item 15, of Part IV hereof.

### **Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

As reported in a Current Report on Form 8-K dated May 30, 2002, we dismissed Arthur Andersen LLP as our independent public accountants on May 30, 2002 and, after a review of several possible candidates, appointed Ernst & Young LLP to serve as our independent public accountants for the fiscal years ended December 31, 2003 and 2002 in accordance with the recommendation of our Board of Directors and its Audit Committee. We dismissed Arthur Andersen LLP as our auditor because we believed that the firm could no longer provide the necessary services on a global basis. There were no disagreements with Arthur Andersen reported.

### **Item 9A. CONTROLS AND PROCEDURES**

Wabtec's principal executive officer and its principal financial officer have evaluated the effectiveness of Wabtec's "disclosure controls and procedures," (as defined in Exchange Act Rule 13a-15(e)) as of December 31, 2003. Based upon their evaluation, the principal executive officer and principal financial officer concluded that Wabtec's disclosure controls and procedures are effective to provide reasonable assurance that information required to be disclosed by Wabtec in the reports filed or submitted by it under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and to provide reasonable assurance that information required to be disclosed by Wabtec in such reports is accumulated and communicated to Wabtec's management, including its principal executive officer and principal finance officer, as appropriate to allow timely decisions regarding required disclosure.

There was no change in Wabtec's "internal control over financial reporting" (as defined in Rule 13a-15(f) under the Exchange Act) that occurred during the quarter ended December 31, 2003, that has materially affected, or is reasonably likely to materially affect, Wabtec's internal control over financial reporting

## **PART III**

### **Items 10 through 14.**

In accordance with the provisions of General Instruction G to Form 10-K, the information required by Item 10 (Directors and Executive Officers of the Registrant), Item 11 (Executive Compensation), Item 12 (Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters), Item 13 (Certain Relationships and Related Transactions) and Item 14 (Principal Accountant Fees and Services) is incorporated herein by reference from the Company's definitive Proxy Statement for its Annual Meeting of Stockholders to be held on May 19, 2004. The definitive Proxy Statement will be filed with the Securities and Exchange Commission not later than 120 days after December 31, 2003. Information relating to the executive officers of the Company is set forth in Part I.

Wabtec has adopted a Code of Ethics for Senior Officers which is applicable to all of our executive officers. As described in Item 1 of this report the Code of Ethics for Senior Officers is posted on our website at [www.wabtec.com](http://www.wabtec.com). In the event that we make any amendments to or waivers from this code, we will disclose the amendment or waiver and the reasons for such on our website.

**PART IV****Item 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K**

The financial statements, financial statement schedules and exhibits listed below are filed as part of this annual report:

	<b>Page</b>
<b>(a) (1) Financial Statements</b>	
<a href="#">Report of Independent Auditors (Ernst &amp; Young LLP)</a>	31
<a href="#">Report of Independent Auditors (Arthur Andersen LLP)</a>	32
<a href="#">Consolidated Balance Sheets as of December 31, 2003 and 2002</a>	33
<a href="#">Consolidated Statements of Operations for the three years ended December 31, 2003, 2002 and 2001</a>	34
<a href="#">Consolidated Statements of Cash Flows for the three years ended December 31, 2003, 2002 and 2001</a>	35
<a href="#">Consolidated Statements of Shareholders' Equity for the three years ended December 31, 2003, 2002 and 2001</a>	36
<a href="#">Notes to Consolidated Financial Statements</a>	37
<b>(2) Financial Statement Schedules</b>	
<a href="#">Schedule II - Valuation and Qualifying Accounts</a>	60
<b>(b) Reports on Form 8-K</b>	
During the fourth quarter of 2003, the Company filed or furnished the following Current Reports on Form 8-K pertaining to the following items:	
(1) A report dated October 15, 2003, which included under Items 5 and 7, the press release dated October 15, 2003 announcing the signing of a contract to supply brakes, couplers and current collectors for New York City subway cars, and under Items 7 and 12, the press release, dated October 15, 2003 announcing the financial results of the Company for the quarter ended September 30, 2003.	
(2) A report dated October 20, 2003, which included under Items 5 and 7, certain reclassifications to the Company's Form 10-K for the year ended December 31, 2002.	
	<b>Filing Method</b>
<b>(c) Exhibits</b>	
2.1 Amended and Restated Agreement and Plan of Merger, as amended (originally included as Annex A to the Joint Proxy Statement/Prospectus)	8
3.1 Restated Certificate of Incorporation of the Company dated January 30, 1995, as amended March 30, 1995	2
3.3 Amended and Restated By-Laws of the Company, effective November 19, 1999	8
4.1(a) Indenture with the Bank of New York as Trustee dated as of August 6, 2003	15
4.1(b) Resolutions Adopted July 23, 2003 by the Board of Directors establishing the terms of the offering of up to \$150,000,000 aggregate principal amount of 6.875% Notes due 2013	15
4.2 Purchase Agreement, dated July 23, 2003, by and between the Company and the initial purchasers	15
4.3 Exchange and Registration Rights Agreement, dated August 6, 2003	15
10.1 MotivePower Stock Option Agreement (originally included as Annex B to the Joint Proxy Statement/Prospectus)	8
10.2 Westinghouse Air Brake Stock Option Agreement (originally included as Annex C to the Joint Proxy Statement/Prospectus)	8
10.3 Voting Agreement dated as of September 26, 1999 among William E. Kassling, Robert J. Brooks, Harvard Private Capital Holdings, Inc. Vestar Equity Partners, L.P. and MotivePower Industries, Inc. (originally included as Annex D to the Joint Proxy Statement/Prospectus)	8

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10.9	Amended and Restated Refinancing Credit Agreement dated as of November 19, 1999 among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York (Schedules and Exhibits omitted)	9
10.10	Amended and Restated Stockholders Agreement dated as of March 5, 1997 among the RAC Voting Trust (“Voting Trust”), Vestar Equity Partners, L.P. (“Vestar Equity”), Harvard Private Capital Holdings, Inc. (“Harvard”), American Industrial Partners Capital Fund II, L.P. (“AIP”) and the Company	5
10.12	Indemnification Agreement dated January 31, 1995 between the Company and the Voting Trust Trustees	2
10.13	Agreement of Sale and Purchase of the North American Operations of the Railway Products Group, an operating division of American Standard Inc., dated as of 1990 between Rail Acquisition Corp. and American Standard Inc. (only provisions on indemnification are reproduced)	2
10.14	Letter Agreement (undated) between the Company and American Standard Inc. on environmental costs and sharing	2
10.15	Purchase Agreement dated as of June 17, 1992 among the Company, Schuller International, Inc., Manville Corporation and European Overseas Corporation (only provisions on indemnification are reproduced)	2
10.16	Asset Purchase Agreement dated as of January 23, 1995 among the Company, Pulse Acquisition Corporation, Pulse Electronics, Inc., Pulse Embedded Computer Systems, Inc. and the Pulse Shareholders (Schedules and Exhibits omitted)	2
10.17	License Agreement dated as of December 31, 1993 between SAB WABCO Holdings B.V. and the Company	2
10.18	Letter Agreement dated as of January 19, 1995 between the Company and Vestar Capital Partners, Inc.	2
10.19	Westinghouse Air Brake Company 1995 Stock Incentive Plan, as amended	7
10.20	Westinghouse Air Brake Company 1995 Non-Employee Directors’ Fee and Stock Option Plan, as amended	9
10.22	Letter Agreement dated as of January 1, 1995 between the Company and Vestar Capital Partners, Inc.	2
10.23	Form of Indemnification Agreement between the Company and Authorized Representatives	2
10.27	Amendment No. 1 to Amended and Restated Stockholders Agreement dated as of March 5, 1997 among the Voting Trust, Vestar, Harvard, AIP and the Company	5
10.28	Common Stock Registration Rights Agreement dated as of March 5, 1997 among the Company, Harvard, AIP and the Voting Trust	5
10.29	1998 Employee Stock Purchase Plan	7
10.32	Westinghouse Air Brake Technologies Corporation 2000 Stock Incentive Plan	10
10.33	Amendment No. 1, dated as of November 16, 2000, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and ABN AMRO Bank N.V. as bookrunner and co-syndication agent, The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999 among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company’s Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	11
10.34	Amendment No. 2, dated as of March 30, 2001, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and ABN AMRO Bank N.V. as bookrunner and co-syndication agent, The Chase Manhattan Bank as administrative agent, The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company’s Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	13

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10.35	Amendment No. 3, dated as of July 18, 2001, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and LaSalle Bank National Association and ABN AMRO Bank N.V. as bookrunner and co-syndication agent, The Bank of New York, as co-syndication agent, The Chase Manhattan Bank as administrative agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	13
10.36	Amendment No. 4, dated as of September 17, 2001, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and LaSalle Bank National Association as bookrunner and co-syndication agent, The Chase Manhattan Bank as administrative agent, The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the Company, various financial institutions, LaSalle Bank National Association, The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	13
10.37	Amendment No. 5, dated as of November 14, 2001, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and LaSalle Bank National Association as bookrunner and co-syndication agent, JP Morgan Chase Bank (formerly known as The Chase Manhattan Bank) as administrative agent, The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	13
10.38	Amendment No. 6, dated as of November 13, 2002, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and LaSalle Bank National Association as bookrunner and co-syndication agent, JP Morgan Chase Bank as administrative agent, and The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, LaSalle Bank National Association, as an issuing bank, ABN AMRO Bank N.V., as an issuing bank, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999	14
10.39	Asset Purchase Agreement, by and between General Electric Company, through its GE Transportation Systems business and Westinghouse Air Brake Technologies Corporation, dated as of July 24, 2001	12
10.40	Refinancing Credit Agreement by and among the Company, the Guarantors, various lenders, LaSalle Bank National Association, JP Morgan Chase Bank, The Bank of New York, Citizens Bank of Pennsylvania, National City Bank of Pennsylvania, The Bank of Nova Scotia, Bank of Tokyo-Mitsubishi Trust Company and PNC Bank, National Association dated January 12, 2004	1

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21	List of subsidiaries of the Company	1
23.1	Consent of Ernst & Young LLP	1
23.2	Information Regarding Consent of Arthur Andersen LLP	1
31.1	Rule 13a-14(a)/15d-14(a) Certifications	1
32.1	Section 1350 Certifications	1
99.1	Annual Report on Form 11-K for the year ended December 31, 2003 of the Westinghouse Air Brake Technologies Corporation Savings Plan	1
99.2	Annual Report on Form 11-K for the year ended December 31, 2003 of the Westinghouse Air Brake Technologies Corporation Savings Plan for Hourly Employees	1
<hr/>		
1	Filed herewith.	
2	Filed as an exhibit to the Company's Registration Statement on Form S-1 (No. 33-90866).	
3	Filed as an exhibit to the Company's Current Report on Form 8-K, dated October 3, 1996.	
4	Filed as an exhibit to the Company's Registration Statement on Form S-8 (No. 333-39159).	
5	Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 1997.	
6	Filed as an exhibit to the Company's Current Report on Form 8-K, dated October 5, 1998.	
7	Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 1998.	
8	Filed as part of the Company's Registration Statement on Form S-4 (No. 333-88903).	
9	Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 1999.	
10	Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2000.	
11	Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 2000.	
12	Filed as an exhibit to the Company's Current Report on Form 8-K, dated November 13, 2001.	
13	Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 2001.	
14	Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 2002.	
15	Filed as an exhibit to the Company's Registration Statement on Form S-4 (No. 333-110600).	

## REPORT OF INDEPENDENT AUDITORS

To the Board of Directors and Shareholders of  
Westinghouse Air Brake Technologies Corporation:

We have audited the accompanying consolidated balance sheet of Westinghouse Air Brake Technologies Corporation and subsidiaries as of December 31, 2003 and 2002, and the related consolidated statements of operations, shareholders' equity and cash flows for the years then ended. Our audit also included the financial statement schedule for the year ended December 31, 2003 listed in the index in Item 15(a) of this Registration Statement. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit. The financial statements of Westinghouse Air Brake Technologies Corporation and subsidiaries as of December 31, 2001, and for the year then ended were audited by other auditors who have ceased operations. Those auditors expressed an unqualified opinion on those financial statements in their report dated February 18, 2002.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Westinghouse Air Brake Technologies Corporation and subsidiaries as of December 31, 2003 and 2002, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States. Also in our opinion, the financial statement schedule referred to above, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As more fully discussed in Note 8 to the consolidated financial statements, effective January 1, 2002, Westinghouse Air Brake Technologies Corporation adopted the provisions of Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets* (SFAS No. 142).

As discussed above, the consolidated financial statements of Westinghouse Air Brake Technologies Corporation as of December 31, 2001, and for the year then ended were audited by other auditors who have ceased operations. As described in Note 8, these financial statements have been revised to include the transitional disclosures required by SFAS No. 142, which was adopted by the Company as of January 1, 2002. Our audit procedures with respect to the disclosures in Note 8 with respect to 2001 included (a) agreeing the previously reported net income to the previously issued financial statements and the adjustments to reported net income representing amortization expense (including any related tax effects) recognized in those periods related to goodwill as a result of initially applying Statement No. 142 to the Company's underlying records obtained from management, and (b) testing the mathematical accuracy of the reconciliation of adjusted net income to reported net income, and the related earnings per share amounts. In our opinion, the disclosures for 2001 in Note 8 are appropriate. However, we were not engaged to audit, review, or apply any procedures to the 2001 financial statements of the Company other than with respect to such disclosures and, accordingly, we do not express an opinion or any other form of assurance on the 2001 financial statements taken as a whole.

/s/ ERNST & YOUNG LLP

February 17, 2004



**REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS**

To the Board of Directors and Shareholders of  
Westinghouse Air Brake Technologies Corporation:

We have audited the accompanying consolidated balance sheets of Westinghouse Air Brake Technologies Corporation (a Delaware corporation) and subsidiaries as of December 31, 2001 and 2000, and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three years in the period ended December 31, 2001. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Westinghouse Air Brake Technologies Corporation and subsidiaries as of December 31, 2001 and 2000, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2001 in conformity with accounting principles generally accepted in the United States.

/s/ ARTHUR ANDERSEN LLP

Pittsburgh, Pennsylvania  
February 18, 2002

This is a copy of the audit report previously issued by Arthur Andersen LLP in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2001. This audit report has not been reissued by Arthur Andersen LLP in connection with this Annual Report Form 10-K. See Exhibit 23.2 for further discussion.

**WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION**  
**CONSOLIDATED BALANCE SHEETS**

	December 31,	
<i>In thousands, except share and par value</i>	2003	2002
<b>Assets</b>		
<b>Current Assets</b>		
Cash	\$ 70,328	\$ 19,210
Accounts receivable	129,074	108,019
Inventories	91,809	88,470
Deferred income taxes	23,457	23,613
Other	7,424	5,911
Total current assets	322,092	245,223
Property, plant and equipment	332,619	308,495
Accumulated depreciation	(178,780)	(159,903)
Property, plant and equipment, net	153,839	148,592
<b>Other Assets</b>		
Assets held for sale	1,974	10,105
Goodwill	109,450	109,450
Other intangibles, net	37,776	41,524
Deferred income taxes	20,315	26,112
Other noncurrent assets	10,859	7,859
Total other assets	180,374	195,050
Total Assets	\$ 656,305	\$ 588,865
<b>Liabilities and Shareholders' Equity</b>		
<b>Current Liabilities</b>		
Current portion of long-term debt	\$ —	\$ 833
Accounts payable	79,747	62,104
Accrued income taxes	126	3,928
Customer deposits	16,818	10,827
Accrued compensation	18,131	19,814
Accrued warranty	13,307	17,407
Other accrued liabilities	24,651	20,350
Total current liabilities	152,780	135,263
Long-term debt	190,225	194,318
Reserve for postretirement and pension benefits	39,055	38,266
Deferred income taxes	11,631	8,771
Commitments and contingencies	5,536	7,568
Notes payable	3,198	—
Other long-term liabilities	5,587	5,417
Total liabilities	408,012	389,603
<b>Shareholders' Equity</b>		
Preferred stock, 1,000,000 shares authorized, no shares issued	—	—
Common stock, \$.01 par value; 100,000,000 shares authorized: 66,174,767 and 65,447,867 shares issued and 44,631,733 and 43,440,840 outstanding at December 31, 2003 and 2002, respectively	662	654
Additional paid-in capital	282,872	272,782
Treasury stock, at cost, 21,543,034 and 22,007,027 shares, at December 31, 2003 and 2002, respectively	(267,586)	(273,634)
Retained earnings	252,234	231,282
Deferred compensation	—	270
Accumulated other comprehensive loss	(19,889)	(32,092)
Total shareholders' equity	248,293	199,262
Total Liabilities and Shareholders' Equity	\$ 656,305	\$ 588,865

*The accompanying notes are an integral part of these statements.*

**WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

Year ended December 31,

*In thousands, except per share data*

	2003	2002	2001
Net sales	\$ 717,924	\$ 696,195	\$ 783,698
Cost of sales	(528,474)	(516,724)	(573,772)
Gross profit	189,450	179,471	209,926
Selling, general and administrative expenses	(100,503)	(93,023)	(96,723)
Merger and restructuring charges	—	—	(3,723)
Engineering expenses	(32,929)	(33,592)	(33,156)
Asset write-downs	—	—	(9,253)
Amortization expense	(4,309)	(5,322)	(13,013)
Total operating expenses	(137,741)	(131,937)	(155,868)
Income from operations	51,709	47,534	54,058
Other income and expenses			
Interest expense	(10,377)	(18,072)	(33,501)
Other expense, net	(6,290)	(5,558)	(2,130)
Income from continuing operations before income taxes and cumulative effect of accounting change	35,042	23,904	18,427
Income tax expense	(12,790)	(7,594)	(4,465)
Income from continuing operations before cumulative effect of accounting change	22,252	16,310	13,962
Discontinued operations			
Income from discontinued operations (net of tax)	451	403	6,360
(Loss) gain on sale of discontinued operations (net of tax)	—	(529)	41,458
Total discontinued operations	451	(126)	47,818
Income before cumulative effect of accounting change	22,703	16,184	61,780
Cumulative effect of accounting change for goodwill, net of tax	—	(61,663)	—
Net income (loss)	\$ 22,703	\$ (45,479)	\$ 61,780
<b>Earnings Per Common Share</b>			
Basic			
Income from continuing operations before cumulative effect of accounting change	\$ 0.51	\$ 0.37	\$ 0.33
Income from discontinued operations	0.01	—	1.11
Cumulative effect of accounting change	—	(1.42)	—
Net income (loss)	\$ 0.52	\$ (1.05)	\$ 1.44
Diluted			
Income from continuing operations before cumulative effect of accounting change	\$ 0.51	\$ 0.37	\$ 0.32
Income from discontinued operations	0.01	—	1.11
Cumulative effect of accounting change	—	(1.41)	—
Net income (loss)	\$ 0.52	\$ (1.04)	\$ 1.43
Weighted average shares outstanding			
Basic	43,538	43,291	42,949
Diluted	43,974	43,617	43,198

*The accompanying notes are an integral part of these statements.*

**WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

<i>In thousands</i>	Year Ended December 31,		
	2003	2002	2001
<b>Operating Activities</b>			
Net income (loss)	\$ 22,703	\$ (45,479)	\$ 61,780
Adjustments to reconcile net income to cash provided by operations:			
Cumulative effect of accounting change for goodwill, net of tax	—	61,663	—
Depreciation and amortization	25,284	25,513	33,061
Results of discontinued operations, net of tax	(451)	126	(47,818)
Loss on sale of product line	—	—	521
Write-down of assets	—	—	9,253
Deferred income taxes	8,824	702	(6,278)
Other, primarily non-cash portion of merger and restructuring charges	—	—	160
Discontinued operations	107	58	(1,213)
Changes in operating assets and liabilities, net of acquisitions			
Accounts receivable	(12,410)	(548)	49,772
Inventories	(796)	17,812	12,670
Accounts payable	14,138	(12,814)	(4,330)
Accrued income taxes	286	(30,262)	5,021
Accrued liabilities and customer deposits	2,836	1,964	(20,856)
Commitments and contingencies	(2,032)	(3,033)	(2,251)
Other assets and liabilities	(2,585)	(44)	29,605
Net cash provided by operating activities	55,904	15,658	119,097
<b>Investing Activities</b>			
Purchase of property, plant and equipment	(17,470)	(14,137)	(20,674)
Proceeds from disposal of property, plant and equipment	5,048	3,673	5,873
Acquisitions of businesses, net of cash acquired	—	(1,654)	(3,730)
Cash received from disposition of discontinued operations	—	1,400	240,900
Cash received from disposition of product line	—	—	4,120
Discontinued operations	(127)	(99)	924
Net cash (used for) provided by investing activities	(12,549)	(10,817)	227,413
<b>Financing Activities</b>			
(Repayments) borrowings of credit agreements	(149,700)	129,700	(298,000)
Borrowings (repayments) of senior notes	150,000	(175,000)	—
Repayments of other borrowings	(5,249)	(641)	(280)
Stock issuance	9,977	—	—
Purchase of treasury stock	—	—	(585)
Proceeds from treasury stock from stock based benefit plans	5,899	3,695	3,359
Cash dividends	(1,751)	(1,808)	(1,681)
Net cash provided by (used for) financing activities	9,176	(44,054)	(297,187)
Effect of changes in currency exchange rates	(1,413)	4,474	(1,445)
Increase (decrease) in cash	51,118	(34,739)	47,878
Cash, beginning of year	19,210	53,949	6,071
Cash, end of year	\$ 70,328	\$ 19,210	\$ 53,949

*The accompanying notes are an integral part of these statements.*

**WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**

<i>In thousands</i>	Comprehensive Income (Loss)	Common Stock	Additional Paid-in Capital	Treasury Stock	Retained Earnings	Deferred Compensation	Accumulated Other Comprehensive Loss
<b>Balance, December 31, 2000</b>		\$ 654	\$ 273,494	\$(281,665)	\$ 218,470	\$ 900	\$ (15,482)
Cash dividends					(1,681)		
Purchase of treasury stock				(585)			
Proceeds from treasury stock issued from the exercise of stock options and other benefit plans, net of tax			(820)	4,398		1	
Compensatory stock options granted through a Rabbi Trust				363		(363)	
Net income	\$ 61,780				61,780		
Translation adjustment	(5,170)						(5,170)
Cumulative effect of change in accounting for derivative financial instruments, net of \$(665) tax	(1,234)						(1,234)
Unrealized losses on derivatives designated and qualified as cash flow hedges, net of \$(705) tax	(1,310)						(1,310)
Additional minimum pension liability, net of \$(4,144) tax	(6,479)						(6,479)
	<u>\$ 47,587</u>						
<b>Balance, December 31, 2001</b>		\$ 654	\$ 272,674	\$(277,489)	\$ 278,569	\$ 538	\$ (29,675)
Cash dividends					(1,808)		
Proceeds from treasury stock issued from the exercise of stock options and other benefit plans, net of tax			108	3,587			
Compensatory stock options granted through a Rabbi Trust				268		(268)	
Net loss	\$ (45,479)				(45,479)		
Translation adjustment	3,165						3,165
Unrealized gains on derivatives designated and qualified as cash flow hedges, net of \$755 tax	1,538						1,538
Additional minimum pension liability, net of \$(4,551) tax	(7,120)						(7,120)
	<u>\$ (47,896)</u>						
<b>Balance, December 31, 2002</b>		\$ 654	\$ 272,782	\$(273,634)	\$ 231,282	\$ 270	\$ (32,092)
Cash dividends					(1,751)		
Stock issuance		8	9,969				
Proceeds from treasury stock issued from the exercise of stock options and other benefit plans, net of tax			121	5,778			
Compensatory stock options granted through a Rabbi Trust				270		(270)	
Net income	\$ 22,703				22,703		
Translation adjustment	13,962						13,962
Unrealized gains on other derivatives, net of \$135 tax	235						235
Unrealized gains on derivatives designated and qualified as cash flow hedges, net of \$496 tax	799						799
Additional minimum pension liability, net of \$(728) tax	(2,793)						(2,793)
	<u>\$ 34,906</u>						
<b>Balance, December 31, 2003</b>		\$ 662	\$ 282,872	\$(267,586)	\$ 252,234	\$ —	\$ (19,889)

*The accompanying notes are an integral part of these statements*

**WESTINGHOUSE AIR BRAKE  
TECHNOLOGIES CORPORATION  
NOTES TO CONSOLIDATED FINANCIAL  
STATEMENTS**

**1. BUSINESS**

Wabtec is one of the world's largest providers of value-added, technology-based products and services for the global rail industry. Our products are found on virtually all U.S. locomotives, freight cars and passenger transit vehicles, as well as in certain markets throughout the world. Our products enhance safety, improve productivity and reduce maintenance costs for customers, and many of our core products and services are essential in the safe and efficient operation of freight rail and passenger transit vehicles.

Wabtec is a global company with operations in nine countries. In 2003, about 79 percent of the Company's revenues came from its North American operations, but Wabtec also sold products or services in 62 countries around the world.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Principles of Consolidation** The consolidated financial statements include the accounts of the Company and its majority owned subsidiaries. Such statements have been prepared in accordance with generally accepted accounting principles. Sales between subsidiaries are billed at prices consistent with sales to third parties and are eliminated in consolidation.

**Cash Equivalents** Cash equivalents are highly liquid investments purchased with an original maturity of three months or less.

**Allowance for Doubtful Accounts** The allowance for doubtful accounts receivable reflects our best estimate of probable losses inherent in our receivable portfolio determined on the basis of historical experience, specific allowances for known troubled accounts and other currently available evidence. The allowance for doubtful accounts was \$4.5 million and \$4.6 million as of December 31, 2003 and 2002, respectively.

**Inventories** Inventories are stated at the lower of cost or market. Cost is determined under the first-in, first-out (FIFO) method. Inventory costs include material, labor and overhead.

**Property, Plant and Equipment** Property, plant and equipment additions are stated at cost. Expenditures for renewals and improvements are capitalized. Expenditures for ordinary maintenance and repairs are expensed as incurred. The Company provides for book depreciation principally on the straight-line method. Accelerated depreciation methods are utilized for income tax purposes.

**Leasing Arrangements** The Company conducts a portion of its operations from leased facilities and finances certain equipment purchases through lease agreements. In those cases in which the lease term approximates the useful life of the leased asset or the lease meets certain other prerequisites, the leasing arrangement is classified as a capital lease. The remaining arrangements are treated as operating leases.

**Intangible Assets** The Company adopted SFAS No. 142 effective January 1, 2002, and, as a result, goodwill and other intangible assets with indefinite lives are no longer amortized. Other intangibles (with definite lives) are amortized on a straight-line basis over their estimated economic lives. Goodwill effective January 1, 2002 is reviewed annually for impairment while amortizable intangibles are reviewed for impairment when indicators of impairment are present.

**Warranty Costs** Warranty costs are accrued based on management's estimates of repair or upgrade costs per unit and historical experience. In recent years, the Company has introduced a number of new products. The Company does not have the same level of historical warranty experience for these new products as it does for its continuing products. Therefore, warranty reserves have been established for these new products based upon management's estimates. Actual future results may vary from such estimates. Warranty expense was \$10.5 million, \$17.6 million and \$14.1 million for 2003, 2002 and 2001, respectively. Warranty reserves were \$13.3 million and \$17.4 million at December 31, 2003 and 2002, respectively.

**Deferred Compensation Agreements** In May 1998, a consensus on Emerging Issues Task Force Issue No. 97-14, "Accounting for Deferred Compensation Arrangements Where Amounts Earned Are Held in a Rabbi Trust and Invested" ("EITF 97-14"), was issued. The adoption of EITF 97-14 required the Company to record as treasury stock the historical value of the Company's stock maintained in its deferred compensation plans.

**Income Taxes** Income taxes are accounted for under the liability method. Deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The provision for income taxes includes federal, state and foreign income taxes.

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**Stock-Based Compensation** Effective January 1, 2003, the Company adopted SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure." SFAS No. 148 amends SFAS No. 123, "Accounting for Stock-Based Compensation," to provide alternate methods of transition to SFAS No. 123's fair value method of accounting for stock-based compensation. The statement amends the disclosure requirements of SFAS No. 123 to require prominent disclosures about the method of accounting for compensation cost associated with employee stock option plans, as well as the effect of the method used on reported results. The Company adopted the disclosure requirements of SFAS No. 148 and has not changed its method for measuring the compensation cost of stock options.

The Company continues to use the intrinsic value based method and does not recognize compensation expense for the issuance of options with an exercise price equal to or greater than the market price of the stock at the time of grant. As a result, the adoption of SFAS No. 148 had no impact on our results of operations or financial position.

Had compensation expense for these plans been determined based on the fair value at the grant dates for awards, the Company's net income and earnings per share would be as set forth in the following table. For purposes of pro forma disclosures, the estimated fair value is amortized to expense over the options' vesting period.

<i>In thousands, except per share</i>	For the year ended December 31,		
	2003	2002	2001
Net income (loss)			
As reported	\$ 22,703	\$ (45,479)	\$ 61,780
Stock based compensation under FAS123	1,940	1,635	3,089
Pro forma	20,763	(47,114)	58,691
Basic earnings (loss) per share			
As reported	\$ 0.52	\$ (1.05)	\$ 1.44
Pro forma	0.48	(1.09)	1.37
Diluted earnings (loss) per share			
As reported	\$ 0.52	\$ (1.04)	\$ 1.43
Pro forma	0.47	(1.07)	1.36

For purposes of presenting pro forma results, the fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

	For the year ended December 31,		
	2003	2002	2001
Dividend yield	.3%	.3%	.3%
Risk-free interest rate	5.2%	5.6%	5.9%
Stock price volatility	46.1	46.7	47.3
Expected life (years)	5.0	5.0	5.0

The Black-Scholes option valuation model was developed for use in estimating fair value of traded options, which are significantly different than employee stock options. Although this valuation model is an acceptable method for use in presenting pro forma information, because of the differences in traded options and employee stock options, the Black-Scholes model does not necessarily provide a single measure of the fair value of employee stock options.

**Financial Derivatives and Hedging Activities** The Company periodically enters into interest rate swap agreements to reduce the impact of interest rate changes on its variable rate borrowings. Interest rate swaps are agreements with a counterparty to exchange periodic interest payments (such as pay fixed, receive variable) calculated on a notional principal amount. The interest rate differential to be paid or received is recognized as interest expense.

The Company has adopted Statement of Financial Accounting Standards ("SFAS") No. 133, and as amended by SFAS 138, "Accounting for Derivative Instruments and Hedging Activities" effective January 1, 2001, resulting in the recording of current assets of \$266,000, long term assets of \$399,000, current liabilities of \$760,000, long term liabilities of \$1.1 million, and a decrease in other comprehensive loss of \$1.2 million. In the application, the Company has concluded its interest rate swap contracts qualify for "special cash flow hedge accounting" which permit recording the fair value of the swap and corresponding adjustment to other comprehensive income (loss) on the balance sheet. At December 31, 2003, and as a result of entering into these interest rate swaps, the Company is expected to incur \$600,000 in additional interest expense in 2004.

The Company also entered into foreign currency options and forward contracts to reduce the impact of changes in currency exchange rates. A currency option gives the Company the right but not the obligation to exchange currency at a pre-determined exchange rate either on a specific date or within a specific period of time. Forward contracts are agreements with a counterparty to exchange two distinct currencies at a set exchange rate for delivery on a set date at some point in the future. There is no exchange of funds until the delivery date. At the delivery date the Company can either take delivery of the currency or settle on

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a net basis. All outstanding forward contracts and option agreements are for the sale of U.S. Dollars and the purchase of Canadian Dollars (CAD). As of December 31, 2003, the Company has outstanding option agreements with a notional value of \$10.5 million CAD resulting in the recording of a current asset of \$270,000, and an increase in comprehensive income of \$171,000, net of tax and has forward contracts with a notional value of \$13.5 million CAD, resulting in the recording of a current asset of \$100,000, and an increase in comprehensive income of \$64,000, net of tax. At December 31, 2003, and as a result of entering into these foreign currency forward and option contracts, the Company is not expected to incur any additional currency exchange loss or gain in 2004.

Subsequent to December 31, 2003, The Company entered into additional forward contracts to hedge its exposure to Canadian currency risk. Including the forwards outstanding at the end of 2003, the forward contracts currently have a total notional value of \$83 million CAD (or \$62 million U.S.), with an average exchange rate of \$0.747 USD per \$1 CAD.

**Foreign Currency Translation** Assets and liabilities of foreign subsidiaries, except for the Company's Mexican operations whose functional currency is the U.S. Dollar, are translated at the rate of exchange in effect on the balance sheet date while income and expenses are translated at the average rates of exchange prevailing during the year. Foreign currency gains and losses resulting from transactions, and the translation of financial statements are recorded in the Company's consolidated financial statements based upon the provisions of Statement of Financial Accounting Standards ("SFAS") No. 52, "Foreign Currency Translation." The effects of currency exchange rate changes on intercompany transactions and balances of a long-term investment nature are accumulated and carried as a component of shareholders' equity. The effects of currency exchange rate changes on intercompany transactions that are non U.S. dollar denominated amounts are charged or credited to earnings. Foreign exchange loss was \$2.8 million, \$1.2 million and \$1.7 million for 2003, 2002 and 2001, respectively.

**Other Comprehensive Income (Loss)** Comprehensive income (loss) is defined as net income and all other non-owner changes in shareholders' equity. The Company's accumulated other comprehensive income (loss) consists of foreign currency translation adjustments, unrealized gains and losses on derivatives designated and qualified as cash flow hedges, foreign currency hedges and pension related adjustments.

**Revenue Recognition** Revenue is recognized in accordance with Staff Accounting Bulletin (SAB) 101, "Revenue Recognition in Financial Statements." Wabtec recognizes revenue upon the passage of title, ownership and risk of loss to the customer.

The Company recognizes revenues on long-term contracts based on the percentage of completion method of accounting. Contract revenues and cost estimates are reviewed and revised quarterly, at a minimum, and adjustments are reflected in the accounting period as known. Provisions are made for estimated losses on uncompleted contracts as known, if necessary. Certain pre-production costs relating to long term production and supply contracts have been deferred and will be amortized over the life of the contract. Deferred pre-production costs were \$3.4 million and \$700,000 at December 31, 2003 and 2002, respectively.

**Significant Customers and Concentrations of Credit Risk** The Company's trade receivables are primarily from rail and transit industry original equipment manufacturers, Class I railroads, railroad carriers and commercial companies that utilize rail cars in their operations, such as utility and chemical companies. No one customer accounted for more than 10% of the Company's consolidated net sales in 2003. One customer, in the transit group, accounted for 11% of the Company's consolidated net sales in 2002 and 2001.

**Shipping and Handling Fees and Costs** All fees billed to the customer for shipping and handling are classified as a component of net revenues. All costs associated with shipping and handling is classified as a component of cost of sales.

**Research and Development** Research and development costs are charged to expense as incurred. For the years ended December 31, 2003, 2002 and 2001, the Company incurred costs of approximately \$32.9 million, \$33.6 million and \$33.2 million, respectively.

**Employees** As of December 31, 2003, approximately 36% of the Company's workforce was covered by collective bargaining agreements. These agreements are generally effective through 2004, 2005 and 2006.

**Earnings Per Share** Basic earnings per common share are computed by dividing net income applicable to common shareholders by the weighted-average number of shares of common stock outstanding during the year. Diluted earnings per common share are computed by dividing net income applicable to common shareholders by the weighted average number of shares of common stock outstanding adjusted for the assumed conversion of all dilutive securities (such as employee stock options).

**Reclassifications** Certain prior year amounts have been reclassified, where necessary, to conform to the current year presentation.

**Use of Estimates** The preparation of financial statements in conformity with generally accepted accounting principles in the United States requires the Company to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual amounts could differ from the estimates. On an ongoing basis, management reviews its estimates based on currently available information. Changes in facts and circumstances may result in revised estimates.



**Recent Accounting Pronouncements.** In April 2003, the Financial Accounting Standards Board issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities." SFAS No. 149 amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under SFAS No. 133. The provisions of this statement are effective for contracts entered into or modified after June 30, 2003 and for hedging relationships designated after June 30, 2003 and should be applied prospectively. SFAS No. 149 has no impact on the Company's financial statements or results of operations.

In May 2003, the Financial Accounting Standards Board issued SFAS No. 150, "Accounting for Certain Instruments with Characteristics of Both Liabilities and Equity." SFAS No. 150 requires that certain financial instruments embodying an obligation to transfer assets or to issue equity securities be classified as liabilities. It is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective July 1, 2003. SFAS No. 150 has no impact on the Company's financial statements or results of operations.

Effective December 31, 2003, Wabtec adopted SFAS No. 132 (revised 2003), "Employers' Disclosures about Pensions and Other Post-retirement Benefits – an Amendment of FASB Statements No. 87, 88 and 106" for its U.S. pension plans. This standard requires additional disclosures about an employer's pension plans and postretirement benefits such as: the type of plan assets, investment strategy, measurement date, plan obligations, cash flows, and components of net periodic benefit costs recognized during interim periods. See Note 10 to the Consolidated Financial Statements for the required additional disclosures.

During 2003, the Company adopted FASB Interpretation No. ("FIN") 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees." FIN 45 requires increased disclosure of guarantees, including those for which likelihood payment is remote, and product warranty information (see Note 16). FIN 45 also requires that guarantors recognize a liability for certain types of guarantees equal to the fair value of the guarantee upon its issuance. The adoption of FIN 45 has no impact on the Company's financial statements or results of operations.

In January 2003, the Financial Accounting Standards Board issued Interpretation No. 46, "Consolidation of Variable Interest Entities." A variable interest entity ("VIE") is one where the contractual or ownership interests in an entity change with changes in the entity's net asset value. This interpretation requires the consolidation of a VIE by the primary beneficiary, and also requires disclosure about VIEs where an enterprise has a significant variable interest but is not the primary beneficiary. The Company does not believe that this statement will have a material impact on the Company's financial statements or results of operations.

On December 8, 2003, President Bush signed into law the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the Act). The Act expanded Medicare to include, for the first time, coverage for prescription drugs. In January 2004, the FASB issued Staff Position 106-1, "Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003," (FSP FAS 106-1). This position permits a sponsor of a postretirement health care plan that provides a prescription drug benefit to make a one-time election to defer accounting for the effects of the Act. As permitted by FSP FAS 106-1, the Company has elected to defer financial recognition of this legislation until the FASB issues final accounting guidance. In accordance with FSP FAS 106-1, appropriate disclosures related to the deferral election have been made in Note 10 to the consolidated financial statements.

### **3. DISCONTINUED OPERATIONS**

On November 1, 2001, the Company completed the sale of certain assets to GE Transportation Systems (GETS) for \$238 million in cash. The assets sold primarily included locomotive aftermarket products and services for which Wabtec was not the original equipment manufacturer. Under the terms of the sales agreement, the Company has agreed to indemnify GETS for, among other things, certain potential third party, off site environmental cleanup or remediation costs. The Company has purchased an insurance policy to mitigate its exposure for the environmental indemnities. The Company reported a \$48.7 million after tax gain on the sale in 2001.

In the fourth quarter of 2001, the Company decided to exit other businesses and put these businesses up for sale. The net assets of those businesses were written down to their estimated realizable value based on a multiple of earnings and was classified as Assets Held for Sale on the balance sheet. The Company reported a \$7.2 million after tax loss on the write-down of these entities.

As of December 31, 2003, one of the businesses has not sold. The Company actively solicited but did not receive any reasonable offers to purchase the asset and, in response, had reduced the price. The asset is no longer being actively marketed and as a result, the Company reclassified the business to continuing operations in the fourth quarter of 2003. Such reclassification had no material impact on the financial statements.

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In accordance with SFAS 144, the operating results of these businesses have been classified as discontinued operations for all years presented and are summarized as of December 31, as follows:

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	2001
Net sales	\$ 6,593	\$ 11,158	\$ 156,803
Income before income taxes	710	593	9,785
Income tax expense	259	190	3,425
Income from discontinued operations	\$ 451	\$ 403	\$ 6,360

#### 4. SUPPLEMENTAL CASH FLOW DISCLOSURES

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	2001
Interest paid during the year	\$ 6,478	\$ 18,111	\$ 37,181
Income taxes paid during the year	8,185	34,452	8,318
Business acquisitions:			
Fair value of assets acquired	\$ —	\$ 1,654	\$ 5,275
Liabilities assumed	—	—	(842)
Cash paid	—	1,654	4,433
Less cash acquired	—	—	703
Net cash paid	\$ —	\$ 1,654	\$ 3,730
Noncash investing and financing activities:			
Notes payable	\$ 3,198	—	—
Deferred compensation	\$ 270	\$ 268	\$ 363
Treasury stock	(270)	(268)	(363)

#### 5. MERGERS AND ACQUISITIONS

The Company did not make any acquisitions in 2003. During 2002 and 2001 the Company completed the following acquisitions:

- i) In February 2002, the Company purchased the minority interest of a business in India that the Company did not already own for \$1.7 million.
- ii) In October 2001, the Company purchased certain assets of Milufab, a supplier of door panels for subway trains for \$3.7 million.

These acquisitions were accounted for under the purchase method. Accordingly, the results of operations of the applicable acquisition are included in the Company's financial statements prospectively from the acquisition date. The excess of the purchase price over the fair value of identifiable net assets was approximately \$2.9 million and was allocated to goodwill. Effective January 1, 2002, goodwill was no longer amortized upon adoption of SFAS No. 142.

#### 6. INVENTORY

The components of inventory, net of reserves, were:

<i>In thousands</i>	December 31,	
	2003	2002
Raw materials	\$28,711	\$56,016
Work-in-process	45,559	27,856
Finished goods	17,539	4,598
Total inventory	\$91,809	\$88,470

#### 7. PROPERTY, PLANT & EQUIPMENT

The major classes of depreciable assets are as follows:

<i>In thousands</i>	December 31,	
	2003	2002
Machinery and equipment	\$ 249,604	\$ 229,813
Buildings and improvements	76,290	72,848
Land and improvements	6,435	5,572
Locomotive leased fleet	290	262
PP&E	332,619	308,495
Less: accumulated depreciation	(178,780)	(159,903)
Total	\$ 153,839	\$ 148,592

The estimated useful lives of property, plant and equipment are as follows:

	<u>Years</u>
Land improvements	10 to 20
Buildings and improvements	20 to 40
Machinery and equipment	3 to 15
Locomotive leased fleet	4 to 15

Depreciation expense was \$21 million, \$20.2 million and \$20 million for 2003, 2002 and 2001, respectively.

#### **8. INTANGIBLES**

The Company has adopted SFAS No. 142, "Goodwill and Other Intangible Assets" effective January 1, 2002. Under its provisions, all goodwill and other intangible assets with indefinite lives are no longer amortized under a straight-line basis over the assets estimated useful life. Instead, they will be subject to periodic assessments for impairment by applying a fair-value-based test. In 2002, the Company completed the Phase I and Phase II assessments and wrote down the carrying value of goodwill by \$90 million (\$83.2 million for the Freight Group and \$6.8 million for the Transit Group), resulting in a non-cash after-tax charge of \$61.7 million. The fair value of these reporting units was determined using a combination of

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discounted cash flow analysis and market multiples based upon historical and projected financial information. The Company also performed the required impairment test in 2003 which resulted in no additional impairment charge. Goodwill still remaining on the balance sheet is \$109.5 million at December 31, 2003.

As of December 31, 2003 and 2002, the Company's trademarks had a net carrying amount of \$19.5 million and the Company believes these intangibles have an indefinite life. Intangible assets of the Company, other than goodwill and trademarks, consist of the following:

<i>In thousands</i>	December 31,	
	2003	2002
Patents and other, net of accumulated amortization of \$21,053 and \$18,492	\$13,675	\$16,124
Covenants not to compete, net of accumulated amortization of \$9,437 and \$7,632	137	1,480
Intangible pension asset	4,401	4,357
<b>Total</b>	<b>\$18,213</b>	<b>\$21,961</b>

In connection with the adoption of SFAS No. 142, the Company reassessed the useful lives and the classification of its identifiable assets and determined that they continue to be appropriate. The weighted average useful life of patents was 13 years and of covenants not to compete was five years.

Amortization expense for intangible assets was \$3.4 million, \$4 million and \$11.3 million for the years ended December 31, 2003, 2002, and 2001, respectively. Amortization expense for the five succeeding years is as follows (in thousands):

2004	\$2,162
2005	\$2,137
2006	\$1,973
2007	\$1,863
2008	\$1,790

The changes in the carrying amount of goodwill by segment for the years ended December 31, 2003 and 2002, respectively, are as follows:

<i>In thousands</i>	Freight Group	Transit Group	Total
Balance at December 31, 2001	\$ 175,085	\$ 23,703	\$ 198,788
Goodwill acquired	664	—	664
Goodwill written off	(83,179)	(6,823)	(90,002)
Balance at December 31, 2002	\$ 92,570	\$ 16,880	\$ 109,450
Goodwill acquired	—	—	—
Goodwill written off	—	—	—
Balance at December 31, 2003	\$ 92,570	\$ 16,880	\$ 109,450

Actual results of continuing operations for the year ended December 31, 2003 and 2002, and pro forma results of continuing operations for 2001 had we applied the non-amortization provisions of SFAS No. 142 in these periods are as follows:

<i>In thousands, except per share amounts</i>	For the year ended December 31,		
	2003	2002	2001
Reported income before cumulative effect of accounting change	\$ 22,703	\$ 16,184	\$ 61,780
Add: goodwill amortization, net of tax	—	—	4,147
Add: trademark amortization, net of tax	—	—	376
Adjusted income before cumulative effect of accounting change	\$ 22,703	\$ 16,184	\$ 66,303
Basic earnings per share			
Reported income before cumulative effect of accounting change	\$ 0.52	\$ 0.37	\$ 1.44
Goodwill amortization	—	—	0.09
Trademark amortization	—	—	0.01
Adjusted income before cumulative effect of accounting change	\$ 0.52	\$ 0.37	\$ 1.54
Diluted earnings per share			
Reported income before cumulative effect of accounting change	\$ 0.52	\$ 0.37	\$ 1.43
Goodwill amortization	—	—	0.09
Trademark amortization	—	—	0.01
Adjusted income before cumulative effect of accounting change	\$ 0.52	\$ 0.37	\$ 1.53

## 9. LONG-TERM DEBT

Long-term debt consisted of the following:

December 31,

*In thousands*

	<u>2003</u>	<u>2002</u>
Revolving credit agreement due 2004	\$ 40,000	\$189,700
6.875% Senior notes	150,000	—
5.5% Industrial revenue bond due 2008	—	4,909
Other	225	542
	<u>          </u>	<u>          </u>
Total	\$190,225	\$195,151
Less—current portion	—	833
	<u>          </u>	<u>          </u>
Long-term portion	\$190,225	\$194,318

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### *Credit Agreement*

In November 1999, Wabtec refinanced the then existing unsecured MotivePower credit agreement (the "Credit Agreement") with a consortium of commercial banks. This unsecured Credit Agreement provided a \$275 million five-year revolving credit facility expiring in November 2004 and a 364-day \$275 million convertible revolving credit facility maturing in November 2004. In November 2001, the Company and the banks negotiated a reduction in the 364-day facility to \$100 million, as a result of the \$208 million, net of tax, cash proceeds from the sale of certain businesses. In November 2002, the Company negotiated a further reduction in the 364-day facility from \$100 million to \$95 million. In July 2003, the Company and the banks negotiated a reduction in both facilities to \$225 million as a result of the issuance of the Senior Notes. The \$225 million facility provided a reduced five-year facility of \$167.2 million and a reduced 364-day facility of \$57.8 million. In November 2003, the Company allowed the \$57.8 million 364-day facility to expire. At December 31, 2003, the Company's available bank borrowing capacity, net of \$19.6 million of letters of credit, was approximately \$107.7 million.

Credit Agreement borrowings bear variable interest rates indexed to the indices described below. The maximum credit agreement borrowings, average credit agreement borrowings and weighted-average contractual interest rate on credit agreement borrowings were \$209 million, \$129.3 million and 2.68%, respectively for 2003. To reduce the impact of interest rate changes on a portion of this variable-rate debt, the Company entered into interest rate swaps which effectively convert a portion of the debt from variable to fixed-rate borrowings during the term of the swap contracts. On December 31, 2003, the notional value of interest rate swaps outstanding totaled \$40 million and effectively changed the Company's interest rate on bank debt at December 31, 2003 from a variable rate to a fixed rate of 3.98%. The interest rate swap agreements mature in February 2006. The Company is exposed to credit risk in the event of nonperformance by the counterparties. However, since only the cash interest payments are exchanged, exposure is significantly less than the notional amount. The counterparties are large financial institutions and the Company does not anticipate nonperformance.

As required by SFAS 145, the Company has reclassified a \$1.2 million net of tax charge related to the early extinguishment of debt in the third quarter of 2002, which had been previously recorded as an extraordinary item, to interest expense and income tax expense.

### *Refinancing Credit Agreement*

In January 2004, the Company entered into a new credit agreement, refinancing its existing unsecured revolving Credit Agreement with a consortium of commercial banks. This "Refinancing Credit Agreement" provides a \$175 million five-year revolving credit facility expiring in January 2009. The financial statements have been prepared based on the terms of the Refinanced Credit Agreement.

Under the Refinancing Credit Agreement, the Company may elect a base rate or an interest rate based on the London Interbank Offered Rates of Interest ("LIBOR"). The base rate is the greater of LaSalle Bank National Association's prime rate or the federal funds effective rate plus 0.5% per annum. The LIBOR rate is based on LIBOR plus a margin that ranges from 100 to 200 basis points depending on the Company's consolidated total indebtedness to cash flow ratios. The current margin is 175 basis points.

The Refinancing Credit Agreement limits the Company's ability to declare or pay cash dividends and prohibits the Company from declaring or making other distributions, subject to certain exceptions. The Refinancing Credit Agreement contains various other covenants and restrictions including the following limitations: incurrence of additional indebtedness; mergers, consolidations and sales of assets and acquisitions; additional liens; sale and leasebacks; permissible investments, loans and advances; certain debt payments; capital expenditures; and imposes a minimum interest expense coverage ratio and a maximum debt to cash flow ratio.

The Refinancing Credit Agreement contains customary events of default, including payment defaults, failure of representations or warranties to be true in any material respect, covenant defaults, defaults with respect to other indebtedness of the Company, bankruptcy, certain judgments against the Company, ERISA defaults and "change of control" of the Company.

### *6.875% Senior Notes Due August 2013*

In August 2003, the Company issued \$150 million of Senior Notes due in 2013 ("the Notes"). The Notes were issued at par. Interest on the Notes will accrue at a rate of 6.875% per annum and will be payable semi-annually on January 31 and July 31 of each year, commencing on January 31, 2004. The proceeds were used to repay debt outstanding under the Company's existing credit agreement, and for general corporate purposes.

The Notes are senior unsecured obligations of the Company and rank pari passu with all existing and future senior debt and senior to all our existing and future subordinated indebtedness of the Company. The indenture under which the Notes were issued contains covenants and restrictions which limit among other things, the following: the incurrence of indebtedness, payment of dividends and certain distributions, sale of assets, change in control, mergers and consolidations and the incurrence of liens,

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Scheduled principal repayments of outstanding loan balances required as of December 31, 2003 are as follows:

<i>In thousands</i>	<u>Original</u>	<u>As refinanced</u>
2004	\$ 40,000	\$ —
2005	225	225
2006	—	—
2007	—	—
2008	—	—
Future years	150,000	190,000
<b>Total</b>	<b>\$190,225</b>	<b>\$190,225</b>

### *Extinguishment of Other Borrowings*

In June 1995, the Company issued \$100 million of 9.375% Senior Notes due in 2005 (the "1995 Notes"). In January 1999, the Company issued an additional \$75 million of 9.375% Senior Notes due in 2005 (the "1999 Notes"). The 1995 Notes and the 1999 Notes were redeemed at par (face) on July 8, 2002 through the use of cash on hand and additional borrowings under the credit agreement. This redemption resulted in a non-cash loss of \$1.9 million relating to a write-off of deferred financing costs.

In July 1998, a subsidiary of the Company entered into a 10- year \$7.5 million debt obligation for the purchase of a building used in the Company's operations. The debt was repaid in September 2003.

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## 10. EMPLOYEE BENEFIT PLANS

The Company sponsors defined benefit pension plans that cover certain U.S., Canadian and United Kingdom employees and provide benefits of stated amounts for each year of service of the employee.

	For the years ended December 31,					
	Pension Plans			Postretirement Plans		
	2003	2002	2001	2003	2002	2001
<i>In thousands, except percentages</i>						
<b>Defined Benefit Plans</b>						
<b>Change in benefit obligation</b>						
Obligation at beginning of year	\$ (92,751)	\$ (89,449)	\$ (23,700)	\$ (23,700)	\$ (21,368)	
Service cost	(2,425)	(2,658)		(330)	(232)	
Interest cost	(6,474)	(6,008)		(1,715)	(1,447)	
Special termination benefits	—	(1,241)		—	—	
Actuarial (loss) gain	(7,762)	2,767		(5,495)	(2,581)	
Benefits paid	5,666	5,634		2,150	1,928	
Expenses paid	372	326		—	—	
Effect of currency rate changes	(9,743)	(2,122)		—	—	
Obligation at end of year	\$ (113,117)	\$ (92,751)		\$ (29,090)	\$ (23,700)	
<b>Change in plan assets</b>						
Fair value of plan assets at beginning of year	\$ 67,600	\$ 77,711		—	—	
Actual gain (loss) on plan assets	11,834	(8,732)		—	—	
Employer contribution	5,554	2,465		—	—	
Participant contributions	401	353		—	—	
Benefits paid	(5,666)	(5,634)		—	—	
Administrative expenses	(1,081)	(695)		—	—	
Effect of currency rate changes	7,939	2,132		—	—	
Fair value of plan assets at end of year	\$ 86,581	\$ 67,600		—	—	
<b>Funded status</b>						
Funded status at year end	\$ (26,536)	\$ (25,151)		(29,090)	(23,700)	
Unrecognized net actuarial loss	29,213	25,628		8,961	3,922	
Unrecognized prior service cost	4,237	4,376		22	34	
Unrecognized transition obligation	3,084	3,031		194	216	
Effect of currency exchange rates	1,399	139		—	—	
Prepaid (accrued) benefit cost	\$ 11,397	\$ 8,023		\$ (19,913)	\$ (19,528)	
<b>Amounts recognized in the statement of financial position include:</b>						
Prepaid pension cost	\$ 323	\$ 110		\$ —	\$ —	
Reserve for postretirement and pension benefits	(19,142)	(18,738)		(19,913)	(19,528)	
Intangible asset	4,401	4,357		—	—	
Accumulated other comprehensive loss	25,815	22,294		—	—	
Prepaid (accrued) benefit cost	\$ 11,397	\$ 8,023		\$ (19,913)	\$ (19,528)	
<b>Net periodic benefit cost</b>						
Service cost	\$ 2,425	\$ 2,658	\$ 1,447	\$ 330	\$ 232	\$ 240
Interest cost	6,474	6,008	4,382	1,715	1,447	1,524
Expected return on plan assets	(6,576)	(6,591)	(5,846)	—	—	—
Net amortization/deferrals	1,406	617	680	489	19	(3)
Net periodic benefit cost	\$ 3,729	\$ 2,692	\$ 663	\$ 2,534	\$ 1,698	\$ 1,761
<b>Assumptions</b>						
Discount rate	6.25%	6.75%	7%	6.25%	6.75%	7.5%
Expected long-term rate of return	7.75%	8.25%	9%	NA	NA	NA
Rate of compensation increase	3.75%	4%	5%	NA	NA	NA

Included in the above table, the aggregate benefit obligation and fair value of plan assets for the pension plans with plan assets in excess of benefit obligations were \$3 million and \$3.4 million, respectively, as of December 31, 2003; and \$2 million and \$2.1 million, respectively, as of December 31, 2002 (the total of which was pension plan benefit obligation in excess of plan assets).



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The components of prepaid (accrued) benefit costs by country are as follows:

<i>In thousands</i>	2003	2002
U.S. plan	\$ 1,539	\$1,716
Canadian plans	10,103	6,307
U.K. plan	(245)	—
Prepaid (accrued) benefit cost	\$11,397	\$8,023

### Pension Plan Assets

The composition of U.S. plan assets consists primarily of equities, corporate bonds, governmental notes and temporary investments. This Plan's asset allocations at December 31, 2003 by asset category are as follows:

Asset Category	%
Equity securities	49%
Debt securities	46%
Other, including cash equivalents	5%
Total	100%

Investment policies are determined by the Plan's Pension Committee and set forth in the Plan's Investment Policy. Pursuant to the Plan's Investment Policy, the investment strategy is to use passive index funds managed by the Bank of New York. The target asset allocation and composite benchmarks include the following:

Asset Allocation		Composite Benchmark	
Category	%	Benchmark	%
Bonds	50%	Lehman Aggregate	50%
Large Cap Stocks	35%	S&P 500	35%
International Stocks	10%	MSCI-EAFE	10%
Small Cap Stocks	5%	Russell 2000	5%
	100%		100%

The Company's funding methods, which are primarily based on the ERISA requirements, differ from those used to recognize pension expense, which is primarily based on the projected unit credit method applied in the accompanying financial statements.

The Company expects to contribute \$6.4 million to the pension plan during 2004 and that this level of funding to continue in future periods. Rebalancing of the asset allocation occurs on a quarterly basis.

In 2002, as a result of an early retirement package offered to certain union employees, the Company incurred charges of approximately \$1.2 million reflected above as a special termination benefit.

In addition to providing pension benefits, the Company has provided certain unfunded postretirement health care and life insurance benefits for substantially all U.S. employees. In January 1995 the postretirement health care and life insurance benefits for salaried employees was modified to discontinue benefits for employees who had not attained the age of 50 by March 31, 1995. The Company is not obligated to pay health care and life insurance benefits to individuals who had retired prior to 1990.

The assumed health care cost trend rate grades from an initial rate of 8% to an ultimate rate of 4.75% in four years. A 1% increase in the assumed health care cost trend rate will increase the amount of expense recognized for the postretirement plans by approximately \$358,000 for 2004, and increase the service and interest cost components of the accumulated postretirement benefit obligation by approximately \$4.1 million. A 1% decrease in the assumed health care cost trend rate will decrease the service and interest cost components of the expense recognized for the postretirement plans by approximately \$286,000 for 2004, and decrease the accumulated postretirement benefit obligation by approximately \$3.4 million.

On December 8, 2003, President Bush signed into law the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the Act). The Act expanded Medicare to include, for the first time, coverage for prescription drugs. The Company sponsors retiree medical programs for certain of its locations and expects that this legislation will reduce the Company's costs for some of these programs in the future.

In January 2004, FASB Staff Position 106-1, "Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003" (FSP FAS 106-1) was issued which permits a sponsor of a postretirement health care plan that provides a prescription drug benefit to make a one-time election to defer accounting for the effects of the Act. The Company is awaiting guidance from various governmental and regulatory agencies concerning the requirements that must be met to obtain these cost reductions as well as the manner in which such savings should be measured. Based on this preliminary analysis, it appears that some of the Company's retiree medical plans may need to be revised in order to qualify for beneficial treatment under the Act, while other plans can continue unchanged.

### Defined Contribution Plans

The Company also participates in a variety of defined contribution, 401(k) and multiemployer pension, health and welfare plans. Additionally, the Company has stock option -based benefit and other plans further described in Note 14.

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Costs recognized under multi-employer and other defined contribution plans are summarized as follows:

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	2001
Multi-employer pension and health & welfare plans	\$ 1,531	\$ 1,310	\$ 994
401(k) savings and other defined contribution plans	6,828	6,929	8,172
<b>Total</b>	<b>\$ 8,359</b>	<b>\$ 8,239</b>	<b>\$ 9,166</b>

The 401(k) savings plan is a participant directed defined contribution plan that holds shares of the Company's stock. At December 31, 2003 and 2002, the plan held on behalf of its participants about 776,000 shares with a market value of \$13.2 million, and 861,000 shares with a market value of \$12 million, respectively.

### 11. INCOME TAXES

In general, the Company is responsible for filing consolidated U.S., foreign and combined, unitary or separate state income tax returns. The Company is responsible for paying the taxes relating to such returns, including any subsequent adjustments resulting from the redetermination of such tax liabilities by the applicable taxing authorities.

The components of the income (loss) from continuing operations before provision for income taxes for the Company's domestic and foreign operations for the years ended December 31 are provided below:

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	2001
Domestic	\$ 35,470	\$ 12,226	\$ 10,287
Foreign	(428)	11,678	8,140
<b>Income from continuing operations</b>	<b>\$ 35,042</b>	<b>\$ 23,904</b>	<b>\$ 18,427</b>

No provision has been made for U.S., state or additional foreign taxes related to undistributed earnings of foreign subsidiaries which have been or are intended to be permanently re-invested. It is not practical to estimate the income tax expense or benefit that might be incurred if these earnings were to be remitted to the U.S.

The consolidated provision (credit) for income taxes included in the Statement of Income consisted of the following:

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	2001
<b>Current taxes</b>			
Federal	\$ 763	\$ 609	\$ 28,703
State	1,470	(2,421)	4,919
Foreign	1,993	2,876	3,345
	<b>\$ 4,226</b>	<b>\$ 1,064</b>	<b>\$ 36,967</b>
<b>Deferred taxes</b>			
Federal	11,525	(14,788)	1,106
State	821	(4,364)	287
Foreign	(3,522)	(2,716)	(325)
	<b>8,824</b>	<b>(21,868)</b>	<b>1,068</b>
<b>Total provision (credit)</b>	<b>\$ 13,050</b>	<b>\$ (20,804)</b>	<b>\$ 38,035</b>

Consolidated income tax provision (credit) is included in the Statement of Income as follows:

<i>In thousands</i>	For the year ended December 31,		
	2003	2002	2001
Continuing operations	\$ 12,790	\$ 7,594	\$ 4,465
Income (loss) from discontinued operations	260	(59)	33,570
Cumulative effect of accounting change for goodwill	—	(28,339)	—
<b>Total provision (credit)</b>	<b>\$ 13,050</b>	<b>\$ (20,804)</b>	<b>\$ 38,035</b>

A reconciliation of the United States federal statutory income tax rate to the effective income tax rate on continuing operations for the years ended December 31 is provided below:

For the year ended

<i>In thousands</i>	2003	2002	2001
U. S. federal statutory rate	35.0%	35.0%	35.0%
State taxes	2.4	3.6	3.6
Resolution of prior year tax matters	(7.6)	—	—
Change in valuation allowance	7.4	—	—
State deferred rate adjustment	2.7	—	—
Foreign	1.5	0.3	0.4
Foreign tax credits	(2.5)	(2.1)	—
Research and development credit	(2.4)	(3.3)	(15.9)
Other, net	—	(1.5)	1.1
Effective rate	36.5%	32.0%	24.2%

Deferred income taxes result from temporary differences in the recognition of income and expense for financial and income tax reporting purposes. These deferred income taxes will be recognized as future tax benefits or costs when the temporary differences reverse.

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Components of deferred tax assets and (liabilities) were as follows:

<i>In thousands</i>	December 31,	
	2003	2002
<b>Deferred income tax assets:</b>		
Accrued expenses and reserves	\$ 4,342	\$ 3,970
Deferred comp/employee benefits	4,439	5,484
Pension	15,491	15,354
Inventory	4,388	3,878
Warranty reserve	3,224	6,062
Restructuring reserve	1,026	1,479
Environmental reserve	408	715
Federal net operating loss	—	303
State net operating loss	7,193	5,925
Plant, equipment and intangibles	1,366	10,139
Federal credits	5,615	3,982
Foreign net operating loss	7,164	2,146
Foreign deferred net items	(4,028)	(3,917)
Gross deferred income tax assets	50,628	55,520
Valuation allowance	(18,487)	(14,566)
<b>Total deferred income tax assets</b>	<b>\$ 32,141</b>	<b>\$ 40,954</b>

A valuation allowance is provided when it is more likely than not that some portion or all of the deferred tax assets will not be realized. The Company has recorded a valuation allowance of \$18.5 million for certain net operating loss carryforwards and deferred tax assets anticipated to produce no tax benefit. The valuation allowance has increased in the current year by \$3.9 million to be applied against certain state and foreign deferred tax assets.

State and foreign net operating loss carryforwards exist in the amount of \$139 million and \$20.5 million, respectively, and are set to expire in various periods from 2006 to 2023. A valuation allowance has been established for certain of these net operating loss carryforwards.

Federal tax credits exist of approximately \$5.6 million which are comprised of Research and Experimentation credits available through 2023 and Alternative Minimum Tax credits available indefinitely.

## 12. EARNINGS PER SHARE

The computation of earnings per share from continuing operations is as follows:

<i>In thousands, except per share</i>	For the year ended December 31,		
	2003	2002	2001
<b>Basic</b>			
Income from continuing operations before cumulative effect of accounting change applicable to common shareholders	\$ 22,252	\$ 16,310	\$ 13,962
Divided by:			
Weighted average shares outstanding	43,538	43,291	42,949
Basic earnings from continuing operations before cumulative effect of accounting change per share	\$ 0.51	\$ 0.37	\$ 0.33
<b>Diluted</b>			
Income from continuing operations before cumulative effect of accounting change applicable to common shareholders	\$ 22,252	\$ 16,310	\$ 13,962
Divided by the sum of:			
Weighted average shares outstanding	43,538	43,291	42,949
Assumed conversion of dilutive stock options	436	326	249
Diluted shares outstanding	43,974	43,617	43,198
Diluted earnings from continuing operations before cumulative effect of accounting change per share	\$ 0.51	\$ 0.37	\$ 0.32

Options to purchase approximately 646,000, 2.1 million and 2.8 million shares of Common Stock were outstanding in 2003, 2002 and 2001, respectively, but were not included in the computation of diluted earnings per share because the options' exercise price exceeded the average market price of the common shares.

### 13. STOCK-BASED COMPENSATION PLANS

**Stock Options** Under the 2000 Stock Incentive Plan (the 2000 Plan), the Company may grant options to employees for an initial amount of 1.1 million shares of Common Stock. This amount is subject to annual modification based on a formula. Under the formula, 1.5% of total common shares outstanding at the end of the preceding fiscal year are added to shares available for grant under the 2000 Plan. Based on the adjustment, the Company had approximately 1.4 million shares available for 2003 grants and has available approximately 1.4 million shares through the end of fiscal 2004. The shares available for grants on any given date may not exceed 15% of Wabtec's total common shares outstanding. Generally, the options become exercisable over a three-year vesting period and expire ten years from the date of grant.

As part of a long-term incentive program, in 1998, the Company granted options to purchase up to 500,020 shares, to certain executives under a plan that preceded the 2000 Plan. The option price is \$20 per share. The options vest 100% after eight years and are subject to accelerated vesting after three years if the Company achieves certain earnings targets as established by the compensation committee of the board of directors. No further grants may be made under this plan.

The Company also has a non-employee directors' stock option plan under which 500,000 shares of Common Stock are reserved for issuance. Through year-end 2003, the Company granted nonqualified stock options to non-employee directors to purchase a total of 93,000 shares.

**Employee Stock Purchase Plan** In 1998, the Company adopted an employee discounted stock purchase plan (DSPP). The DSPP had 500,000 shares available for issuance. Participants can purchase the Company's common stock at 85% of the lesser of fair market value on the first or last day of each offering period. Stock outstanding under this plan at December 31, 2003 was 202,632 shares.

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A summary of the Company's stock option activity and related information for the years indicated follows:

	2003		2002		2001	
	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price
Beginning of year	4,977,296	\$ 13.44	4,599,935	\$ 13.76	5,389,397	\$ 14.74
Granted	718,500	10.85	835,500	12.15	512,212	13.22
Exercised	(360,883)	11.77	(192,779)	11.60	(210,660)	10.40
Canceled	(250,737)	16.06	(265,360)	15.41	(1,091,014)	19.00
End of year	5,084,176	\$ 13.08	4,977,296	\$ 13.44	4,599,935	\$ 13.76
Exercisable at end of year	3,834,069		3,771,366		3,738,562	
Available for future grant	1,394,818		1,343,893		1,432,980	
Weighted average fair value of options granted during the year	\$ 4.34		\$ 5.20		\$ 5.98	

The following table summarizes information about stock options outstanding at December 31, 2003:

Range of Exercise Prices	Number Outstanding As of 12/31/03	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable As of 12/31/03
\$ 5.06 - \$ 5.43	44,416	5.9	5.31	44,416
9.54 - 9.54	530,999	6.9	9.54	530,999
9.88 - 10.86	1,111,050	7.9	10.72	431,550
11.00 - 12.98	1,260,824	7.0	12.20	716,547
13.18 - 13.98	356,274	7.5	13.25	329,944
14.00 - 14.00	1,134,881	1.8	14.00	1,134,881
14.63 - 19.91	109,900	4.8	17.71	109,900
20.00 - 20.00	404,200	4.8	20.00	404,200
\$22.38 - \$29.61	131,632	4.5	24.88	131,632
	5,084,176	5.8	\$ 13.08	3,834,069

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### Restricted Stock Award

In February of 2001, the Company awarded to two officers 4,920 shares of restricted Common Stock in lieu of a cash bonus for 2000.

### 14. OTHER COMPREHENSIVE LOSS

The components of accumulated other comprehensive loss were:

<i>In thousands</i>	December 31,	
	2003	2002
Foreign currency translation adjustment	\$ (3,525)	\$ (17,487)
Unrealized losses on derivatives designated and qualified as cash flow hedges, net of tax of \$(119) and \$(615)	(207)	(1,006)
Unrealized gains on other derivatives, net of tax of \$135 and \$0	235	—
Additional minimum pension liability, net of tax of \$(9,423) and \$(8,695)	(16,392)	(13,599)
Total accumulated other comprehensive loss	\$ (19,889)	\$ (32,092)

### 15. OPERATING LEASES

The Company leases office and manufacturing facilities under operating leases with terms ranging from one to 15 years, excluding renewal options.

The Company has sold remanufactured locomotives to various financial institutions and leased them back under operating leases with terms from five to 20 years.

Total net rental expense charged to operations in 2003, 2002, and 2001 was \$6.9 million, \$6.2 million and \$5.7 million, respectively. Certain of the Company's equipment rental obligations under operating leases pertain to locomotives, which are subleased to customers under both short-term and long-term agreements. The amounts above are shown net of sublease rentals of \$2.8 million, \$2.8 million and \$2.8 million for the years 2003, 2002 and 2001, respectively.

Future minimum rental payments under operating leases with remaining noncancelable terms in excess of one year are as follows:

<i>In thousands</i>	Real Estate	Equipment	Sublease Rentals	Total
2004	\$ 4,708	\$ 4,846	\$ (2,498)	\$ 7,056
2005	4,468	4,503	(2,411)	6,560
2006	4,415	4,135	(2,347)	6,203
2007	4,271	2,150	(1,571)	4,850
2008	5,259	2,132	(1,455)	5,936
2009 and after	12,896	—	—	12,896

### 16. GUARANTEES

In 2001, the Company sold a small non-core operating unit to its management team. As part of the sale, Wabtec guaranteed approximately \$3 million of bank debt of the buyer, which was used for the purchase financing. In the event that the purchaser cannot repay or refinance the debt without a guarantee by Wabtec, the business would be returned to Wabtec. This debt is due in 2004. The Company has no reason to believe that this debt will not be repaid or refinanced.

The following table reconciles the changes in the Company's product warranty reserve as follows:

<i>In thousands</i>	For the year ended December 31,	
	2003	2002
Balance at beginning of period	\$ 17,407	\$ 15,373
Warranty expense	10,489	17,625
Warranty payments	(14,589)	(15,591)
Balance at end of period	\$ 13,307	\$ 17,407

## **17. STOCKHOLDERS' AGREEMENTS**

As of December 31, 2003 the approximate ownership interests in the Company's Common Stock are: management (12%), American Industrial Partners Capital Fund II, L.P. (2%), and all others including public shareholders (86%).

A Stockholders Agreement exists between the Company and American Industrial Partners that provides for, among other things, the composition of the Board of Directors as long as certain minimum stock ownership percentages are maintained, and rights to request the registration of the shares.

## **18. PREFERRED STOCK**

The Company's authorized capital stock includes 1,000,000 shares of preferred stock. The Board of Directors has the authority to issue the preferred stock and to fix the designations, powers, preferences and rights of the shares of each such class or series, including dividend rates, conversion rights, voting rights, terms of redemption and liquidation preferences, without any further vote or action by the Company's shareholders. The rights and preferences of the preferred stock would be superior to those of the common stock. At December 31, 2003 and 2002 there was no preferred stock issued or outstanding.

## **19. COMMITMENTS AND CONTINGENCIES**

The Company is subject to a variety of environmental laws and regulations governing discharges to air and water, the handling, storage and disposal of hazardous or solid waste materials and the remediation of contamination associated with releases of hazardous substances. The Company believes its operations currently comply in all material respects with all of the various environmental laws and regulations applicable to our business; however, there can be no assurance that environmental requirements will not change in the future or that we will not incur significant costs to comply with such requirements.

Under terms of the purchase agreement and related documents for the 1990 Acquisition, American Standard, Inc. ("ASI") has indemnified the Company for certain items including, among other things, certain environmental claims the Company asserted prior to 2000. If ASI was unable to honor or meet these indemnifications, the Company would be responsible for such items. In the opinion of management, ASI currently has the ability to meet its indemnification obligations.

Actions have been filed against us and certain of our affiliates in various jurisdictions across the United States by persons alleging bodily injury as a result of exposure to asbestos-containing products. Since 2000, the number of such claims has increased. Most of these claims have been made against our wholly-owned subsidiary, Railroad Friction Products Corporation (RFPC), and are based on a product sold by RFPC before we acquired American Standard, Inc.'s (ASI) 50% interest in RFPC in 1990. We acquired the remaining interest in RFPC in 1992. These claims include a suit against RFPC by ASI seeking contribution and indemnity for asbestos claims brought against ASI that ASI alleges claim exposure to RFPC's product.

Most of these claims, including all of the RFPC claims, are submitted to insurance carriers for defense and indemnity or to non-affiliated companies that retain the liabilities for the asbestos-containing products at issue. Neither we nor our affiliates have to date incurred material costs relating to these asbestos claims. We cannot, however, assure that all these claims will be fully covered by insurance or that the indemnitors will remain financially viable. Our ultimate legal and financial liability with respect to these claims, as is the case with other pending litigation, cannot be estimated with certainty.

### *BOISE, IDAHO*

The Company is subject to a RCRA Part B Closure Permit ("the Permit") issued by the Environmental Protection Agency (EPA) and the Idaho Department of Health and Welfare, Division of Environmental Quality relating to the monitoring and treatment of groundwater contamination on, and adjacent to, the MotivePower Industries (Boise, Idaho) facility. In compliance with the Permit, the Company has completed the first phase of an accelerated plan for the treatment of contaminated groundwater, and continues onsite and offsite monitoring for hazardous constituents. The Company has accrued \$585,000 at December 31, 2003, the estimated remaining costs for remediation. The Company was in compliance with the Permit at December 31, 2003.

### *MOUNTAINTOP, PENNSYLVANIA*

Foster Wheeler Energy Corporation ("FWEC") the seller of the Mountaintop property to the predecessor of one of the Company's subsidiaries in 1989, agreed to indemnify the Company's predecessor and its successors and assigns against certain identified environmental liabilities for which FWEC executed a Consent Order Agreement with the Pennsylvania Department of Environmental Protection (PADEP) and EPA. On October 14, 2003, the Company executed a Consent Order and Agreement with PADEP pursuant to the PA Land Recycling and Environmental Remediation Standards Act (Act 2), entitling the Company to the liability protections afforded under Act 2 for the environmental contamination identified in the Agreement. Management believes that the Act 2 protection and the FWEC indemnification arrangement are enforceable for the benefit of the Company. Management believes that this indemnification arrangement is enforceable for the benefit of the Company and that FWEC has the financial resources to honor its obligations under this indemnification arrangement.



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### *MATTOON, ILLINOIS*

Prior to the Company's acquisition of Young Radiator, Young agreed to clean up alleged contamination on a prior production site in Mattoon, Ill. The Company is in the process of remediating the site with the state of Illinois and now estimates the costs to remediate the site to be approximately \$251,000 which has been accrued at December 31, 2003.

### *RACINE, WISCONSIN*

Young ceased manufacturing operations at its Racine facility in the early 1990s. Investigations prior to the acquisition of Young revealed some levels of contamination on the Racine property and the Company has begun remediation efforts. The Company has initiated a comprehensive site evaluation with the state of Wisconsin and believes this governing body is generally in agreement with the findings. The Company has accrued approximately \$259,000 at December 31, 2003 as its estimate of the remaining remediation costs.

### *GETS-GS*

On November 3, 2000, the Company settled a suit brought against it in 1999 by GE-Harris Railway Electronics, L.L.C. and GE-Harris Railway Electronics Services, L.L.C. (collectively "GE-Harris"). On September 20, 2002, a motion in that lawsuit was filed by the successor to GE Harris, GE Transportation Services Global Signaling, L.L.C. ("GETS-GS"). The motion by GETS-GS contends that the Company is acting beyond authority granted in the parties' November 2000 settlement and license agreement and in contempt of the consent order that concluded the suit at that time. In support of its motion, GETS-GS points principally to sales and offers to sell certain railway brake equipment, including distributed power equipment, to Australian customers. GETS-GS is seeking substantial money damages and has claimed a significant business loss. A two day hearing was held on GETS-GS' motion in May 2003. The parties completed and filed all post-hearing papers on August 28, 2003. Barring a settlement agreement in the interim, the parties are awaiting the court's decision and opinion on the motion.

The Company has other contingent obligations relating to certain sales leaseback transactions, for locomotives that were assumed in connection with the MotivePower merger in 1999, for which reserves of \$5.8 million have been established.

From time to time the Company is involved in litigation relating to claims arising out of its operations in the ordinary course of business. As of the date hereof, the Company is involved in no litigation that the Company believes will have a material adverse effect on its financial condition, results of operations or liquidity.

## **20. SEGMENT INFORMATION**

Wabtec has two reportable segments – the Freight Group and the Transit Group. The key factors used to identify these reportable segments are the organization and alignment of the Company's internal operations, the nature of the products and services and customer type. The business segments are:

**Freight Group** manufactures products and provides services geared to the production and operation of freight cars and locomotives, including braking control equipment, engines, on-board electronic components and train coupler equipment. Revenues are derived from OEM sales and locomotive overhauls, aftermarket sales and from freight car repairs and services. All of the assets sold to GETS were part of the Freight Group.

**Transit Group** consists of products for passenger transit vehicles (typically subways, rail and buses) that include braking, coupling and monitoring systems, climate control and door equipment that are engineered to meet individual customer specifications. Revenues are derived from OEM and aftermarket sales as well as from repairs and services.

The Company evaluates its business segments' operating results based on income from operations. Corporate activities include general corporate expenses, elimination of intersegment transactions, interest income and expense and other unallocated charges. Since certain administrative and other operating expenses and other items have not been allocated to business segments, the results in the below tables are not necessarily a measure computed in accordance with generally accepted accounting principles and may not be comparable to other companies.

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Segment financial information for 2003 is as follows:

<i>In thousands</i>	Freight Group	Transit Group	Corporate Activities	Merger and Restructuring	Total
Sales to external customers	\$ 522,279	\$ 195,645	—	—	\$ 717,924
Intersegment sales/(elimination)	8,998	686	(9,684)	—	—
<b>Total sales</b>	<b>\$ 531,277</b>	<b>\$ 196,331</b>	<b>\$ (9,684)</b>	<b>—</b>	<b>\$ 717,924</b>
Income (loss) from operations	\$ 76,042	\$ 198	\$ (24,531)	—	\$ 51,709
Interest expense and other	—	—	(16,667)	—	(16,667)
<b>Income (loss) from continuing operations before income taxes and cumulative effect of accounting change</b>	<b>\$ 76,042</b>	<b>\$ 198</b>	<b>\$ (41,198)</b>	<b>—</b>	<b>\$ 35,042</b>
Depreciation and amortization	17,897	5,178	2,209	—	25,284
Capital expenditures	12,097	1,581	3,792	—	17,470
Segment assets	418,064	150,435	87,806	—	656,305

Segment financial information for 2002 is as follows:

<i>In thousands</i>	Freight Group	Transit Group	Corporate Activities	Merger and Restructuring	Total
Sales to external customers	\$ 443,443	\$ 252,752	—	—	\$ 696,195
Intersegment sales/(elimination)	8,849	567	(9,416)	—	—
<b>Total sales</b>	<b>\$ 452,292</b>	<b>\$ 253,319</b>	<b>\$ (9,416)</b>	<b>—</b>	<b>\$ 696,195</b>
Income (loss) from operations	\$ 48,186	\$ 22,237	\$ (22,889)	—	\$ 47,534
Interest expense and other	—	—	(23,630)	—	(23,630)
<b>Income (loss) from continuing operations before income taxes and cumulative effect of accounting change</b>	<b>\$ 48,186</b>	<b>\$ 22,237</b>	<b>\$ (46,519)</b>	<b>—</b>	<b>\$ 23,904</b>
Depreciation and amortization	17,166	5,761	2,586	—	25,513
Capital expenditures	9,134	3,757	1,246	—	14,137
Segment assets	375,032	142,764	71,069	—	588,865

Segment financial information for 2001 is as follows:

<i>In thousands</i>	Freight Group	Transit Group	Corporate Activities	Merger and Restructuring	Total
Sales to external customers	\$ 490,261	\$ 293,437	—	—	\$ 783,698
Intersegment sales/(elimination)	10,160	788	(10,948)	—	—
<b>Total sales</b>	<b>\$ 500,421</b>	<b>\$ 294,225</b>	<b>\$ (10,948)</b>	<b>—</b>	<b>\$ 783,698</b>
Income (loss) from operations	\$ 58,989	\$ 32,390	\$ (33,598)	\$ (3,723)	\$ 54,058
Interest expense and other	—	—	(35,631)	—	(35,631)
<b>Income (loss) from continuing operations before income taxes and cumulative effect of accounting change</b>	<b>\$ 58,989</b>	<b>\$ 32,390</b>	<b>\$ (69,229)</b>	<b>\$ (3,723)</b>	<b>\$ 18,427</b>
Depreciation and amortization	23,234	7,337	2,490	—	33,061
Capital expenditures	14,048	4,469	2,157	—	20,674
Segment assets	477,983	175,028	76,941	—	729,952

In 2001, \$530,000 of the merger and restructuring costs related to the Freight Group, and \$2 million related to the Transit Group.

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The following geographic area data as of and for the years ended December 31, 2003, 2002 and 2001, respectively, includes net sales based on product shipment destination and long-lived assets, which consist of plant, property and equipment, net of depreciation, resident in their respective countries:

<i>In thousands</i>	Net Sales			Long-Lived Assets		
	2003	2002	2001	2003	2002	2001
United States	\$ 497,579	\$ 525,724	\$ 582,655	\$ 99,091	\$ 99,292	\$ 115,583
Canada	61,770	50,035	73,177	31,786	27,889	32,963
Mexico	10,225	11,487	8,693	10,473	10,979	10,584
Other international	148,350	108,949	119,173	12,489	10,432	8,565
<b>Total</b>	<b>\$ 717,924</b>	<b>\$ 696,195</b>	<b>\$ 783,698</b>	<b>\$ 153,839</b>	<b>\$ 148,592</b>	<b>\$ 167,695</b>

Export sales from the Company's United States operations were \$59.2 million, \$61.9 million and \$90.3 million for the years ending December 31, 2003, 2002 and 2001, respectively. The following data reflects income (loss) from operations, including merger and restructuring related charges by major geographic area, attributed to the Company's operations within each of the following countries or regions for the years ended December 31, 2003, 2002 and 2001, respectively:

<i>In thousands</i>	Income (Loss) from Operations		
	2003	2002	2001
United States	\$44,192	\$34,554	\$41,007
Canada	(6,385)	496	6,412
Mexico	166	(325)	(2,467)
Other international	13,736	12,809	9,106
<b>Total</b>	<b>\$51,709</b>	<b>\$47,534</b>	<b>\$54,058</b>

**21. FAIR VALUE OF FINANCIAL INSTRUMENTS**

The estimated fair values of the Company's financial instruments approximate their related carrying values, except for the following:

<i>In thousands</i>	2003		2002	
	Carry Value	Fair Value	Carry Value	Fair Value
Interest rate swaps	\$ (377)	\$ (377)	\$ (1,756)	(1,756)
Foreign exchange hedges and option contracts	235	235	—	—
6.875% senior notes	150,000	155,000	—	—

The fair value of the Company's interest rate swaps (see Note 9), foreign exchange hedges and option contracts and senior notes were based on dealer quotes and represent the estimated amount the Company would pay to the counterparty to terminate the agreements.

**22. SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)**

<i>In thousands, except per share data</i>	<b>First Quarter</b>	<b>Second Quarter</b>	<b>Third Quarter</b>	<b>Fourth Quarter</b>
<b>2003</b>				
Net sales	\$ 169,523	\$ 174,856	\$ 167,189	\$ 206,356
Gross profit	45,276	47,562	43,425	53,187
Operating income	12,301	13,842	10,647	14,919
Income from continuing operations before taxes	8,766	8,771	8,740	8,765
Income (loss) from discontinued operations (net of tax)	117	(44)	53	325
Net income	5,683	5,526	5,603	5,891
Basic earnings from continuing operations per common share	\$ 0.13	\$ 0.13	\$ 0.13	\$ 0.12
Diluted earnings from continuing operations per common share	\$ 0.13	\$ 0.13	\$ 0.13	\$ 0.12
<b>2002</b>				
Net sales	\$ 177,325	\$ 179,808	\$ 161,422	\$ 177,640
Gross profit	44,780	45,356	43,284	46,051
Operating income	10,467	13,300	11,170	12,597
Income from continuing operations before taxes	4,044	7,329	5,910	6,621
Income (loss) from discontinued operations (net of tax)	(405)	57	48	174
Net (loss) income	(59,440)	4,821	3,890	5,250
Basic earnings from continuing operations per common share	\$ 0.06	\$ 0.11	\$ 0.09	\$ 0.12
Diluted earnings from continuing operations per common share	\$ 0.06	\$ 0.11	\$ 0.09	\$ 0.12

Earnings per share for 2002 are different than the sum of the quarterly earnings per share due to rounding.

The Company recorded a cumulative effect of accounting change for goodwill, net of tax, of \$61.7 million, or \$1.41 in the first quarter of 2002. In the fourth quarter of 2002, the Company recorded a \$772,000, or \$0.02, per diluted share tax benefit due to research and development credits and the utilization of foreign tax credits. Also in the fourth quarter of 2002, the Company's vacation policy was changed so that employees that leave the Company are entitled to a pro rata portion of their vacation for that year instead of their entire vacation for the year. This change resulted in income of \$789,000, net of tax, or \$0.02 per diluted share.

### 23. RESTRUCTURING CHARGE

In 2001, the Company completed a merger and restructuring plan with charges totaling \$71 million pre-tax, with approximately \$2 million of the costs expensed in 2001, \$20 million in 2000 and \$49 million in 1999. The plan involved the elimination of duplicate facilities and excess capacity, operational realignment and related workforce reductions, and the evaluation of certain assets as to their perceived ongoing benefit to the Company.

As of December 31, 2003, \$86,000 of the merger and restructuring charge was still remaining as accrued on the balance sheet as part of other accrued liabilities. The table below identifies the significant components of the charge and reflects the accrual balance at that date.

<u><i>In thousands</i></u>	<u>Lease Impairments</u>	<u>Total</u>
Beginning balance, January 1, 2003	\$ 647	\$ 647
Amounts paid in 2003	561	561
	<hr/>	<hr/>
Balance at December 31, 2003	86	86
	<hr/>	<hr/>

The lease impairment charges are associated with the Company's closing of a plant and the consolidation of the corporate headquarters.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION

By                      /s/ GREGORY T. H. DAVIES

**Gregory T. H. Davies,  
Chief Executive Officer**

Date: March 15, 2004

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Company in the capacities indicated and on the dates indicated.

	<u>Signature and Title</u>	<u>Date</u>
By	/s/ WILLIAM E. KASSLING <hr/> <b>William E. Kassling, Chairman of the Board and Director</b>	March 15, 2004
By	/s/ GREGORY T. H. DAVIES <hr/> <b>Gregory T. H. Davies, President, Chief Executive Officer and Director</b>	March 15, 2004
By	/s/ ROBERT J. BROOKS <hr/> <b>Robert J. Brooks, Executive Vice President - Strategic Development and Director</b>	March 15, 2004
By	/s/ KIM G. DAVIS <hr/> <b>Kim G. Davis, Director</b>	March 15, 2004
By	/s/ EMILIO A. FERNANDEZ <hr/> <b>Emilio A. Fernandez, Director</b>	March 15, 2004
By	/s/ LEE B. FOSTER, II <hr/> <b>Lee B. Foster, Director</b>	March 15, 2004
By	/s/ MICHAEL W.D. HOWELL <hr/> <b>Michael W.D. Howell, Director</b>	March 15, 2004
By	/s/ JAMES P. MISCOLL <hr/> <b>James P. Miscoll, Director</b>	March 15, 2004
By	/s/ JAMES V. NAPIER <hr/> <b>James V. Napier, Director</b>	March 15, 2004

**WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION**  
**VALUATION AND QUALIFYING ACCOUNTS**  
**For each of the three years ended December 31**

<i>In thousands</i>	Balance at beginning of period	Charged/ (credited) to expense	Charged to other accounts <sup>(1)</sup>	Deductions from reserves <sup>(2)</sup>	Balance at end of period
<b>2003</b>					
Warranty and overhaul reserves	\$ 17,407	\$ 10,489	\$ —	\$ 14,589	\$ 13,307
Allowance for doubtful accounts	4,647	1,576	—	1,771	4,452
Valuation allowance - taxes	14,566	—	3,921	—	18,487
Inventory reserves	12,408	5,326	—	1,331	16,403
Merger and restructuring reserve	647	—	—	561	86
<b>2002</b>					
Warranty and overhaul reserves	\$ 15,373	\$ 17,625	\$ —	\$ 15,591	\$ 17,407
Allowance for doubtful accounts	2,294	2,923	—	570	4,647
Valuation allowance- taxes	8,641	—	5,925	—	14,566
Inventory reserves	13,228	3,802	—	4,622	12,408
Merger and restructuring reserve	3,152	—	—	2,505	647
<b>2001</b>					
Warranty and overhaul reserves	\$ 23,482	\$ 19,821	\$ (6,658)	\$ 21,272	\$ 15,373
Allowance for doubtful accounts	3,949	2,151	(1,287)	2,519	2,294
Valuation allowance- taxes	8,641	—	—	—	8,641
Inventory reserves	17,309	8,569	(3,689)	8,961	13,228
Merger and restructuring reserve	6,257	3,723	—	6,828	3,152

<sup>(1)</sup> Reserves of acquired/(sold) companies and valuation allowances for state and foreign deferred tax assets

<sup>(2)</sup> Actual disbursements and/or charges



**EXHIBITS**

<u>Exhibits</u>		<u>Filing Method</u>
2.1	Amended and Restated Agreement and Plan of Merger, as amended (originally included as Annex A to the Joint Proxy Statement/Prospectus)	8
3.1	Restated Certificate of Incorporation of the Company dated January 30, 1995, as amended March 30, 1995	2
3.3	Amended and Restated By-Laws of the Company, effective November 19, 1999	8
4.1(a)	Indenture with the Bank of New York as Trustee dated as of August 6, 2003	15
4.1(b)	Resolutions Adopted July 23, 2003 by the Board of Directors establishing the terms of the offering of up to \$150,000,000 aggregate principal amount of 6.875% Notes due 2013	15
4.2	Purchase Agreement, dated July 23, 2003, by and between the Company and the initial purchasers	15
4.3	Exchange and Registration Rights Agreement, dated August 6, 2003	15
10.1	MotivePower Stock Option Agreement (originally included as Annex B to the Joint Proxy Statement/Prospectus)	8
10.2	Westinghouse Air Brake Stock Option Agreement (originally included as Annex C to the Joint Proxy Statement/Prospectus)	8
10.3	Voting Agreement dated as of September 26, 1999 among William E. Kassling, Robert J. Brooks, Harvard Private Capital Holdings, Inc. Vestar Equity Partners, L.P. and MotivePower Industries, Inc. (originally included as Annex D to the Joint Proxy Statement/Prospectus)	8
10.9	Amended and Restated Refinancing Credit Agreement dated as of November 19, 1999 among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York (Schedules and Exhibits omitted)	9
10.10	Amended and Restated Stockholders Agreement dated as of March 5, 1997 among the RAC Voting Trust (“Voting Trust”), Vestar Equity Partners, L.P. (“Vestar Equity”), Harvard Private Capital Holdings, Inc. (“Harvard”), American Industrial Partners Capital Fund II, L.P. (“AIP”) and the Company	5
10.12	Indemnification Agreement dated January 31, 1995 between the Company and the Voting Trust Trustees	2
10.13	Agreement of Sale and Purchase of the North American Operations of the Railway Products Group, an operating division of American Standard Inc., dated as of 1990 between Rail Acquisition Corp. and American Standard Inc. (only provisions on indemnification are reproduced)	2
10.14	Letter Agreement (undated) between the Company and American Standard Inc. on environmental costs and sharing	2
10.15	Purchase Agreement dated as of June 17, 1992 among the Company, Schuller International, Inc., Manville Corporation and European Overseas Corporation (only provisions on indemnification are reproduced)	2
10.16	Asset Purchase Agreement dated as of January 23, 1995 among the Company, Pulse Acquisition Corporation, Pulse Electronics, Inc., Pulse Embedded Computer Systems, Inc. and the Pulse Shareholders (Schedules and Exhibits omitted)	2
10.17	License Agreement dated as of December 31, 1993 between SAB WABCO Holdings B.V. and the Company	2
10.18	Letter Agreement dated as of January 19, 1995 between the Company and Vestar Capital Partners, Inc.	2
10.19	Westinghouse Air Brake Company 1995 Stock Incentive Plan, as amended	7
10.20	Westinghouse Air Brake Company 1995 Non-Employee Directors’ Fee and Stock Option Plan, as amended	9
10.22	Letter Agreement dated as of January 1, 1995 between the Company and Vestar Capital Partners, Inc.	2
10.23	Form of Indemnification Agreement between the Company and Authorized Representatives	2

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10.27	Amendment No. 1 to Amended and Restated Stockholders Agreement dated as of March 5, 1997 among the Voting Trust, Vestar, Harvard, AIP and the Company	5
10.28	Common Stock Registration Rights Agreement dated as of March 5, 1997 among the Company, Harvard, AIP and the Voting Trust	5
10.29	1998 Employee Stock Purchase Plan	7
10.32	Westinghouse Air Brake Technologies Corporation 2000 Stock Incentive Plan	10
10.33	Amendment No. 1, dated as of November 16, 2000, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and ABN AMRO Bank N.V. as bookrunner and co-syndication agent, The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999 among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	11
10.34	Amendment No. 2, dated as of March 30, 2001, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and ABN AMRO Bank N.V. as bookrunner and co-syndication agent, The Chase Manhattan Bank as administrative agent, The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	13
10.35	Amendment No. 3, dated as of July 18, 2001, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and LaSalle Bank National Association and ABN AMRO Bank N.V. as bookrunner and co-syndication agent, The Bank of New York, as co-syndication agent, The Chase Manhattan Bank as administrative agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	13
10.36	Amendment No. 4, dated as of September 17, 2001, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and LaSalle Bank National Association as bookrunner and co-syndication agent, The Chase Manhattan Bank as administrative agent, The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the Company, various financial institutions, LaSalle Bank National Association, The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	13
10.37	Amendment No. 5, dated as of November 14, 2001, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and LaSalle Bank National Association as bookrunner and co-syndication agent, JP Morgan Chase Bank (formerly known as The Chase Manhattan Bank) as administrative agent, The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the	

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	Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999 (Exhibits omitted)	13
10.38	Amendment No. 6, dated as of November 13, 2002, by and among the Company and the Guarantors from Time to Time Party Thereto, and the Banks From Time to Time Party Thereto, and LaSalle Bank National Association as bookrunner and co-syndication agent, JP Morgan Chase Bank as administrative agent, and The Bank of New York, as co-syndication agent, Mellon Bank, N.A., as documentation agent, LaSalle Bank National Association, as an issuing bank, ABN AMRO Bank N.V., as an issuing bank, and The Chase Manhattan Bank USA, N.A., (successor in interest to Chase Manhattan Bank Delaware), as an issuing bank, to the Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended, among the Company, various financial institutions, ABN AMRO Bank N.V., The Chase Manhattan Bank, and The Bank of New York which was filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the period ended December 31, 1999	14
10.39	Asset Purchase Agreement, by and between General Electric Company, through its GE Transportation Systems business and Westinghouse Air Brake Technologies Corporation, dated as of July 24, 2001	12
10.40	Refinancing Credit Agreement by and among the Company, the Guarantors, various lenders, LaSalle Bank National Association, JP Morgan Chase Bank, The Bank of New York, Citizens Bank of Pennsylvania, National City Bank of Pennsylvania, The Bank of Nova Scotia, Bank of Tokyo-Mitsubishi Trust Company and PNC Bank, National Association dated January 12, 2004	1
21	List of subsidiaries of the Company	1
23.1	Consent of Ernst & Young LLP	1
23.2	Information Regarding Consent of Arthur Andersen LLP	1
31.1	Rule 13a-14(a)/15d-14(a) Certifications	1
32.1	Section 1350 Certifications	1
99.1	Annual Report on Form 11-K for the year ended December 31, 2002 of the Westinghouse Air Brake Technologies Corporation Savings Plan	1
99.2	Annual Report on Form 11-K for the year ended December 31, 2003 of the Westinghouse Air Brake Technologies Corporation Savings Plan for Hourly Employees	1

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- 1 Filed herewith.
  - 2 Filed as an exhibit to the Company's Registration Statement on Form S-1 (No. 33-90866).
  - 3 Filed as an exhibit to the Company's Current Report on Form 8-K, dated October 3, 1996.
  - 4 Filed as an exhibit to the Company's Registration Statement on Form S-8 (No. 333-39159).
  - 5 Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 1997.
  - 6 Filed as an exhibit to the Company's Current Report on Form 8-K, dated October 5, 1998.
  - 7 Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 1998.
  - 8 Filed as part of the Company's Registration Statement on Form S-4 (No. 333-88903).
  - 9 Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 1999.
  - 10 Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2000.
  - 11 Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 2000.
  - 12 Filed as an exhibit to the Company's Current Report on Form 8-K, dated November 13, 2001.

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- 13 Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 2001.
- 14 Filed as an exhibit to the Company's Annual Report on Form 10-K for the period ended December 31, 2002.
- 15 Filed as an exhibit to the Company's Registration Statement on Form S-4 (No. 333-110600).

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**\$175,000,000 SENIOR REVOLVING CREDIT FACILITY**

**REFINANCING  
CREDIT AGREEMENT**

*by and among*

**WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION**

*and*

**THE GUARANTORS PARTY HERETO**

*and*

**THE LENDERS PARTY HERETO**

*and*

**LASALLE BANK NATIONAL ASSOCIATION,**

**As Administrative Agent, Bookrunner, and Lead Arranger,**

*and*

**JPMorgan Chase Bank, as Syndication Agent and Co-Arranger,**

**The Bank of New York, Citizens Bank of Pennsylvania and National City Bank of  
Pennsylvania,**

**as Co-Documentation Agents**

**The Bank of Nova Scotia, Bank of Tokyo-Mitsubishi Trust Company and PNC Bank,  
National Association,  
as Senior Managing Agents**

*Dated as of January 12, 2004*

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**REFINANCING  
CREDIT AGREEMENT**

THIS REFINANCING CREDIT AGREEMENT dated as of January 12, 2004 (this "Agreement") is entered into among WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION, a Delaware corporation (the "Company"), each of the other Loan Parties (as hereinafter defined) from time to time party hereto, the financial institutions that are or may from time to time become parties hereto (together with their respective successors and assigns, the "Lenders"), and LASALLE BANK NATIONAL ASSOCIATION (in its individual capacity, "LaSalle"), as administrative agent for the Lenders, bookrunner, lead arranger, and as an Issuing Lender, JPMORGAN CHASE BANK, as syndication agent and co-arranger, THE BANK OF NEW YORK, CITIZENS BANK OF PENNSYLVANIA and NATIONAL CITY BANK OF PENNSYLVANIA, as co-documentation agents, and BANK OF NOVA SCOTIA, PNC BANK, NATIONAL ASSOCIATION, and BANK OF TOKYO-MITSUBISHI TRUST COMPANY, as Senior Managing Agents, and ABN AMRO BANK N.V. and JPMORGAN CHASE BANK (as assignee of Chase Manhattan Bank USA, N.A.), each as an Issuing Lender.

The Company, the other Loan Parties, Administrative Agent, and certain lenders (including some of the Lenders hereunder) are parties to an Amended and Restated Refinancing Credit Agreement, dated as of November 19, 1999, as amended from time to time (as amended to the date hereof, the "Prior Credit Agreement"), providing for, *inter alia*, (i) a revolving credit facility and (ii) a convertible revolving credit facility; and

The Company has requested the Lenders to refinance the amounts outstanding under the Prior Credit Agreement and to provide for a five-year revolving credit facility to the Company in an aggregate principal amount up to \$175,000,000 as such amount may be increased in accordance with the terms hereof; and

The Lenders have agreed to make available to the Company such credit and refinance the amounts outstanding under the Prior Credit Agreement upon the terms and conditions set forth herein.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

**1. DEFINITIONS.**

1.01 Definitions.

When used herein the following terms shall have the following meanings:

Acquired Debt means mortgage Debt or Debt with respect to Capital Leases of a Person existing at the time such Person became a Subsidiary or assumed by the Company or a Subsidiary of the Company pursuant to an Acquisition permitted hereunder (and not created or incurred in connection with or in anticipation of such Acquisition).

**Acquisition** means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of 50% of the Capital Securities of any Person, or otherwise causing any Person to become a Subsidiary, or (c) a merger or consolidation or any other combination with another Person (other than a Person that is already a Subsidiary).

**Administrative Agent** means LaSalle in its capacity as administrative agent for the Lenders hereunder and any successor thereto in such capacity.

**Affected Loan** - see Section 8.3.

**Affiliate** of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof and which is engaged in making, purchasing, holding or otherwise investing in commercial loans. A Person shall be deemed to be “controlled by” any other Person if such Person possesses, directly or indirectly, power to vote 5% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, neither the Administrative Agent nor any Lender shall be deemed an Affiliate of any Loan Party.

**Agent Fee Letter** means the Fee letter dated as of September 29, 2003, between the Company and the Administrative Agent.

**Agreement** - see the Preamble.

**Alternate Currency** means with respect to any Revolving Loan, Canadian Dollars to the extent that such currency is freely tradable and exchangeable into Dollars in the London or other applicable interbank market and for which an Exchange Rate can be determined by reference to the Bloomberg Financial Markets system or other authoritative source selected by the Administrative Agent in its sole discretion.

**Applicable Margin** means, for any day, the rate per annum set forth below opposite the level (the “Level”) then in effect, it being understood that the Applicable Margin for (i) LIBOR Loans shall be the percentage set forth under the column “LIBOR Margin”, (ii) Standby L/C Fee Rate shall be the percentage set forth under the column “Standby L/C Fee”, (iii) the Commercial L/C Fee Rate shall be the percentage set forth under the column “Commercial L/C Fee” and (iv) the Non-Use Fee Rate shall be the percentage set forth under the column “Non-Use Fee”:

<u>Level</u>	<u>Total Debt To EBITDA</u>	<u>LIBOR Margin (bps)</u>	<u>Standby L/C Fee (bps)</u>	<u>Commercial L/C Fee (bps)</u>	<u>Non-Use Fee (bps)</u>
I	<sup>3</sup> 3.00x	+200.00	+200.00	+ 100.00	+ 50.00
II	<sup>3</sup> 2.50x < 3.00x	+175.00	+175.00	+ 87.50	+ 35.00
III	<sup>3</sup> 2.00x < 2.50x	+150.00	+150.00	+ 75.00	+ 30.00
IV	<sup>3</sup> 1.50x < 2.00x	+125.00	+125.00	+ 62.50	+ 25.00
V	< 1.50	+100.00	+100.00	+ 50.00	+ 20.00

The LIBOR Margin, the Commercial L/C Fee Rate, the Standby L/C Fee Rate, and the Non-Use Fee Rate shall be adjusted, to the extent applicable, on the fifth (5th) Business Day after the Company provides or is required to provide the annual and quarterly financial statements and other information pursuant Section 10.1.1 or 10.1.2, as applicable, and the related Compliance Certificate, pursuant to Section 10.1.3. Notwithstanding anything contained in this paragraph to the contrary, (a) if the Company fails to deliver the such financial statements and Compliance Certificate in accordance with the provisions of Section 10.1.1, 10.1.2 and 10.1.3, the LIBOR Margin, the Commercial L/C Fee Rate, the Standby L/C Fee Rate, and the Non-Use Fee Rate shall be based upon Level I above beginning on the date such financial statements and Compliance Certificate were required to be delivered until the fifth (5th) Business Day after such financial statements and Compliance Certificate are actually delivered, whereupon the Applicable Margin shall be determined by the then current Level; (b) no reduction to any Applicable Margin shall become effective at any time when an Event of Default or Unmatured Event of Default has occurred and is continuing; and (c) notwithstanding any other provision hereof and solely for the purpose of determining the LIBOR Margin, the Commercial L/C Fee Rate, the Standby L/C Fee Rate, and the Non-Use Fee Rate, the initial Applicable Margin on the Closing Date shall be based on Level II until the date on which the financial statements and Compliance Certificate are required to be delivered for the Fiscal Quarter ending December 31, 2003.

Asset Disposition see the definition of Significant Disposition.

Assignee - see Section 15.6.1.

Assignment Agreement - see Section 15.6.1.

Attorney Costs means, with respect to any Person, all reasonable fees and charges of any counsel to such Person, the reasonable allocable cost of internal legal services of such Person, all reasonable disbursements of such internal counsel and all court costs and similar legal expenses.

Augmenting Lender see Section 6.5.

Base Rate means at any time the greater of (a) the Federal Funds Rate plus 0.5% and (b) the Prime Rate.

Base Rate Loan means any Loan which bears interest at or by reference to the Base Rate.

Business Day means any day on which LaSalle is open for commercial banking business in Chicago, Illinois, and, in the case of a Business Day which relates to a LIBOR Loan, on which dealings in deposits in the relevant currency are carried on in the London or other applicable interbank market.

Capital Expenditures means all expenditures which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of the Company, including expenditures in respect of Capital Leases, but excluding Acquisitions permitted pursuant to Section 11.5 and expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (a) from insurance proceeds (or other similar recoveries) paid on account of the loss of or damage to the assets being replaced or restored or (b) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced.

Capital Lease means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of such Person.

Capital Securities means, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued or acquired after the Closing Date, including common shares, preferred shares, membership interests in a limited liability company, limited or general partnership interests in a partnership or any other equivalent of such ownership interest.

Cash Collateralize means to deliver cash collateral to the Administrative Agent, to be held as cash collateral for outstanding Letters of Credit, pursuant to documentation satisfactory to the Administrative Agent. Derivatives of such term have corresponding meanings.

Cash Equivalent Investment means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof, (b) commercial paper, maturing not more than one year from the date of issue, or corporate demand notes, in each case (unless issued by a Lender or its holding company) rated at least A-1 by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or P-1 by Moody's Investors Service, Inc., (c) any certificate of deposit, time deposit or banker's acceptance, maturing not more than one year after such time, or any overnight Federal Funds transaction that is issued or sold by any Lender or its holding company (or by a commercial banking institution that is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$500,000,000), (d) any repurchase agreement entered into with any Lender (or commercial banking institution of the nature referred to in clause (c)) which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such Lender (or other commercial banking institution) thereunder and (e) money market accounts or mutual funds which invest exclusively in assets satisfying the foregoing requirements, and (f) other short term liquid investments approved in writing by the Administrative Agent.

Casualty Disposition see the definition of “Significant Disposition.”

Change of Control means (i) any person or group of persons (within the meaning of Sections 13(d) or 14(a) of the Securities Exchange Act of 1934, as amended) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under said Act) of 50% or more of the voting capital stock of the Company; or (ii) within a period of twelve (12) consecutive calendar months, individuals who were directors of the Company on the first day of such period shall cease to constitute a majority of the board of directors of the Company.

Closing Date - see Section 12.1.

Code means the Internal Revenue Code of 1986.

Collateral Documents means, collectively, the Guaranty Agreement and any agreement or instrument pursuant to which the Company, any Subsidiary or any other Person hereafter grants or purports to grant collateral to the Administrative Agent for the benefit of the Lenders or otherwise relates to such collateral.

Commercial Letter of Credit means any Letter of Credit which is a commercial letter of credit issued in respect of the purchase of goods or services.

Commercial Letter of Credit Fee see Section 5.2.

Commitment means, as to any Lender, such Lender’s commitment to make Revolving Loans, and to issue or participate in Letters of Credit, under this Agreement. The initial amount of each Lender’s commitment to make Loans is set forth on Annex A.

Company - see the Preamble.

Compliance Certificate means a Compliance Certificate in substantially the form of Exhibit B.

Computation Period means each period of four consecutive Fiscal Quarters ending on the last day of a Fiscal Quarter.

Consolidated Net Income means, with respect to the Company and its Subsidiaries for any period, the net income (or loss) of the Company and its Subsidiaries for such period.

Consolidated Net Worth shall mean, as of any date of determination, total stockholders’ equity, determined and consolidated in accordance with GAAP except that any write-offs or deductions affecting the financial statements of the Company and its Subsidiaries resulting from the application of SFAS 142 shall be disregarded in the determination of total stockholders’ equity.

Contingent Liability means, without duplication, with respect to any Person, each obligation and liability of such Person and all such obligations and liabilities of such Person incurred pursuant to any agreement, undertaking or arrangement by which such Person:



(a) guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, dividend, obligation or other liability of any other Person in any manner (other than by endorsement of instruments in the course of collection), including any indebtedness, dividend or other obligation which may be issued or incurred at some future time; (b) guarantees the payment of dividends or other distributions upon the Capital Securities of any other Person; (c) undertakes or agrees (whether contingently or otherwise): (i) to purchase, repurchase, or otherwise acquire any indebtedness, obligation or liability of any other Person or any property or assets constituting security therefor, (ii) to advance or provide funds for the payment or discharge of any indebtedness, obligation or liability of any other Person (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), or to maintain solvency, assets, level of income, working capital or other financial condition of any other Person, or (iii) to make payment to any other Person other than for value received; (d) agrees to lease property or to purchase securities, property or services from such other Person with the purpose or intent of assuring the owner of such indebtedness or obligation of the ability of such other Person to make payment of the indebtedness or obligation; (e) to induce the issuance of, or in connection with the issuance of, any letter of credit for the benefit of such other Person; or (f) undertakes or agrees otherwise to assure a creditor against loss. The amount of any Contingent Liability shall (subject to any limitation set forth herein) be deemed to be the outstanding principal amount (or maximum permitted principal amount, if larger) of the indebtedness, obligation or other liability guaranteed or supported thereby.

Controlled Group means all members of a controlled group of corporations, all members of a controlled group of trades or businesses (whether or not incorporated) under common control and all members of an affiliated service group which, together with the Company or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

Debt of any Person means, without duplication, (a) all indebtedness of such Person, (b) all borrowed money of such Person, whether or not evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person; provided that if such Person has not assumed or otherwise become liable for such indebtedness, such indebtedness shall be measured at the fair market value of such property securing such indebtedness at the time of determination, (f) all obligations, contingent or otherwise, with respect to the face amount of all letters of credit (whether or not drawn), bankers' acceptances and similar obligations issued for the account of such Person (including the Letters of Credit), (g) all Hedging Obligations of such Person, (h) all Contingent Liabilities of such Person and (i) all Debt of any partnership of which such Person is a general partner.

Debt to be Repaid means Debt listed on Schedule 12.1.

Designated Proceeds - see Section 6.2.2(a).

Dollar and the sign “\$” mean lawful money of the United States of America.

Dollar Equivalent shall mean (A) with respect to a Letter of Credit the amount in Dollars (i) which is to be paid in Dollars under the Letter of Credit, and (ii) which is equivalent to the amount to be paid in a currency other than Dollars under the Letter of Credit computed at the Administrative Agent’s then current selling rate of exchange, as reasonably determined by Administrative Agent, for payment by teletransmission or otherwise to or at the place of payment when and in the currency in which payment is to be made under the Letter of Credit, plus any and all costs, premiums, and expenses arising from all currency conversions incurred by Administrative Agent in connection therewith, and (B) with respect to Revolving Loans (i) as to any such Loan denominated in Dollars, the principal amount thereof, and (ii) as to any such Loan denominated in an Alternate Currency, the amount in Dollars which is equivalent to the principal amount thereof, determined by the Administrative Agent using the Exchange Rate with respect to such Alternate Currency at the time in effect.

EBITDA means, for any period, Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income, Interest Expense, income tax expense, depreciation, amortization, losses from Asset Dispositions, extraordinary losses, noncash losses from discontinued operations and other noncash charges to net income for such period, minus, to the extent added in determining such Consolidated Net Income, noncash credits to net income, gains from Asset Dispositions, noncash gains from discontinued operations, and other extraordinary income for such period; provided, however, that in the event of an acquisition or disposition of a Subsidiary or material line of business or a material division during the period of determination and solely for the purposes of Section 11.14.2, such calculation shall (a) in the case of such a disposition, exclude for the period of determination EBITDA attributable to the disposed of Subsidiary, line of business, or division as if such disposition had occurred at the beginning of such period of determination and (b) in the case of such an acquisition, include for the period of determination the EBITDA attributable to the acquired Subsidiary, line of business, or division as if such acquisition had occurred at the beginning of such period of determination.

Environmental Claims means all claims, however asserted, by any governmental, regulatory or judicial authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment.

Environmental Laws means all present or future federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative or judicial orders, consent agreements, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authority, in each case relating to any matter arising out of or relating to public health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, emission, release, threatened release, control or cleanup of any Hazardous Substance.

Equity Disposition see the definition of “Significant Disposition.”

ERISA means the Employee Retirement Income Security Act of 1974.

ESOP see Section 11.4.

Event of Default means any of the events described in Section 13.1.

Exchange Rate means, on any day, with respect to an Alternate Currency, the rate at which such Alternate Currency may be exchanged into Dollars, as set forth at approximately 11:00 a.m., London or such other applicable time, on such date by reference to the *Bloomberg Financial Markets* system for such Alternate Currency (or other authoritative source selected by the Administrative Agent in its sole discretion) or, in the event of the unavailability of any such source, the Exchange Rate shall instead be the spot rate of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such Alternate Currency are then being conducted, at or about 11:00 a.m. at the place of such market, on such date for the purchase of Dollars for delivery two Business Days later; *provided* that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

Exchange Rate L/C Excess Amount see Section 2.3.1.

Excluded Taxes means taxes based upon, or measured by, the Lender's or Administrative Agent's (or a branch of the Lender's or Administrative Agent's) overall net income, overall net receipts, or overall net profits (including franchise taxes imposed in lieu of such taxes).

Federal Funds Rate means, for any day, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent. The Administrative Agent's determination of such rate shall be binding and conclusive absent manifest error.

Fiscal Quarter means a fiscal quarter of a Fiscal Year.

Fiscal Year means the fiscal year of the Company and its Subsidiaries, which period shall be the 12-month period ending on December 31 of each year. References to a Fiscal Year with a number corresponding to any calendar year (e.g., "Fiscal Year 2003") refer to the Fiscal Year ending on December 31, 2003, of such calendar year.

FRB means the Board of Governors of the Federal Reserve System or any successor thereto.

GAAP means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of

Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession) and the Securities and Exchange Commission, which are applicable to the circumstances as of the date of determination.

Group - see Section 2.2.1.

Guaranty Agreement means the Guaranty Agreement dated as of the date hereof executed and delivered by the Loan Parties, together with any joinders thereto and any other guaranty agreement executed by a Loan Party, in each case in form and substance satisfactory to the Administrative Agent.

Hazardous Substances means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, radon gas and mold; (b) any chemicals, materials, pollutant or substances defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous substances", "restricted hazardous waste", "toxic substances", "toxic pollutants", "contaminants", "pollutants" or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, the exposure to or release of which is prohibited, limited or regulated by any governmental authority or for which any duty or standard of care is imposed pursuant to any Environmental Law.

Hedging Agreement means any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices.

Hedging Obligation means, with respect to any Person, any liability of such Person under any Hedging Agreement. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

Indemnified Liabilities - see Section 15.16.

Intercompany Subordination Agreement means the Intercompany Subordination Agreement dated as of the date hereof executed and delivered by the Loan Parties, together with any joinders thereto and any other intercompany subordination agreement executed by a Loan Party or a Subsidiary of a Loan Party, in each case in form and substance satisfactory to the Administrative Agent.

Interest Coverage Ratio means, for any Computation Period, the ratio of (a) EBITDA for such Computation Period to (b) cash Interest Expense for such Computation Period.

Interest Expense means for any period the consolidated interest expense of the Company and its Subsidiaries for such period (including all imputed interest on Capital Leases).

Interest Period means, as to any LIBOR Loan, the period commencing on the date such Loan is borrowed or continued as, or converted into, a LIBOR Loan and ending on the date one, two, three or six months thereafter (and nine or twelve months if such periods are available to all Lenders at substantially the same cost to each) as selected by the Company pursuant to Section 2.2.2 or 2.2.3, as the case may be; provided that:

(a) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the following Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day;

(b) any Interest Period that begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) the Company may not select any Interest Period for a Revolving Loan which would extend beyond the scheduled Termination Date.

Investment means, with respect to any Person, any investment in another Person, whether by acquisition of any debt or Capital Security, by making any loan or advance, by becoming obligated with respect to a Contingent Liability in respect of obligations of such other Person (other than travel and similar advances to employees in the ordinary course of business) or by making an Acquisition.

Issuing Lender severally means LaSalle, in its capacity as the issuer of Letters of Credit hereunder, or any Affiliate of LaSalle that may from time to time issue Letters of Credit, and their successors and assigns in such capacity, and means, subject to the limitations set forth at Section 2.3.1, Chase Manhattan Bank USA, N.A. (or its assignee, JPMorgan Chase Bank), or ABN AMRO Bank N.V.

LaSalle - see the Preamble.

L/C Application means, with respect to any request for the issuance of a Letter of Credit, a letter of credit application in the form being used by the Issuing Lender at the time of such request for the type of letter of credit requested.

L/C Fee Rate - see the definition of Applicable Margin.

Lender - see the Preamble. References to the "Lenders" shall include the Issuing Lender; for purposes of clarification only, to the extent that LaSalle (or any successor Issuing Lender) may have any rights or obligations in addition to those of the other Lenders due to its status as Issuing Lender, its status as such will be specifically referenced.

Lender Party - see Section 15.16.

Letter of Credit - see Section 2.1.3 and Section 2.1.2.

Level see the definition of Applicable Margin.

LIBOR Loan means any Loan which bears interest at a rate determined by reference to the LIBOR Rate.

LIBOR Margin - see the definition of Applicable Margin.

LIBOR Office means with respect to any Lender the office or offices of such Lender which shall be making or maintaining the LIBOR Loans of such Lender hereunder. A LIBOR Office of any Lender may be, at the option of such Lender, either a domestic or foreign office.

LIBOR Rate means a rate of interest equal to (a) the per annum rate of interest at which deposits in Dollars or the applicable Alternate Currency (as the case may be) in an amount comparable to the amount of the relevant LIBOR Loan and for a period equal to the relevant Interest Period are offered in the London or other applicable Interbank Eurodollar or Alternate Currency market at 11:00 A.M. (London or such other applicable time) two (2) Business Days prior to the commencement of such Interest Period, as displayed in the *Bloomberg Financial Markets* system (or other authoritative source selected by the Administrative Agent in its sole discretion) or, if the *Bloomberg Financial Markets* system or another authoritative source is not available, as the LIBOR Rate is otherwise determined by the Administrative Agent in its sole and absolute discretion, divided by (b) a number determined by subtracting from 1.00 the then applicable stated maximum reserve percentage for determining reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D), such rate to remain fixed for such Interest Period. The Administrative Agent's determination of the LIBOR Rate shall be conclusive, absent manifest error.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person (including an interest in respect of a Capital Lease) which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, title retention lien, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loan Documents means this Agreement, the Notes, the Letters of Credit, the Master Letter of Credit Agreement, the L/C Applications, the Intercompany Subordination Agreement, the Agent Fee Letter, the Collateral Documents, and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means the Company and each domestic Subsidiary of the Company.

Loan or Loans means, as the context may require, Revolving Loans and/or Swing Line Loans.

Mandatory Prepayment Event - see Section 6.2.2(a).

Margin Stock means any "margin stock" as defined in Regulation U.

Master Letter of Credit Agreement means, at any time, with respect to the issuance of Letters of Credit, a master letter of credit agreement or reimbursement agreement in the form, if any, being used by the Issuing Lender at such time.

Material Adverse Effect means (a) a material adverse change in, or a material adverse effect upon, the financial condition, operations, assets, business, or properties of the Loan Parties taken as a whole, (b) a material impairment of the ability of the Loan Parties taken as a whole to perform any of the payment Obligations under any Loan Document or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document.

Multiemployer Pension Plan means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Company or any other member of the Controlled Group may have any liability.

Non-U.S. Participant - see Section 7.6(d).

Non-Use Fee Rate - see the definition of Applicable Margin.

Note means a promissory note substantially in the form of Exhibit A.

Notice of Borrowing - see Section 2.2.2.

Notice of Conversion/Continuation - see Section 2.2.3.

Obligations means all obligations (monetary (including post-petition interest, allowed or not) or otherwise) of any Loan Party under this Agreement and any other Loan Document including Attorney Costs and any reimbursement obligations of each Loan Party in respect of Letters of Credit, and all Hedging Obligations permitted hereunder which are owed to any Lender or its Affiliate, all in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

OFAC - see Section 10.4.

Operating Lease means any lease of (or other agreement conveying the right to use) any real or personal property by any Loan Party, as lessee, other than any Capital Lease.

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

Participant - see Section 15.6.2.

Pension Plan means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA or the minimum funding standards of ERISA (other than a Multiemployer Pension Plan), and as to which the Company or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial

employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Permitted Lien means a Lien expressly permitted hereunder pursuant to Section 11.2.

Permitted Note Indenture shall mean the indenture, dated as of August 6, 2003, in the original principal amount of \$150,000,000, among the Company and the Bank of New York, as Trustee, and any amendment, restatement, refinancing, or the like thereof to the extent permitted by Section 11.16.

Person means any natural person, corporation, partnership, trust, limited liability company, association, governmental authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

Prime Rate means, for any day, the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its prime rate (whether or not such rate is actually charged by the Administrative Agent), which is not intended to be the Administrative Agent's lowest or most favorable rate of interest at any one time. Any change in the Prime Rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the public announcement of such change; provided that the Administrative Agent shall not be obligated to give notice of any change in the Prime Rate.

Prior Credit Agreement see the Recitals.

Pro Rata Share means with respect to a Lender's obligation to make Revolving Loans, participate in Letters of Credit, reimburse the Issuing Lender, and receive payments of principal, interest, fees, costs, and expenses with respect thereto, (x) prior to the Revolving Commitment being terminated or reduced to zero, the percentage obtained by dividing (i) such Lender's Revolving Commitment, by (ii) the aggregate Revolving Commitment of all Lenders and (y) from and after the time the Revolving Commitment has been terminated or reduced to zero, the percentage obtained by dividing (i) the aggregate unpaid principal amount of such Lender's Revolving Outstandings (after settlement and repayment of all Swing Line Loans by the Lenders) by (ii) the aggregate unpaid principal amount of all Revolving Outstandings.

Refunded Swing Line Loan - see Section 2.2.4(c).

Regulation D means Regulation D of the FRB.

Regulation U means Regulation U of the FRB.

Replacement Lender - see Section 8.7(b).

Reportable Event means a reportable event as defined in Section 4043 of ERISA and the regulations issued thereunder as to which the PBGC has not waived the notification requirement of Section 4043(a), or the failure of a Pension Plan to meet the minimum funding standards of Section 412 of the Code (without regard to whether the Pension Plan is a plan described in Section 4021(a)(2) of ERISA) or under Section 302 of ERISA.



Required Lenders means, at any time, Lenders whose Pro Rata Shares equal or exceed 51% as determined pursuant to the definition of “Pro Rata Share”.

Revolving Commitment means \$175,000,000, as reduced from time to time pursuant to Section 6.1, or as increased pursuant to Section 6.5.

Revolving Loan - see Section 2.1.1.

Revolving Outstandings means, at any time, the sum of (a) the aggregate principal Dollar Equivalent amount of all outstanding Revolving Loans, plus (b) the Stated Amount of all Letters of Credit.

SEC means the Securities and Exchange Commission or any other governmental authority succeeding to any of the principal functions thereof.

Securitization means any sale, transfer or other disposition of assets relating to any one or more securitization, factoring or similar dispositions of assets, but excluding any sale by a Subsidiary of the Company, which is organized under the laws of Canada or a province thereof, of Dollar denominated receivables in order to reduce currency translation costs.

Senior Officer means, with respect to any Loan Party, any of the Chief Executive Officer, President, Chief Financial Officer, Chief Operating Officer, Treasurer, or Controller of such Loan Party.

Significant Disposition shall mean (i) any direct or indirect sale, lease, transfer, or other disposition (or series of related sales, leases, transfers or dispositions) by the Company or any Restricted Subsidiary (which term, for the purpose solely of this definition, shall have the meaning in this definition which is ascribed to such term by the Permitted Note Indenture), including any disposition by means of a merger, consolidation or similar transaction, of all or substantially all the assets of any division or line of business of the Company or any Restricted Subsidiary or any other assets of the Company or any Restricted Subsidiary outside of the ordinary course of business of the Company or any such Restricted Subsidiary (in each case an “Asset Disposition”), (ii) any direct or indirect sale, lease, transfer, or other disposition (or series of related sales, leases, transfers or dispositions) by the Company or any Restricted Subsidiary, including any disposition by means of a merger, consolidation or similar transaction, of any shares, interests, rights to purchase, warrants, options, participations, or other equivalents of or interests in (however designated) equity of a Restricted Subsidiary (other than directors’ qualifying shares or shares required by applicable Law to be held by a Person other than the Company or a Restricted Subsidiary) (“Equity Disposition”), and (iii) any receipt of insurance proceeds arising from a loss or casualty to property of any Loan Party (“Casualty Disposition”).

Significant Disposition Amount shall mean an amount of principal indebtedness required to be paid or prepaid at any time pursuant to the Permitted Note Indenture in connection with a Significant Disposition without giving effect to any payment or prepayment made or Cash Collateral pledged under this Agreement and without giving effect, at the time of determination, to any unconsummated acquisition of additional or replacement assets.

Standby Letter of Credit means a Letter of Credit which is not a Commercial Letter of Credit.

Standby Letter of Credit Fee see Section 5.2.

Stated Amount means, with respect to any Letter of Credit at any date of determination, (a) the maximum aggregate Dollar Equivalent (which with respect to Letters of Credit not yet honored shall be calculated by Administrative Agent on the basis of reasonable assumptions) amount available for drawing thereunder under any and all circumstances plus (b) the aggregate Dollar Equivalent amount of all unreimbursed payments and disbursements under such Letter of Credit.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding Capital Securities as have more than 50% of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to Subsidiaries of the Company.

Swing Line Availability means the lesser of (a) the Swing Line Commitment Amount and (b) Revolving Commitment (less Revolving Outstandings at such time).

Swing Line Commitment Amount means \$10,000,000, as reduced from time to time pursuant to Section 6.1, which commitment constitutes a subfacility of the Commitment of the Swing Line Lender.

Swing Line Lender means LaSalle.

Swing Line Loan - see Section 2.2.4.

Taxes means any and all present and future taxes, duties, levies, imposts, deductions, assessments, charges or withholdings, and any and all liabilities (including interest and penalties and other additions to taxes) with respect to the foregoing, but excluding Excluded Taxes.

Termination Date means the earlier to occur of (a) December 23, 2008, or (b) such other date on which the Commitments terminate pursuant to Section 6 or 13.

Termination Event means, with respect to a Pension Plan that is subject to Title IV of ERISA, (a) a Reportable Event, (b) the withdrawal of the Company or any other member of the Controlled Group from such Pension Plan during a plan year in which the Company or any other member of the Controlled Group was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or was deemed such under Section 4068(f) of ERISA, (c) the termination of such Pension Plan, the filing of a notice of intent to terminate the Pension Plan or the treatment of an amendment of such Pension Plan as a termination under Section 4041 of ERISA, (d) the institution by the PBGC of proceedings to terminate such Pension Plan or (e) any event or condition that might constitute grounds under Section 4042 of ERISA for the termination of, or appointment of a trustee to administer, such Pension Plan.

Total Debt means all Debt of the Company and its Subsidiaries, determined on a consolidated basis minus the unencumbered cash and Cash Equivalent Investments of the Company and its Subsidiaries at the time of determination, excluding (a) contingent obligations in respect of Contingent Liabilities (except to the extent constituting Contingent Liabilities in respect of Debt of a Person other than any Loan Party), and (b) Hedging Obligations. For the avoidance of doubt, Total Debt shall not include Indebtedness of a Loan Party arising from surety bonds, performance bonds, bid bonds, or similar obligations.

Total Debt to EBITDA Ratio means, as of the last day of any Fiscal Quarter, the ratio of (a) Total Debt as of such day to (b) EBITDA for the Computation Period ending on such day.

Total Plan Liability means, at any time, the present value of all vested and unvested accrued benefits under all Pension Plans, determined as of the then most recent valuation date for each Pension Plan, using PBGC actuarial assumptions for single employer plan terminations.

type - see Section 2.2.1.

UCC means the Uniform Commercial code as in effect from time to time in the Commonwealth of Pennsylvania.

Unfunded Liability means the amount (if any) by which the present value of all vested and unvested accrued benefits under all Pension Plans exceeds the fair market value of all assets allocable to those benefits, all determined as of the then most recent valuation date for each Pension Plan, using PBGC actuarial assumptions for single employer plan terminations.

Unmatured Event of Default means any event that, if it continues uncured, will, with lapse of time or notice or both, constitute an Event of Default.

Vapor Management shall mean the managers of Vapor Power, formerly a division of Vapor Corporation, or an entity controlled by such managers.

Vapor Power Sale shall mean the sale of Vapor Power, formerly a division of Vapor Corporation, to Vapor Management.

Venture shall mean at any time any domestic or non-domestic Person, venture or enterprise which is not a Subsidiary of the Company, but as to which (A) the Company or any one or more Subsidiaries of the Company directly or indirectly owns or controls an ownership, voting or other interest in excess of five percent of any such outstanding interests and (B) the Company materially participates in the management or operations thereof.

Withholding Certificate - see Section 7.6(d).

Wholly-Owned Subsidiary means, as to any Person, a Subsidiary all of the Capital Securities of which (except directors' qualifying Capital Securities) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

## 1.02 Other Interpretive Provisions.

(i) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(ii) Section, Annex, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(iii) The term “including” is not limiting and means “including without limitation.”

(iv) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.”

(v) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement and the other Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, supplements and other modifications thereto, but only to the extent such amendments, restatements, supplements and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation.

(vi) This Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and each shall be performed in accordance with its terms, and all covenants and other terms of this Agreement and the other Loan Documents shall each be given effect so that if a particular action or condition is expressly prohibited by any such covenant or other term, the fact that it would be expressly or impliedly permitted by another covenant or term, by an exception thereto, or be otherwise within the limitations thereof, shall not result in such action or condition being permissible.

(vii) This Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Administrative Agent, the Company, the Lenders and the other parties thereto and are the products of all parties. Accordingly, they shall not be construed against the Administrative Agent or the Lenders merely because of the Administrative Agent’s or Lenders’ involvement in their preparation.

## 2. **COMMITMENTS OF THE LENDERS; BORROWING, CONVERSION AND LETTER OF CREDIT PROCEDURES.**

### 2.01 Commitments.

On and subject to the terms and conditions of this Agreement, each of the Lenders, severally and for itself alone, agrees to make loans to, and to issue or participate in letters of credit for the account of, the Company as follows:

#### (a) Revolving Loan Commitment.

Each Lender with a Commitment agrees to make loans in Dollars or an Alternate Currency on a revolving basis (“Revolving Loans”) from time to time until the Termination Date in such Lender’s Pro Rata Share of such aggregate amounts as the Company may request from all Lenders; provided that the Revolving Outstandings will not at any time exceed the Revolving Commitment (less the amount of any Swing Line Loans outstanding at such time) and provided that the aggregate Dollar Equivalent amount of all Loans denominated in an Alternate Currency shall not exceed \$20,000,000.

(b) L/C Commitment.

Subject to Section 2.3.1, the Issuing Lender agrees to issue letters of credit, in each case containing such terms and conditions as are permitted by this Agreement and are reasonably satisfactory to the Issuing Lender (each, a “Letter of Credit”), at the request of and for the account of the Company from time to time before the scheduled Termination Date and, as more fully set forth in Section 2.3.2, each Lender agrees to purchase a participation in each such Letter of Credit; provided that (a) the aggregate Stated Amount of all Letters of Credit shall not at any time exceed \$75,000,000 and (b) the Revolving Outstandings shall not at any time exceed the Revolving Commitment (less the amount of any Swing Line Loans outstanding at such time).

2.02 Loan Procedures.

(a) Various Types of Loans.

Each Revolving Loan shall be either a Base Rate Loan or a LIBOR Loan (each a “type” of Loan), as the Company shall specify in the related notice of borrowing or conversion pursuant to Section 2.2.2 or 2.2.3. LIBOR Loans having the same Interest Period and denominated in the same currency are sometimes called a “Group” or collectively “Groups”. Base Rate Loans and LIBOR Loans may be outstanding at the same time, provided that not more than twelve (12) different Groups of LIBOR Loans shall be outstanding at any one time. All borrowings, conversions and repayments of Revolving Loans shall be effected so that each Lender will have a ratable share (according to its Pro Rata Share) of all types and Groups of Loans. Base Rate Loan shall be denominated solely in Dollars; LIBOR Loans may be denominated in Dollars or an Alternate Currency.

(b) Borrowing Procedures.

The Company shall give written notice (each such written notice, a “Notice of Borrowing”) substantially in the form of Exhibit E or telephonic notice (followed immediately by a Notice of Borrowing) to the Administrative Agent of each proposed borrowing not later than (a) in the case of a Base Rate borrowing, 11:00 A.M., Chicago time, on the proposed date of such borrowing, and (b) in the case of a LIBOR borrowing, 11:00 A.M., Chicago time, at least three Business Days prior to the proposed date of such borrowing. Each such notice shall be effective upon receipt by the Administrative Agent, shall be irrevocable, and shall specify the date, amount (which shall be denominated in Dollars notwithstanding that the requested Loan may be advanced in an Alternate Currency) and type of borrowing and, in the case of a LIBOR borrowing, the

currency and initial Interest Period therefor. Promptly upon receipt of such notice, the Administrative Agent shall advise each Lender thereof and, if a Loan is requested in an Alternate Currency, the amount thereof in such Alternate Currency. Not later than 1:00 P.M., Chicago time, on the date of a proposed borrowing, each Lender shall provide the Administrative Agent at the office specified by the Administrative Agent with immediately available funds covering such Lender's Pro Rata Share of such borrowing in the currency requested and, so long as the Administrative Agent has not received written notice that the conditions precedent set forth in Section 11 with respect to such borrowing have not been satisfied, the Administrative Agent shall pay over the funds received by the Administrative Agent to the Company on the requested borrowing date. Each borrowing shall be on a Business Day. Each Base Rate borrowing shall be in an aggregate amount of at least \$1,000,000 and an integral multiple of at least \$500,000, and each LIBOR borrowing shall be in an aggregate amount of at least \$2,500,000 and an integral multiple of \$1,000,000. If the Company fails to specify in its Loan Request an Alternate Currency for the Loan requested thereby, the Company shall be deemed to have requested that such Loan be denominated in Dollars.

(c) Conversion and Continuation Procedures.

(i) Subject to Section 2.2.1, the Company may, upon irrevocable written notice to the Administrative Agent in accordance with clause (b) below:

(A) elect, as of any Business Day, to convert any Loans (or any part thereof in an aggregate Dollar Equivalent amount not less than \$2,500,000 or a higher integral multiple Dollar Equivalent of \$1,000,000) into Loans of the other type; or

(B) elect, as of the last day of the applicable Interest Period, to continue any LIBOR Loans denominated in the same currency and having Interest Periods expiring on such day (or any part thereof in an aggregate Dollar Equivalent amount not less than \$2,500,000 or a higher integral multiple Dollar Equivalent of \$1,000,000) for a new Interest Period;

provided that after giving effect to any prepayment, conversion or continuation, the aggregate principal Dollar Equivalent amount of each Group of LIBOR Loans shall be at least \$2,500,000 and an integral multiple of the Dollar Equivalent of \$1,000,000.

(ii) The Company shall give written notice (each such written notice, a "Notice of Conversion/Continuation") substantially in the form of Exhibit F or telephonic notice (followed immediately by a Notice of Conversion/Continuation) to the Administrative Agent of each proposed conversion or continuation not later than (i) in the case of conversion into Base Rate Loans, 11:00 A.M., Chicago time, on the proposed date of such conversion and (ii) in the case of conversion into or continuation of LIBOR Loans, 11:00 A.M., Chicago time, at least three Business Days prior to the proposed date of such conversion or continuation, specifying in each case:

(A) the proposed date of conversion or continuation;

- (B) the aggregate Dollar Equivalent amount of Loans to be converted or continued;
- (C) the type of Loans resulting from the proposed conversion or continuation; and
- (D) in the case of conversion into, or continuation of, LIBOR Loans, the currency thereof and the duration of the requested Interest Period therefor.

(iii) If upon the expiration of any Interest Period applicable to LIBOR Loans denominated in Dollars, the Company has failed to select timely a new Interest Period to be applicable to such LIBOR Loans, the Company shall be deemed to have elected to convert such LIBOR Loans into Base Rate Loans effective on the last day of such Interest Period; if upon the expiration of any Interest Period applicable to LIBOR Loans denominated in an Alternate Currency, the Company has failed to give timely notice of its selection of a new Interest Period to be applicable to such LIBOR Loans, the Company shall be deemed to have elected to continue such LIBOR Loans effective on the last day of such Interest Period for an additional one month Interest Period.

(iv) The Administrative Agent will promptly notify each Lender of its receipt of a notice of conversion or continuation pursuant to this Section 2.2.3 or, if no timely notice is provided by the Company, of the details of any automatic conversion or continuation.

(v) Any conversion of a LIBOR Loan on a day other than the last day of an Interest Period therefor shall be subject to Section 8.4.

(d) Swing Line Facility.

(i) The Administrative Agent shall notify the Swing Line Lender upon the Administrative Agent's receipt of any Notice of Borrowing. Subject to the terms and conditions hereof, the Swing Line Lender may, in its sole discretion, make available from time to time until the Termination Date advances (each, a "Swing Line Loan") in accordance with any such notice, notwithstanding that after making a requested Swing Line Loan, the sum of the Swing Line Lender's Pro Rata Share of the Revolving Outstandings and all outstanding Swing Line Loans, may exceed the Swing Line Lender's Pro Rata Share of the Revolving Commitment. The provisions of this Section 2.2.4 shall not relieve Lenders of their obligations to make Revolving Loans under Section 2.1.1; provided that if the Swing Line Lender makes a Swing Line Loan pursuant to any such notice, such Swing Line Loan shall be in lieu of any Revolving Loan that otherwise may be made by the Lenders pursuant to such notice. The aggregate amount of Swing Line Loans outstanding shall not exceed at any time Swing Line Availability. Until the Termination Date, the Company may from time to time borrow, repay and reborrow under this Section 2.2.4. Each Swing Line Loan shall be made pursuant to a Notice of Borrowing delivered by the Company to the Administrative Agent in accordance with Section 2.2.2. Any such notice must be given no later than 2:00 P.M., Chicago time, on the Business Day of the proposed Swing Line Loan. Unless the Swing Line Lender has received at least one Business Day's prior written notice from Required Lenders instructing it not to make a Swing Line Loan, the Swing Line

Lender shall, notwithstanding the failure of any condition precedent set forth in Section 12.2, be entitled to fund that Swing Line Loan, and to have such Lender make Revolving Loans in accordance with Section 2.2.4(c) or purchase participating interests in accordance with Section 2.2.4(d). Notwithstanding any other provision of this Agreement or the other Loan Documents, each Swing Line Loan shall constitute a Base Rate Loan. The Company shall repay the aggregate outstanding principal amount of each Swing Line Loan upon demand therefor by the Administrative Agent.

(ii) The entire unpaid balance of each Swing Line Loan and all other noncontingent Obligations shall be immediately due and payable in full in immediately available funds on the Termination Date if not sooner paid in full.

(iii) The Swing Line Lender, at any time and from time to time at the discretion of the Swing Line Lender, shall on behalf of the Company (and the Company hereby irrevocably authorizes the Swing Line Lender to so act on its behalf) request each Lender with a Revolving Commitment (including the Swing Line Lender) to make a Revolving Loan to the Company (which shall be a Base Rate Loan) in an amount equal to that Lender's Pro Rata Share of the principal amount of all Swing Line Loans (the "Refunded Swing Line Loan") outstanding on the date such notice is given. Unless any of the events described in Section 13.1.4 has occurred (in which event the procedures of Section 2.2.4(d) shall apply) and regardless of whether the conditions precedent set forth in this Agreement to the making of a Revolving Loan are then satisfied, each Lender shall disburse directly to the Administrative Agent, its Pro Rata Share on behalf of the Swing Line Lender, prior to 2:00 P.M., Chicago time, in immediately available funds on the date that notice is given (provided that such notice is given by 12:00 p.m., Chicago time, on such date). The proceeds of those Revolving Loans shall be immediately paid to the Swing Line Lender and applied to repay the Refunded Swing Line Loan.

(iv) If, prior to refunding a Swing Line Loan with a Revolving Loan pursuant to Section 2.2.4(c), one of the events described in Section 13.1.4 has occurred, then, subject to the provisions of Section 2.2.4(e) below, each Lender shall, on the date such Revolving Loan was to have been made for the benefit of the Company, purchase from the Swing Line Lender an undivided participation interest in the Swing Line Loan in an amount equal to its Pro Rata Share of such Swing Line Loan. Upon request, each Lender shall promptly transfer to the Swing Line Lender, in immediately available funds, the amount of its participation interest.

(v) Each Lender's obligation to make Revolving Loans in accordance with Section 2.2.4(c) and to purchase participation interests in accordance with Section 2.2.4(d) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against the Swing Line Lender, the Company or any other Person for any reason whatsoever; (ii) the occurrence or continuance of any Unmatured Event of Default or Event of Default; (iii) any inability of the Company to satisfy the conditions precedent to borrowing set forth in this Agreement at any time or (iv) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If and to the extent any Lender shall not have made such amount available to the Administrative Agent or the Swing Line Lender, as applicable, by 2:00 P.M., Chicago time, the amount required pursuant to Sections 2.2.4(c) or 2.2.4(d), as the case



may be, on the Business Day on which such Lender receives notice from the Administrative Agent of such payment or disbursement (it being understood that any such notice received after noon, Chicago time, on any Business Day shall be deemed to have been received on the next following Business Day), such Lender agrees to pay interest on such amount to the Administrative Agent for the Swing Line Lender's account forthwith on demand, for each day from the date such amount was to have been delivered to the Administrative Agent to the date such amount is paid, at a rate per annum equal to (a) for the first three days after demand, the Federal Funds Rate from time to time in effect and (b) thereafter, the Base Rate from time to time in effect.

### 2.03 Letter of Credit Procedures.

#### (a) L/C Applications.

The Company shall execute and deliver to the Issuing Lender the Master Letter of Credit Agreement from time to time in effect or such other application and agreement for letters of credit as such Issuing Lender may elect. The Company shall give notice to the Administrative Agent and the Issuing Lender of the proposed issuance of each Letter of Credit on a Business Day which is at least three Business Days (or such lesser number of days as the Administrative Agent and the Issuing Lender shall agree in any particular instance in their sole discretion) prior to the proposed date of issuance of such Letter of Credit. Each such notice shall be accompanied by an L/C Application, duly executed by the Company and in all respects satisfactory to the Administrative Agent and the Issuing Lender, together with such other documentation as the Administrative Agent or the Issuing Lender may request in support thereof, it being understood that each L/C Application shall specify, among other things, the date on which the proposed Letter of Credit is to be issued, the expiration date of such Letter of Credit (which shall not be later than twenty (20) Business Days prior to the scheduled Termination Date (unless such Letter of Credit is Cash Collateralized)), whether such Letter of Credit is to be transferable in whole or in part and the currency in which the Letter of Credit is requested to be denominated which shall be either Dollars or a currency satisfactory to the Issuing Lender. Any Letter of Credit outstanding after the scheduled Termination Date which is Cash Collateralized for the benefit of the Issuing Lender shall after the scheduled Termination Date be the sole responsibility of the Issuing Lender. So long as the Issuing Lender has not received written notice that the conditions precedent set forth in Section 12 with respect to the issuance of such Letter of Credit have not been satisfied, the Issuing Lender shall issue such Letter of Credit on the requested issuance date. The Issuing Lender shall promptly advise the Administrative Agent of the issuance of each Letter of Credit, the currency thereof, and of any amendment thereto, extension thereof or event or circumstance changing the amount available for drawing thereunder. In the event of any inconsistency between the terms of the Master Letter of Credit Agreement, any L/C Application and the terms of this Agreement, the terms of this Agreement shall control.

The Company may request the issuance of a Letter of Credit on behalf of itself or on behalf of any other Loan Party, provided that the Company is the account party thereon and provided further that notwithstanding that any letter of credit issued in connection herewith may state that it is issued on behalf of another Loan Party or Subsidiary of a Loan Party and notwithstanding that any application or agreement with respect to such a letter of credit is executed by a Loan Party or Subsidiary of a Loan Party, each such letter of credit is hereby

deemed to be a Letter of Credit issued hereunder for the account of the Company and the Company is hereby deemed to be severally obligated on such application or agreement.

(a) LaSalle agrees to continue outstanding until expiration each of the letters of credit issued by it and listed on Schedule 2.3 and to be an Issuing Lender hereunder with respect to such letters of credit and the Letters of Credit issued hereunder, (b) JPMorgan Chase Bank (“JPMC”), as assignee of Chase Manhattan Bank USA, N.A., successor in interest to Chase Manhattan Bank Delaware, agrees to continue outstanding until expiration each of the letters of credit issued by it and listed on Schedule 2.3 and to be an Issuing Lender hereunder with respect to such Letters of Credit, and (c) ABN AMRO Bank N.V. (“ABN AMRO”) agrees to continue outstanding until expiration or replacement by LaSalle each of the Letters of Credit issued by it and listed on Schedule 2.3 and to be an Issuing Lender with respect to such Letters of Credit. All letters of credit outstanding under the Prior Credit Agreement (together with all extensions and renewals thereof and amendments thereto after the date hereof) issued by LaSalle, ABN AMRO, or JPMC (and any of its assignors or successors) shall be deemed to be and hereby are Letters of Credit under this Agreement as of the Closing Date and hereafter.

If from time to time on any date the aggregate Stated Amount of all Letters of Credit, in the equivalent amount of Dollars at exchange rates then prevailing and available to the Issuing Lender, exceed \$75,000,000 (such excess amount, calculated at any time and from time to time, being referred to herein as the “Exchange Rate L/C Excess Amount”), the Company shall thereupon provide Cash Collateral to the Administrative Agent for the benefit of the Issuing Lender and the Lenders (to be held in an interest-bearing account with the Agent) an amount equal to the Exchange Rate L/C Excess Amount, and the Company hereby pledges to the Administrative Agent for the benefit of the Issuing Lender and each Lender, and grants to the Administrative Agent for the benefit of the Issuing Lender and each Lender a security interest in, all such cash and the deposit account to which it is credited, and the proceeds thereof, as security for the Company’s reimbursement obligations with respect to Letters of Credit. Unless an Event of Default has occurred and is continuing, the Administrative Agent shall return to the Company any amount of Cash Collateral which is in excess of the Exchange Rate L/C Excess Amount.

(b) Participations in Letters of Credit.

Concurrently with the issuance of each Letter of Credit and in connection with each Letter of Credit described on Schedule 2.3 and any extensions and renewals thereof and amendments thereto, the Issuing Lender shall be deemed to have sold and transferred to each Lender with a Commitment, and each such Lender shall be deemed irrevocably and unconditionally to have purchased and received from the Issuing Lender, without recourse or warranty, an undivided interest and participation, to the extent of such Lender’s Pro Rata Share, in such Letter of Credit and the Company’s reimbursement obligations with respect thereto. If the Company does not pay any reimbursement obligation when due, the Company shall be deemed to have immediately requested that the Lenders make a Revolving Loan which is a Base Rate Loan in a principal amount equal to such reimbursement obligations. The Administrative Agent shall promptly notify such Lenders of such deemed request and, without the necessity of compliance with the requirements of Section 2.2.2, 12.2 or otherwise such Lender shall make available to the Administrative Agent its Pro Rata Share of such Loan. The proceeds of such Loan shall be paid

over by the Administrative Agent to the Issuing Lender for the account of the Company in satisfaction of such reimbursement obligations. For the purposes of this Agreement, the unparticipated portion of each Letter of Credit shall be deemed to be the Issuing Lender's "participation" therein. The Issuing Lender hereby agrees, upon request of the Administrative Agent or any Lender, to deliver to the Administrative Agent or such Lender a list of all outstanding Letters of Credit issued by the Issuing Lender, together with such information related thereto as the Administrative Agent or such Lender may reasonably request.

(c) Reimbursement Obligations.

(i) The Company hereby unconditionally and irrevocably agrees to reimburse the Issuing Lender for each payment or disbursement made by the Issuing Lender under any Letter of Credit honoring any demand for payment made by the beneficiary thereunder, in each case on the date that such payment or disbursement is made and in an amount equal to the Dollar Equivalent of the amount of such payment or disbursement. Any amount not reimbursed on the date of such payment or disbursement shall bear interest from the date of such payment or disbursement to the date that the Issuing Lender is reimbursed by the Company therefor, payable on demand, at a rate per annum equal to the Base Rate from time to time in effect plus the Base Rate Margin from time to time in effect plus, beginning on the third Business Day after receipt of notice from the Issuing Lender of such payment or disbursement, 2%. The Issuing Lender shall notify the Company and the Administrative Agent whenever any demand for payment is made under any Letter of Credit by the beneficiary thereunder; provided that the failure of the Issuing Lender to so notify the Company or the Administrative Agent shall not affect the rights of the Issuing Lender or the Lenders in any manner whatsoever.

(ii) The Company's reimbursement obligations hereunder shall be irrevocable and unconditional under all circumstances, including (a) any lack of validity or enforceability of any Letter of Credit, this Agreement or any other Loan Document, (b) the existence of any claim, set-off, defense or other right which any Loan Party may have at any time against a beneficiary named in a Letter of Credit, any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), the Administrative Agent, the Issuing Lender, any Lender or any other Person, whether in connection with any Letter of Credit, this Agreement, any other Loan Document, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between any Loan Party and the beneficiary named in any Letter of Credit), (c) the validity, sufficiency or genuineness of any document which the Issuing Lender has determined complies on its face with the terms of the applicable Letter of Credit, even if such document should later prove to have been forged, fraudulent, invalid or insufficient in any respect or any statement therein shall have been untrue or inaccurate in any respect, or (d) the surrender or impairment of any security for the performance or observance of any of the terms hereof. Without limiting the foregoing, no action or omission whatsoever by the Administrative Agent or any Lender (excluding any Lender in its capacity as the Issuing Lender) under or in connection with any Letter of Credit or any related matters shall result in any liability of the Administrative Agent or any Lender to the Company, or relieve the Company of any of its obligations hereunder to any such Person.

(d) Funding by Lenders to Issuing Lender.

If the Issuing Lender makes any payment or disbursement under any Letter of Credit and (a) the Company has not reimbursed the Issuing Lender in full for such payment or disbursement by 11:00 A.M., Chicago time, on the date of such payment or disbursement, (b) a Revolving Loan may not be made in accordance with Section 2.3.2 or (c) any reimbursement received by the Issuing Lender from the Company is or must be returned or rescinded upon or during any bankruptcy or reorganization of the Company or otherwise, each other Lender with a Commitment shall be irrevocably and unconditionally obligated to pay to the Administrative Agent for the account of the Issuing Lender, in full or partial payment of the purchase price of its participation in such Letter of Credit, its Pro Rata Share of the Dollar Equivalent of such payment or disbursement (but no such payment shall diminish the obligations of the Company under Section 2.3.3), and, upon notice from the Issuing Lender, the Administrative Agent shall promptly notify each other Lender thereof. Each other Lender irrevocably and unconditionally agrees to so pay to the Administrative Agent in immediately available funds for the Issuing Lender's account the amount of such other Lender's Pro Rata Share of the Dollar Equivalent of such payment or disbursement. If and to the extent any Lender shall not have made such amount available to the Administrative Agent by 2:00 P.M., Chicago time, on the Business Day on which such Lender receives notice from the Administrative Agent of such payment or disbursement (it being understood that any such notice received after noon, Chicago time, on any Business Day shall be deemed to have been received on the next following Business Day), such Lender agrees to pay interest on such amount to the Administrative Agent for the Issuing Lender's account forthwith on demand, for each day from the date such amount was to have been delivered to the Administrative Agent to the date such amount is paid, at a rate per annum equal to (a) for the first three days after demand, the Federal Funds Rate from time to time in effect and (b) thereafter, the Base Rate from time to time in effect. Any Lender's failure to make available to the Administrative Agent its Pro Rata Share of any such payment or disbursement shall not relieve any other Lender of its obligation hereunder to make available to the Administrative Agent such other Lender's Pro Rata Share of such payment, but no Lender shall be responsible for the failure of any other Lender to make available to the Administrative Agent such other Lender's Pro Rata Share of any such payment or disbursement.

2.04 Commitments Several.

The failure of any Lender to make a requested Loan on any date shall not relieve any other Lender of its obligation (if any) to make a Loan on such date, but no Lender shall be responsible for the failure of any other Lender to make any Loan to be made by such other Lender.

2.05 Certain Conditions.

Notwithstanding any other provision of this Agreement (other than the provisions of Section 2.2.4), no Lender shall have an obligation to make any Loan, or to permit the continuation of or any conversion into any LIBOR Loan, and the Issuing Lender shall not have any obligation to issue any Letter of Credit, if an Event of Default or Unmatured Event of Default exists.

### 3. EVIDENCING OF LOANS.

#### 3.01 Notes.

The Loans of each Lender shall be evidenced by a Note, with appropriate insertions, payable to the order of such Lender in a face principal amount equal to the sum of such Lender's Commitment.

#### 3.02 Recordkeeping.

The Administrative Agent, on behalf of each Lender, shall record in its records, the date and amount of each Loan made by each Lender, each repayment or conversion thereof and, in the case of each LIBOR Loan, the dates on which each Interest Period for such Loan shall begin and end. The aggregate unpaid principal amount so recorded shall be presumptive evidence of the principal amount of the Loans owing and unpaid. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of the Company hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

### 4. INTEREST.

#### 4.01 Interest Rates.

The Company promises to pay interest on the unpaid principal amount of each Loan for the period commencing on the date of such Loan until such Loan is paid in full as follows:

(i) at all times while such Loan is a Base Rate Loan, at a rate per annum equal to the Base Rate from time to time in effect; and

(ii) at all times while such Loan is a LIBOR Loan, at a rate per annum equal to the sum of the LIBOR Rate applicable to each Interest Period for such Loan plus the LIBOR Margin from time to time in effect;

provided that at any time an Event of Default exists, unless the Required Lenders otherwise consent, the interest rate applicable to each Loan shall be increased by 2% (and, in the case of Obligations not bearing interest and to the extent permitted by law, such Obligations shall bear interest at the Base Rate applicable to Revolving Loans plus 2%), provided further that such increase may thereafter be rescinded by the Required Lenders, notwithstanding Section 15.1. Notwithstanding the foregoing, upon the occurrence of an Event of Default under Section 13.1.1 or 13.1.4, such increase shall occur automatically.

#### 4.02 Interest Payment Dates, Currency.

Accrued interest on each Base Rate Loan shall be payable in arrears on the first day of each calendar quarter and at maturity. Accrued interest on each LIBOR Loan shall be payable on the first day of each Interest Period relating to such Loan (and, in the case of a LIBOR Loan with an Interest Period in excess of three months, on the three-month anniversary of the first day of

such Interest Period), upon a prepayment of such Loan, and at maturity. After maturity, and at any time an Event of Default exists, accrued interest on all Loans shall be payable on demand. All payments of interest on Loans outstanding in an Alternate Currency shall be paid in that Alternate Currency.

#### 4.03 Setting and Notice of LIBOR Rates.

The applicable LIBOR Rate for each Interest Period shall be determined by the Administrative Agent, and notice thereof shall be given by the Administrative Agent promptly to the Company and each Lender. Each determination of the applicable LIBOR Rate by the Administrative Agent shall be conclusive and binding upon the parties hereto, in the absence of demonstrable error. The Administrative Agent shall, upon written request of the Company or any Lender, deliver to the Company or such Lender a statement showing the computations used by the Administrative Agent in determining any applicable LIBOR Rate hereunder.

#### 4.04 Computation of Interest.

Interest shall be computed for the actual number of days elapsed on the basis of a year of 360 days; provided that, for Revolving Loans denominated in an Alternate Currency for which a 365-day basis is the only market practice available, interest shall be calculated on the basis of a year of 365 or 366 days, as the case may be. The applicable interest rate for each Base Rate Loan shall change simultaneously with each change in the Base Rate.

### 5. FEES.

#### 5.01 Non-Use Fee.

The Company agrees to pay to the Administrative Agent for the account of each Lender a non-use fee, for the period from the Closing Date to the Termination Date, at the Non-Use Fee Rate in effect from time to time of such Lender's Pro Rata Share (as adjusted from time to time) of the unused amount of the Revolving Commitment. For purposes of calculating usage under this Section, the Revolving Commitment shall be deemed used to the extent of Revolving Outstandings. Such non-use fee shall be payable in arrears on the first day of each calendar quarter and on the Termination Date for any period then ending for which such non-use fee shall not have previously been paid. The non-use fee shall be computed for the actual number of days elapsed on the basis of a year of 360 days.

#### 5.02 Letter of Credit Fees.

(i) The Company agrees to pay to the Administrative Agent for the account of each Lender (i) with respect to Commercial Letters of Credit, a nonrefundable fee (the "Commercial Letter of Credit Fee") equal to the basis points per annum at the Commercial Letter of Credit Fee Rate in effect from time to time of such Lender's Pro Rata Share (as adjusted from time to time) of the undrawn Dollar Equivalent (which shall be calculated by Administrative Agent on the basis of reasonable assumptions) amount of such Letters of Credit (computed for the actual number of days elapsed on the basis of a year of 360 days) and (ii) with respect to Standby Letters of Credit, a nonrefundable fee (the "Standby Letter of Credit Fee") equal to the basis points per annum at

the Standby Letter of Credit Fee Rate in effect from time to time of such Lender's Pro Rata Share (as adjusted from time to time) of the undrawn Dollar Equivalent (which shall be calculated by Administrative Agent on the basis of reasonable assumptions) amount of such Letters of Credit (computed for the actual number of days elapsed on the basis of a year of 360 days); provided that, unless the Required Lenders otherwise consent, the rate applicable to each Letter of Credit shall be increased by 2% at any time that an Event of Default exists. Such letter of credit fee shall be payable in arrears on the first day of each calendar quarter and on the Termination Date (or such later date on which such Letter of Credit expires or is terminated) for the period from the date of the issuance of each Letter of Credit (or the last day on which the letter of credit fee was paid with respect thereto) to the date such payment is due or, if earlier, the date on which such Letter of Credit expired or was terminated.

(ii) In addition, with respect to each Letter of Credit, the Company agrees to pay to the Issuing Lender, for its own account, (i) such fees and expenses as the Issuing Lender customarily requires in connection with the issuance, negotiation, processing and/or administration of letters of credit in similar situations and (ii) a letter of credit fronting fee in the amount and at the times agreed to by the Company and the Issuing Lender.

#### 5.03 Administrative Agent's Fees.

The Company agrees to pay to the Administrative Agent such agent's fees as are mutually agreed to from time to time by the Company and the Administrative Agent including the fees set forth in the Agent Fee Letter.

### **6. REDUCTION, INCREASE, OR TERMINATION OF THE REVOLVING COMMITMENT; PREPAYMENTS.**

#### 6.01 Reduction or Termination of the Revolving Commitment.

##### (a) Voluntary Reduction or Termination of the Revolving Commitment.

The Company may from time to time on at least five Business Days' prior written notice received by the Administrative Agent (which shall promptly advise each Lender thereof) permanently reduce the Revolving Commitment to an amount not less than the Revolving Outstandings plus the outstanding amount of all Swing Line Loans. Any such reduction shall be in an amount not less than an integral multiple of \$1,000,000. Concurrently with any reduction of the Revolving Commitment to zero, the Company shall pay all interest on the Revolving Loans, all non-use fees and all letter of credit fees and shall Cash Collateralize in full all obligations arising with respect to the Letters of Credit.

##### (b) [Reserved]

##### (c) All Reductions of the Revolving Commitment.

All reductions of the Revolving Commitment shall reduce the Commitments ratably among the Lenders according to their respective Pro Rata Shares.

## 6.02 Prepayments.

### (a) Voluntary Prepayments.

The Company may from time to time prepay the Loans in whole or in part; provided that the Company shall give the Administrative Agent (which shall promptly advise each Lender) notice thereof not later than 11:00 A.M., Chicago time, on the day of such prepayment (which shall be a Business Day), specifying the Loans to be prepaid and the date and amount of prepayment. Any such partial prepayment shall be in an amount equal to an integral multiple of the Dollar Equivalent of \$1,000,000.

### (b) Mandatory Prepayment.

#### (i) Upon Significant Disposition.

Within one-hundred eighty (180) days of an Asset Disposition or Equity Disposition and within two hundred seventy (270) days of a Casualty Disposition, the Company shall first prepay the principal amount of the Revolving Loans outstanding and second Cash Collateralize the Stated Amount of all Letters of Credit (in the order and manner set forth below in Section 6.2.2(b)) in an aggregate amount equal to the Significant Disposition Amount (if any), provided, however, that the Stated Amount of all Letters of Credit shall be required to be Cash Collateralized only if the Stated Amount of all Letters of Credit (minus any Cash Collateral held by the Administrative Agent therefor) is in excess of \$50,000,000 (and only to the extent of such excess) and if the Total Debt to EBITDA Ratio as of the last day of the most recent previous Computation Period is greater than 2.50 to 1.00; but provided, further, that if at any time thereafter, up to that date which is 365 days after the Significant Disposition, the Stated Amount of all Letters of Credit (minus any Cash Collateral held by the Administrative Agent therefor) exceeds \$50,000,000 and the Total Debt to EBITDA Ratio as of the last day of the most recent previous Computation Period exceeds 2.50 to 1.00, then the Stated Amount of all Letters of Credit (minus any Cash Collateral held by the Administrative Agent therefor) in excess of \$50,000,000 shall be Cash Collateralized with that portion of the Significant Disposition Amount which was not at any such time or times applied as a prepayment of the Revolving Loans. Any prepayment hereunder shall be subject to the Company's obligation to indemnify the Lenders under Section 8.4.

#### (ii) Application Among Loans and Interest Rate Options; Cash Collateral Under Certain Circumstances.

All prepayments and cash collateral required pursuant to this Section 6.2.2 shall: (a) first be applied to prepay Revolving Loans and, as among the Interest Rate Options applicable to Revolving Loans, first to the principal amount of the Revolving Loans subject to the Base Rate, then to Revolving Loans subject to the LIBOR Rate and then to prepay Swing Line Loans; and (b) next be deposited by the Company in a non-interest bearing account with the Administrative Agent, as Cash Collateral for the Stated Amount of all Letters of Credit, and the Company hereby pledges to the Administrative Agent and the Lenders, and grants to the Administrative Agent and the Lenders a security interest in, all such cash and deposits as security



for all Obligations. Upon and to the extent of the expiration of, or the payment by the Company (by way of Revolving Loans or otherwise) of the reimbursement obligations relating to, Letters of Credit that are Cash Collateralized pursuant to this Section 6.2.2(b), or at any time that the Stated Amount of all Letters of Credit (minus any Cash Collateral held by the Administrative Agent therefor and not released pursuant to the terms hereof) does not exceed \$50,000,000, such Cash Collateral shall to such extent be released and returned to the Company upon its request except to the extent any such Cash Collateral has been utilized to pay any such reimbursement obligations. In addition, in the event at any time that the Total Debt to EBITDA Ratio as of the last day of the most recent previous Computation Period does not exceed 2.50 to 1.00, all Cash Collateral shall be released and returned to the Company upon its request except to the extent any such Cash Collateral has been utilized to pay any such reimbursement obligations.

(iii) Mandatory Prepayments Due to Currency Fluctuations.

If, upon the earlier of the last day of an Interest Period or the first Business Day of any calendar quarter, the amount of the Revolving Outstandings (minus any Cash Collateral provided in regard to Letters of Credit) is greater than 100% of the Revolving Commitment as a result of a fluctuation in exchange rates between the Alternate Currency and Dollars, then the Company shall pay or prepay Revolving Loans (subject to the Company's indemnity obligations under Section 8.4) and Cash Collateralize the outstanding Letters of Credit on such day to such an extent that the Revolving Outstandings shall not exceed the Revolving Commitments after giving effect to such payments or prepayments.

(iv) If on any day on which the Revolving Commitment is reduced pursuant to Section 6.1.1 the Revolving Outstandings plus the outstanding amount of the Swing Line Loan exceeds the Revolving Commitment, the Company shall immediately prepay Revolving Loans or Cash Collateralize the outstanding Letters of Credit, or do a combination of the foregoing, in an amount sufficient to eliminate such excess.

6.03 Manner of Prepayments.

(a) All Prepayments.

Each voluntary partial prepayment shall be in a principal Dollar Equivalent amount of \$1,000,000 or a higher integral multiple Dollar Equivalent of \$500,000. Any partial prepayment of a Group of LIBOR Loans shall be subject to the proviso to Section 2.2.3(a). Any prepayment of a LIBOR Loan on a day other than the last day of an Interest Period therefor shall include interest on the principal amount being repaid and shall be subject to Section 8.4. Except as otherwise provided by this Agreement, all principal payments in respect of the Loans (other than the Swing Line Loans) shall be applied first, to repay outstanding Base Rate Loans and then to repay outstanding LIBOR Rate Loans in direct order of Interest Period maturities. All prepayments of Loans outstanding in an Alternate Currency shall be paid in that Alternate Currency and any prepayment made in an Alternate Currency shall be first applied to Revolving Loans outstanding in such currency.

#### 6.04 Repayments.

The Revolving Loans of each Lender shall be paid in full in the currency in which such Loans were advanced and the Revolving Commitment shall terminate on the Termination Date.

#### 6.05 Increase in Commitments.

The Company may from time to time in consultation with and upon the consent of the Administrative Agent (such consent to not be unreasonably withheld), by notice to the Administrative Agent (which, upon its consent, shall promptly deliver a copy to each of the Lenders), request that the Revolving Commitment be increased by an amount that is not more than \$50,000,000 and which will not result in the Revolving Commitment under this Agreement exceeding \$225,000,000. Each such notice shall set forth the requested amount of the increase in the Revolving Commitment and the date on which such increase is requested to become effective (which shall be not fewer than twenty (20) nor more than forty-five (45) days after the date of such notice) and shall offer each Lender the opportunity to increase its Commitment by its Pro Rata Share of the requested increase in the Revolving Commitment. Each Lender shall, by notice to the Company and the Administrative Agent given not more than fifteen (15) days after the date of the Company's notice, either agree to increase its Commitment by all or a portion of the offered amount or decline to increase its Commitment (and any Lender that does not deliver such a notice within such period of fifteen (15) days shall be deemed to have declined to increase its Commitment). In the event that, on the fifteenth (15<sup>th</sup>) day after the Company shall have delivered a notice pursuant to the first sentence of this paragraph, the Lenders (or any number of the Lenders) shall have agreed pursuant to the preceding sentence to increase their Commitments by an aggregate amount which is less than the increase in the Revolving Commitment requested by the Company, the Company shall have the right to arrange for one or more banks or other lenders (any such bank or other lender which provides a Commitment hereunder being referred to herein as an "Augmenting Lender"), and any Lender(s), to extend Commitments or increase their existing Commitments in an aggregate amount equal to all or part of the unsubscribed amount on the date on which such increase was requested by the Company in its notice; *provided* that each Augmenting Lender, if not already a Lender hereunder, shall be subject to the approval of the Company, Issuing Lender, Swing Line Lender, and Administrative Agent (which approval shall not be unreasonably withheld) and shall execute all such documentation as Administrative Agent shall specify to evidence its status as a Lender hereunder, including an Augmenting Lender Joinder and Assumption Agreement substantially in the form of Exhibit C. If (and only if) Lenders (including Augmenting Lenders) shall have agreed to increase their Commitments or to extend new Commitments, as the case may be, in an aggregate amount not more than \$50,000,000, such increases and such new Commitments shall become effective on the date specified in the notice delivered by the Company pursuant to the first sentence of this paragraph, and shall be deemed added to the Commitments set forth in Annex A hereof (and Administrative Agent may distribute a revised Annex A to the Lenders and the Company to reflect such additional Commitments) and each Augmenting Lender shall be a Lender hereunder. Notwithstanding the foregoing, no increase in the Commitment of any Lender and no new Commitment of any Augmenting Lender shall become effective under this paragraph unless, on the date of such increased or new Commitment and after giving effect to all increased and new Commitments, (i) the representations and warranties of the Loan Parties contained herein and in

the other Loan Documents shall be true on and as of such date with the same effect as though such representations and warranties had been made on and as of such date (except representations and warranties which expressly relate solely to an earlier date or time, which representations and warranties shall be true and correct on and as of the specific dates or times referred to therein), (ii) no Material Adverse Effect shall have occurred since the Closing Date, (iii) the Company shall have performed and complied with all covenants and conditions hereof, (iv) no Event of Default or Unmatured Event of Default shall have occurred and be continuing or shall exist, (v) the increase in the Commitments shall not contravene any law applicable to any of the Lenders, the Company, or any Subsidiary of the Company, and (vi) the Company shall have delivered to the Administrative Agent for the benefit of the Lenders such replacement and new Notes as may be necessary to reflect the increased or new Commitments. Upon the date on which the Commitments are increased, each Lender which has agreed to increase its Commitment and each Augmenting Lender which has agreed to extend a new Commitment (in accordance with the terms of this Section 6.5) shall, subject to the terms and conditions hereof and in reliance on the representations and warranties herein set forth, severally make its Pro Rata Share of Revolving Loans in the currencies in which such Loans are outstanding to the Company and purchase from any Issuing Lender and Swing Line Lender its Pro Rata Share of the Stated Amount of all Letters of Credit and of those Swing Line Loans that have been participated to the Lenders in the amount of the increase of its Commitment (in the case of a Lender which has agreed to increase its Commitment) or in the amount of its new Commitment (in the case of an Augmenting Lender which has agreed to extend new a Commitment). Upon the request of the Administrative Agent, the Company shall execute and deliver to Administrative Agent for the benefit of the Lenders any and all other documents, instruments, and agreements necessary or advisable in the reasonable judgment of Administrative Agent to evidence or document the increase in the Commitments, including any amendments hereto, and each of the Lenders and each of the Loan Parties hereby provides its consent hereto and thereto and each Lender hereby authorizes the Administrative Agent, and each Loan Party hereby authorizes the Company, to execute any such documents, instruments, and agreements consistent with the terms of this Section 6.5 on its behalf without the necessity of any further consent of any Lender or Loan Party. The Administrative Agent and each Lender shall have no obligation to provide any additional credit, commitment, or loan under this Section 6.5 nor shall the Administrative Agent or any Lender have any obligation to arrange any such additional credit, commitment, or loan.

**7. MAKING AND PRORATION OF PAYMENTS; SETOFF; TAXES.**

**7.01 Making of Payments.**

All payments of principal or interest on the Notes, and of all fees, shall be made by the Company to the Administrative Agent in immediately available funds at the office specified by the Administrative Agent not later than noon, Chicago time, on the date due; and funds received after that hour shall be deemed to have been received by the Administrative Agent on the following Business Day. The Administrative Agent shall promptly remit to each Lender its share of all such payments received in collected funds by the Administrative Agent for the account of such Lender. All payments under Section 8.1 shall be made by the Company directly to the Lender entitled thereto without setoff, counterclaim or other defense.

#### 7.02 Application of Certain Payments.

So long as no Unmatured Event of Default or Event of Default has occurred and is continuing, voluntary and mandatory prepayments shall be applied as set forth in Sections 6.2 and 6.3. After the occurrence and during the continuance of an Unmatured Event of Default or Event of Default, all amounts collected or received by the Administrative Agent or any Lender as proceeds from the sale of, or other realization upon, all or any part of the collateral (if any) shall be applied as the Administrative Agent shall determine in its reasonable discretion. Concurrently with each remittance to any Lender of its share of any such payment, the Administrative Agent shall advise such Lender as to the application of such payment.

#### 7.03 Due Date Extension.

If any payment of principal or interest with respect to any of the Loans, or of any fees, falls due on a day which is not a Business Day, then such due date shall be extended to the immediately following Business Day (unless, in the case of a LIBOR Loan, such immediately following Business Day is the first Business Day of a calendar month, in which case such due date shall be the immediately preceding Business Day) and, in the case of principal, additional interest shall accrue and be payable for the period of any such extension.

#### 7.04 Setoff.

The Company agrees that the Administrative Agent and each Lender have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, the Company agrees that at any time any Event of Default exists, the Administrative Agent and each Lender may apply to the payment of any Obligations of the Company hereunder, whether or not then due, any and all balances, credits, deposits, accounts or moneys of the Company then or thereafter with the Administrative Agent or such Lender.

#### 7.05 Proration of Payments.

If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of offset or otherwise, on account of (a) principal of or interest on any Loan, but excluding (i) any payment pursuant to Section 8.7 or 15.6 and (ii) payments of interest on any Affected Loan) or (b) its participation in any Letter of Credit) in excess of its applicable Pro Rata Share of payments and other recoveries obtained by all Lenders on account of principal of and interest on the Loans (or such participation) then held by them, then such Lender shall purchase from the other Lenders such participations in the Loans (or sub-participations in Letters of Credit) held by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery.

#### 7.06 Taxes.

(i) All payments made by the Company hereunder or under any Loan Documents shall be made without setoff, counterclaim, or other defense. To the extent permitted by applicable

law, all payments hereunder or under the Loan Documents (including any payment of principal, interest, or fees) to, or for the benefit, of any person shall be made by the Company free and clear of and without deduction or withholding for, or account of, any Taxes now or hereinafter imposed by any taxing authority.

(ii) If the Company makes any payment hereunder or under any Loan Document in respect of which it is required by applicable law to deduct or withhold any Taxes, the Company shall increase the payment hereunder or under any such Loan Document such that after the reduction for the amount of Taxes withheld (and any taxes withheld or imposed with respect to the additional payments required under this Section 7.6(b)), the amount paid to the Lenders or the Administrative Agent equals the amount that was payable hereunder or under any such Loan Document without regard to this Section 7.6(b). To the extent the Company withholds any Taxes on payments hereunder or under any Loan Document, the Company shall pay the full amount deducted to the relevant taxing authority within the time allowed for payment under applicable law and shall deliver to the Administrative Agent within 30 days after it has made payment to such authority a receipt issued by such authority (or other evidence satisfactory to the Administrative Agent) evidencing the payment of all amounts so required to be deducted or withheld from such payment.

(iii) If any Lender or the Administrative Agent is required by law to make any payments of any Taxes on or in relation to any amounts received or receivable hereunder or under any other Loan Document, or any Tax is assessed against a Lender or the Administrative Agent with respect to amounts received or receivable hereunder or under any other Loan Document, the Company will indemnify such person against (i) such Tax (and any reasonable counsel fees and expenses associated with such Tax) and (ii) any taxes imposed as a result of the receipt of the payment under this Section 7.6(c). A certificate prepared in good faith as to the amount of such payment by such Lender or the Administrative Agent shall, absent manifest error, be final, conclusive, and binding on all parties.

(iv) (i) To the extent permitted by applicable law, each Lender that is not a United States person within the meaning of Code Section 7701(a)(30) (a “Non-U.S. Participant”) shall deliver to the Company and the Administrative Agent on or prior to the Closing Date (or in the case of a Lender that is an Assignee, on the date of such assignment to such Lender) two accurate and complete original signed copies of IRS Form W-8BEN, W-8ECI, or W-8IMY (or any successor or other applicable form prescribed by the IRS) certifying to such Lender’s entitlement to a complete exemption from, or a reduced rate in, United States withholding tax on interest payments to be made hereunder or any Loan. If a Lender that is a Non-U.S. Participant is claiming a complete exemption from withholding on interest pursuant to Sections 871(h) or 881(c) of the Code, the Lender shall deliver (along with two accurate and complete original signed copies of IRS Form W-8BEN) a certificate in form and substance reasonably acceptable to Administrative Agent (any such certificate, a “Withholding Certificate”). In addition, each Lender that is a Non-U.S. Participant agrees that from time to time after the Closing Date, (or in the case of a Lender that is an Assignee, after the date of the assignment to such Lender), when a lapse in time (or change in circumstances occurs) renders the prior certificates hereunder obsolete or inaccurate in any material respect, such Lender shall, to the extent permitted under applicable law, deliver to the Company and the Administrative Agent two new and accurate and complete

original signed copies of an IRS Form W-8BEN, W-8ECI, or W-8IMY (or any successor or other applicable forms prescribed by the IRS), and if applicable, a new Withholding Certificate, to confirm or establish the entitlement of such Lender or the Administrative Agent to an exemption from, or reduction in, United States withholding tax on interest payments to be made hereunder or any Loan.

(ii) Each Lender that is not a Non-U.S. Participant (other than any such Lender which is taxed as a corporation for U.S. federal income tax purposes) shall provide two properly completed and duly executed copies of IRS Form W-9 (or any successor or other applicable form) to the Company and the Administrative Agent certifying that such Lender is exempt from United States backup withholding tax. To the extent that a form provided pursuant to this Section 7.6(d)(ii) is rendered obsolete or inaccurate in any material respect as result of a change in circumstances with respect to the status of a Lender, such Lender shall, to the extent permitted by applicable law, deliver to the Company and the Administrative Agent revised forms necessary to confirm or establish the entitlement to such Lender's or Agent's exemption from United States backup withholding tax.

(iii) The Company shall not be required to pay additional amounts to a Lender, or indemnify any Lender, under this Section 7.6 to the extent that such obligations would not have arisen but for the failure of such Lender to comply with Section 7.6(d).

(iv) Each Lender agrees to indemnify the Administrative Agent and hold the Administrative Agent harmless for the full amount of any and all present or future Taxes and related liabilities (including penalties, interest, additions to tax and expenses, and any Taxes imposed by any jurisdiction on amounts payable to the Administrative Agent under this Section 7.6) which are imposed on or with respect to principal, interest or fees payable to such Lender hereunder and which are not paid by the Company pursuant to this Section 7.6, whether or not such Taxes or related liabilities were correctly or legally asserted. This indemnification shall be made within 30 days from the date the Administrative Agent makes written demand therefor.

#### 7.07 Alternate Currency Repayments.

Notwithstanding anything contained herein to the contrary, the entire amount of principal of and interest on any Revolving Loan made in an Alternate Currency shall be repaid in the same Alternate Currency in which such Loan was made, provided, however, that if it is impossible or illegal for the Company to effect payment of a Revolving Credit Loan in the Alternate Currency in which such Loan was made, the Company may at its option after reasonable notice to the Administrative Agent make such payment to be made (i) at and to a different location, subsidiary, affiliate or correspondent of Administrative Agent, or (ii) in the Dollar Equivalent amount of Dollars, or (iii) in an equivalent amount (as determined by Administrative Agent in its reasonable discretion) of such other currency (freely convertible into Dollars) as the Required Lenders may solely at their option designate. Upon any events described in (i) through (iii) of the preceding sentence, the Company shall make such payment and the Company agrees to hold each Lender harmless from and against any loss incurred by any Lender arising from the cost to such Lender of any premium, any costs of exchange, the cost of hedging and covering the Alternate Currency in

which such Loan was originally made, and from any change in the value of Dollars, or such other currency, in relation to the Alternate Currency that was due and owing. Such loss shall be calculated for the period commencing with the first day of the Interest Period for such Loan and continuing through the date of payment thereof. Without prejudice to the survival of any other agreement of the Company hereunder, the Company's obligations under this Section shall survive termination of this Agreement.

7.08 Alternate Currency Amounts - Rounding.

Notwithstanding anything contained herein to the contrary, Administrative Agent may, with respect to requests by the Company for Revolving Loans in an Alternate Currency or prepayments of less than the full amount of a Revolving Loan denominated in an Alternate Currency, engage in reasonable rounding of the Alternate Currency amounts requested to be loaned or repaid; and, in such event, Administrative Agent shall notify the Company and the Lenders of such rounded amounts and the Company's request or notice shall thereby be deemed to reflect such rounded amounts.

**8. INCREASED COSTS; SPECIAL PROVISIONS FOR LIBOR LOANS.**

8.01 Increased Costs.

(i) If, after the date hereof, the adoption of, or any change in, any applicable law, rule or regulation, or any change in the interpretation or administration of any applicable law, rule or regulation by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB, but excluding any reserve included in the determination of the LIBOR Rate pursuant to Section 4), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by any Lender; or (ii) shall impose on any Lender any other condition affecting its LIBOR Loans, its Note or its obligation to make LIBOR Loans; and the result of anything described in clauses (i) and (ii) above is to increase the cost to (or to impose a cost on) such Lender (or any LIBOR Office of such Lender) of making or maintaining any LIBOR Loan, or to reduce the amount of any sum received or receivable by such Lender (or its LIBOR Office) under this Agreement or under its Note with respect thereto, then upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to the Administrative Agent), the Company shall pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is 180 days prior to the date on which such Lender first made demand therefor.

(ii) If any Lender shall reasonably determine that any change in, or the adoption or phase-in of, any applicable law, rule or regulation regarding capital adequacy, or any change in the interpretation or administration thereof by any governmental authority, central bank or

comparable agency charged with the interpretation or administration thereof, or the compliance by any Lender or any Person controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder or under any Letter of Credit to a level below that which such Lender or such controlling Person could have achieved but for such change, adoption, phase-in or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by such Lender or such controlling Person to be material, then from time to time, upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to the Administrative Agent), the Company shall pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction so long as such amounts have accrued on or after the day which is 180 days prior to the date on which such Lender first made demand therefor.

#### 8.02 Basis for Determining Interest Rate Inadequate or Unfair.

If

(i) the Administrative Agent reasonably determines (which determination shall be binding and conclusive on the Company) that by reason of circumstances affecting the interbank LIBOR market adequate and reasonable means do not exist for ascertaining the applicable LIBOR Rate; or

(ii) the Required Lenders advise the Administrative Agent that the LIBOR Rate as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Lenders of maintaining or funding LIBOR Loans for such Interest Period (taking into account any amount to which such Lenders may be entitled under Section 8.1) or that the making or funding of LIBOR Loans has become impracticable as a result of an event occurring after the date of this Agreement which in the opinion of such Lenders materially affects such Loans;

then the Administrative Agent shall promptly notify the other parties thereof and, so long as such circumstances shall continue, (i) no Lender shall be under any obligation to make or convert any Base Rate Loans into LIBOR Loans and (ii) on the last day of the current Interest Period for each LIBOR Loan, such Loan shall, unless then repaid in full, automatically convert to a Base Rate Loan, provided that any LIBOR Loan denominated in an Alternate Currency shall be repaid in full.

#### 8.03 Changes in Law Rendering LIBOR Loans Unlawful.

If any change in or the adoption of any new law or regulation, or any change in the interpretation of any applicable law or regulation by any governmental or other regulatory body charged with the administration thereof, should make it (or in the good faith judgment of any Lender cause a substantial question as to whether it is) unlawful for any Lender to make, maintain or fund LIBOR Loans, then such Lender shall promptly notify each of the other parties hereto



and, so long as such circumstances shall continue, (a) such Lender shall have no obligation to make or convert any Base Rate Loan into a LIBOR Loan (but shall make Base Rate Loans concurrently with the making of or conversion of Base Rate Loans into LIBOR Loans by the Lenders which are not so affected, in each case in an amount equal to the amount of LIBOR Loans which would be made or converted into by such Lender at such time in the absence of such circumstances) and (b) on the last day of the current Interest Period for each LIBOR Loan of such Lender (or, in any event, on such earlier date as may be required by the relevant law, regulation or interpretation), such LIBOR Loan shall, unless then repaid in full, automatically convert to a Base Rate Loan, provided that any LIBOR Loan denominated in an Alternate Currency shall be repaid in full. Each Base Rate Loan made by a Lender which, but for the circumstances described in the foregoing sentence, would be a LIBOR Loan (an "Affected Loan") shall remain outstanding for the period corresponding to the Group of LIBOR Loans of which such Affected Loan would be a part absent such circumstances.

#### 8.04 Funding Losses.

The Company hereby agrees that upon demand by any Lender (which demand shall be accompanied by a statement setting forth the basis for the amount being claimed, a copy of which shall be furnished to the Administrative Agent), the Company will indemnify such Lender against any net loss or expense which such Lender may sustain or incur (including any net loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain any LIBOR Loan), as reasonably determined by such Lender, as a result of (a) any payment, prepayment or conversion of any LIBOR Loan of such Lender on a date other than the last day of an Interest Period for such Loan (including any conversion pursuant to Section 8.3) or (b) any failure of the Company to borrow, convert or continue any Loan on a date specified therefor in a notice of borrowing, conversion or continuation pursuant to this Agreement. For this purpose, all such notices to the Administrative Agent pursuant to this Agreement shall be deemed to be irrevocable.

#### 8.05 Right of Lenders to Fund through Other Offices.

Each Lender may, if it so elects, fulfill its commitment as to any LIBOR Loan by causing a foreign branch or Affiliate of such Lender to make such Loan; provided that in such event for the purposes of this Agreement such Loan shall be deemed to have been made by such Lender and the obligation of the Company to repay such Loan shall nevertheless be to such Lender and shall be deemed held by it, to the extent of such Loan, for the account of such branch or Affiliate.

#### 8.06 Discretion of Lenders as to Manner of Funding.

Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it sees fit, it being understood, however, that for the purposes of this Agreement all determinations hereunder shall be made as if such Lender had actually funded and maintained each LIBOR Loan during each Interest Period for such Loan through the purchase of deposits having a maturity corresponding to such Interest Period and bearing an interest rate equal to the LIBOR Rate for such Interest Period.

#### 8.07 Mitigation of Circumstances; Replacement of Lenders.

(i) Each Lender shall promptly notify the Company and the Administrative Agent of any event which the Lender has determined will result in, and will use reasonable commercial efforts available to it (and not, in such Lender's sole judgment, otherwise disadvantageous to such Lender) to mitigate or avoid, (i) any obligation by the Company to pay any amount pursuant to Section 7.6 or 8.1 or (ii) the occurrence of any circumstances described in Section 8.2 or 8.3 (and, if any Lender has given notice of any such event described in clause (i) or (ii) above and thereafter such event ceases to exist, such Lender shall promptly so notify the Company and the Administrative Agent). Without limiting the foregoing, each Lender will designate a different funding office if such designation will avoid (or reduce the cost to the Company of) any event described in clause (i) or (ii) above and such designation will not, in such Lender's sole judgment, be otherwise disadvantageous to such Lender.

(ii) If the Company becomes obligated to pay additional amounts to any Lender pursuant to Section 7.6 or 8.1, or any Lender gives notice of the occurrence of any circumstances described in Section 8.2 or 8.3, or any Lender does not agree to an amendment, waiver, consent, or modification to this Agreement or the other Loan Documents as to which the Required Lenders shall have agreed, then the Company may designate another bank which is acceptable to the Administrative Agent and the Issuing Lender in their reasonable discretion (such other bank being called a "Replacement Lender") to purchase the Loans of such Lender and such Lender's rights hereunder, without recourse to or warranty by, or expense to, such Lender, for a purchase price equal to the outstanding principal amount of the Loans payable to such Lender plus any accrued but unpaid interest on such Loans and all accrued but unpaid fees owed to such Lender and any other amounts payable to such Lender under this Agreement, and to assume all the obligations of such Lender hereunder, and such Lender shall sell and assign all of its Loans and other rights and obligations under this Agreement to the Replacement Lender and, upon such purchase and assumption by the Replacement Lender (pursuant to an Assignment Agreement), such Lender shall no longer be a party hereto or have any rights hereunder (other than rights with respect to indemnities and similar rights applicable to such Lender prior to the date of such purchase and assumption) and shall be relieved from all obligations to the Company hereunder, and the Replacement Lender shall succeed to the rights and obligations of such Lender hereunder.

#### 8.08 Conclusiveness of Statements; Survival of Provisions.

Determinations and statements of any Lender pursuant to Section 8.1, 8.2, 8.3 or 8.4 shall be conclusive absent demonstrable error. Lenders may use reasonable averaging and attribution methods in determining compensation under Sections 8.1 and 8.4, and the provisions of such Sections shall survive repayment of the Obligations, cancellation of any Notes, expiration or termination of the Letters of Credit and termination of this Agreement.

## 9. REPRESENTATIONS AND WARRANTIES.

To induce the Administrative Agent and the Lenders to enter into this Agreement and to induce the Lenders to make Loans and issue and participate in Letters of Credit hereunder, each of the Loan Parties represents and warrants to the Administrative Agent and the Lenders that:

### 9.01 Organization.

Each Loan Party is validly existing and in good standing under the laws of its jurisdiction of organization; and each Loan Party is duly qualified to do business in each jurisdiction where, because of the nature of its activities or properties, such qualification is required, except for such jurisdictions where the failure to so qualify would not have a Material Adverse Effect.

### 9.02 Authorization; No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, the Company is duly authorized to borrow monies hereunder and each Loan Party is duly authorized to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of each Loan Document to which it is a party, and the borrowings by the Company hereunder, do not and will not (a) require any consent or approval of any governmental agency or authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of law, (ii) the charter, by-laws or other organizational documents of any Loan Party or (iii) any material agreement, indenture, instrument or other document, or any judgment, order or decree, which is binding upon any Loan Party or any of their respective properties or (c) require, or result in, the creation or imposition of any Lien on any material asset of any Loan Party (other than Liens in favor of the Administrative Agent created pursuant to any of the Loan Documents).

### 9.03 Validity and Binding Nature.

Each of this Agreement and each other Loan Document to which any Loan Party is a party is the legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

### 9.04 Financial Condition.

The audited consolidated financial statements of the Company and its Subsidiaries for and as at the Company's Fiscal Year ends, 2000, 2001, and 2002, and the unaudited consolidated interim financial statements of the Company and the Subsidiaries for the first three fiscal quarters of the Company's Fiscal Year 2003, copies of each of which have been delivered to each Lender, were prepared in accordance with GAAP (subject, in the case of such unaudited statements, to the absence of footnotes and to normal year-end adjustments) and present fairly the consolidated financial condition of the Company and its Subsidiaries as at such dates and the results of their operations for the periods then ended.

### 9.05 No Material Adverse Change.

Since the Company's Fiscal Year end 2002, there has been no material adverse change in the financial condition, operations, assets, business, or properties of the Loan Parties taken as a whole.

#### 9.06 Litigation and Contingent Liabilities.

As of the Closing Date, no litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to the Company's knowledge, threatened against any Loan Party which might reasonably be expected to have a Material Adverse Effect, except as set forth in Schedule 9.6. As of the Closing Date, other than any liability incident to such litigation or proceedings, no Loan Party has any material contingent liabilities, that would be required to be disclosed by GAAP, which are not listed on Schedule 9.6 or permitted by Section 11.1. No litigation, arbitration or similar proceedings, regardless whether or not previously disclosed to the Lenders or the Administrative Agent, is or are pending against any Loan Party which alone or in the aggregate would reasonably be expected to result, within nine (9) months of any date on which this representation and warranty is made or deemed made (pursuant to a Notice of Borrowing, a Notice of Conversion/Continuation, Section 12.2, or otherwise), in one or more judgments or awards against one or more of the Loan Parties in an amount not covered by confirmed insurance coverage and committed indemnification or contribution obligations with respect thereto in excess of to \$100,000,000.

#### 9.07 Ownership of Properties; Liens.

Each Loan Party owns good and, in the case of real property, marketable title to all of its owned material properties and assets, real and personal, tangible and intangible, of any nature whatsoever (including patents, trademarks, trade names, service marks and copyrights), free and clear of all material Liens, charges and claims (including infringement claims with respect to patents, trademarks, service marks, copyrights and the like) except as permitted by Section 11.2.

#### 9.08 Equity Ownership; Subsidiaries.

All issued and outstanding Capital Securities of each Loan Party are duly authorized and validly issued, fully paid, non-assessable, and free and clear of all Liens, and such securities were issued in material compliance with all applicable state and federal laws concerning the issuance of securities. Schedule 9.8 sets forth the authorized Capital Securities of each Loan Party and of each of the other Subsidiaries of the Loan Parties as of the Closing Date, together with their respective legal name, place of organization, type of organization and location of chief executive office. All of the issued and outstanding Capital Securities of the Company are owned as set forth on Schedule 9.8 as of the Closing Date, and all of the issued and outstanding Capital Securities of each Wholly-Owned Subsidiary is, directly or indirectly, owned by the Company. As of the Closing Date, except as set forth on Schedule 9.8, there are no material pre-emptive or other outstanding rights, options, warrants, conversion rights or other similar agreements or understandings for the purchase or acquisition of any Capital Securities of any Loan Party.

#### 9.09 Pension Plans.

(i) Each Pension Plan complies in all material respects with all applicable requirements of law and regulations. No contribution failure under Section 412 of the Code, Section 302 of ERISA or the terms of any Pension Plan has occurred with respect to any Pension Plan, sufficient to give rise to a Lien under Section 302(f) of ERISA, or otherwise to have a Material Adverse Effect. There are no pending or, to the knowledge of the Company, threatened, claims, actions,

investigations or lawsuits against any Pension Plan, any fiduciary of any Pension Plan, or Company or any other member of the Controlled Group with respect to a Pension Plan or a Multiemployer Pension Plan which could reasonably be expected to have a Material Adverse Effect. Neither the Company nor any other member of the Controlled Group has engaged in any prohibited transaction (as defined in Section 4975 of the Code or Section 406 of ERISA) in connection with any Pension Plan or Multiemployer Pension Plan which would subject that Person to any material liability. Within the past five years, neither the Company nor any other member of the Controlled Group has engaged in a transaction which resulted in a Pension Plan with an Unfunded Liability being transferred out of the Controlled Group, which could reasonably be expected to have a Material Adverse Effect. No Termination Event has occurred or is reasonably expected to occur with respect to any Pension Plan, which could reasonably be expected to have a Material Adverse Effect.

(ii) All material contributions (if any) have been made to any Multiemployer Pension Plan that are required to be made by the Company or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable law; neither the Company nor any other member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Pension Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan; and neither the Company nor any other member of the Controlled Group has received any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

#### 9.10 Investment Company Act.

No Loan Party is an “investment company” or a company “controlled” by an “investment company” or a “subsidiary” of an “investment company,” within the meaning of the Investment Company Act of 1940.

#### 9.11 Public Utility Holding Company Act.

No Loan Party is a “holding company”, or a “subsidiary company” of a “holding company,” or an “affiliate” of a “holding company” or of a “subsidiary company” of a “holding company,” within the meaning of the Public Utility Holding Company Act of 1935.

#### 9.12 Regulation U.

The Company is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. No part of the proceeds of any Loan has been or will be used, immediately, incidentally, or ultimately, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or to refund Indebtedness originally incurred for such purpose, or for any purpose which entails a violation of or which is inconsistent with the provisions of the

regulations of the Board of Governors of the Federal Reserve System. None of the Company or any of its Subsidiaries holds or intends to hold margin stock in such amounts that more than 25% of the reasonable value of the assets of the Company or any Subsidiary of the Company are or will be represented by margin stock.

#### 9.13 Taxes; Tax Shelter Registration.

(i) Each Loan Party has timely filed all material tax returns and reports required by law to have been filed by it and has paid all material taxes and governmental charges due and payable with respect to such return, except any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books. The Loan Parties have made adequate reserves on their books and records in accordance with GAAP for all taxes that have accrued but which are not yet due and payable. No Loan Party has participated in any transaction that relates to a year of the taxpayer (which is still open under the applicable statute of limitations) which is a “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4(b)(2) (irrespective of the date when the transaction was entered into).

(ii) No Loan Party intends to treat any of the transactions contemplated by any Loan Document as being a “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4.

#### 9.14 Solvency, etc.

On the Closing Date, and immediately prior to and after giving effect to the issuance of each Letter of Credit and each borrowing hereunder and the use of the proceeds thereof, with respect to the Loan Parties, taken as a whole, (a) the fair value of their assets is greater than the amount of their liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated, (b) the present fair saleable value of their assets is not less than the amount that will be required to pay the probable liability on their debts as they become absolute and matured, (c) they are able to realize upon their assets and pay their debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, (d) they do not intend to, and do not believe that they will, incur debts or liabilities beyond their ability to pay as such debts and liabilities mature and (e) they are not engaged in business or a transaction, and are not about to engage in business or a transaction, for which their property would constitute unreasonably small capital.

#### 9.15 Environmental Matters.

The on-going operations of each Loan Party comply in all respects with all Environmental Laws, except such non-compliance which could not (if enforced in accordance with applicable law) reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect. Each Loan Party has obtained, and maintained in good standing, all licenses, permits, authorizations, registrations and other approvals required under any Environmental Law and required for their respective ordinary course operations, and for their reasonably anticipated future operations, and each Loan Party is in compliance with all terms and conditions thereof, except where the failure to do so could not reasonably be expected to result in material liability to

any Loan Party and could not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect. No Loan Party or any of its properties or operations is subject to any written order from or agreement with any Federal, state or local governmental authority, nor to the knowledge of any Loan Party subject to any judicial or docketed administrative or other proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Substance which could reasonably be expected to have a Material Adverse Effect. No Loan Party has any underground storage tanks that are not properly registered or permitted under applicable Environmental Laws.

9.16 Insurance.

Set forth on Schedule 9.16 is an accurate summary of the property and casualty insurance program of the Loan Parties as of the Closing Date. Each Loan Party and its properties are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Parties operate.

9.17 Real Property.

Set forth on Schedule 9.17 is a complete and accurate list, as of the Closing Date, of the address of all material real property owned or leased by any Loan Party, together with, in the case of leased property, the name and mailing address of the lessor of such property.

9.18 Information.

To the best knowledge of the Company, all information heretofore or contemporaneously herewith furnished in writing by any Loan Party to the Administrative Agent or any Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby is, and all written information hereafter furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender pursuant hereto or in connection herewith will be, true and accurate in every material respect on the date as of which such information is dated or certified, and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading in light of the circumstances under which made (it being recognized by the Administrative Agent and the Lenders that any projections and forecasts provided by the Company are based on good faith estimates and assumptions believed by the Company to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results).

9.19 Intellectual Property.

To the knowledge of the Senior Officers of the Loan Parties, each Loan Party owns and possesses or has a license or other right to use all patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights and copyrights as are necessary for the then current conduct of the businesses of the Loan Parties, without any

infringement upon rights of others which could reasonably be expected to have a Material Adverse Effect.

9.20 Burdensome Obligations.

To the knowledge of the Senior Officers of the Loan Parties, no Loan Party is a party to any agreement or contract or subject to any restriction contained in its organizational documents which could reasonably be expected to have a Material Adverse Effect.

9.21 Labor Matters.

Except as set forth on Schedule 9.21, as of the Closing Date, no Loan Party is subject to any labor or collective bargaining agreement. There are no existing or, to the knowledge of the Company, threatened strikes, lockouts or other labor disputes involving any Loan Party that singly or in the aggregate could reasonably be expected to have a Material Adverse Effect.

9.22 No Default.

No Event of Default or Unmatured Event of Default exists or would result from the incurrence by any Loan Party of any Debt hereunder or under any other Loan Document.

9.23 Indenture, No Recent Amendments.

There has occurred no amendment, restatement, refinancing, or the like to the Permitted Note Indenture from the date of its execution by the Company through the Closing Date.

**10. AFFIRMATIVE COVENANTS.**

Until the expiration or termination of the Commitments and thereafter until all Obligations hereunder and under the other Loan Documents are paid in full and all Letters of Credit have been terminated, each of the Loan Parties jointly and severally agrees that, unless at any time the Required Lenders shall otherwise expressly consent in writing, it will (and, where applicable, will cause any non-domestic Subsidiary of a Loan Party to):

10.01 Reports, Certificates and Other Information.

Furnish to the Administrative Agent (who shall forward a copy of the same to each Lender):

(a) Annual Report.

Promptly when available and in any event within 90 days after the close of each Fiscal Year, the consolidated financial statements of the Company and its Subsidiaries as at the end of such Fiscal Year consisting of the consolidated 10-K of the Company and its Subsidiaries, all in reasonable detail and certified without adverse reference to going concern value and without qualification by independent auditors of recognized standing selected by the Company and reasonably acceptable to the Administrative Agent.



(b) Interim Reports.

Promptly when available and in any event within 45 days after the end of each Fiscal Quarter (except the last Fiscal Quarter of each Fiscal Year), consolidated financial statements of the Company and its Subsidiaries as of the end of such Fiscal Quarter consisting of the consolidated 10-Q of the Company and its Subsidiaries.

(c) Compliance Certificates.

Contemporaneously with the furnishing of a copy of each annual audit report pursuant to Section 10.1.1 and each set of quarterly statements pursuant to Section 10.1.2, a duly completed compliance certificate in the form of Exhibit B, with appropriate insertions, dated the date of such annual report or such quarterly statements and signed by a Senior Officer of the Company, containing a computation of each of the financial ratios and restrictions set forth in Section 11.14 and to the effect that such officer has not become aware of any Event of Default or Unmatured Event of Default that has occurred and is continuing or, if there is any such event, describing it and the steps, if any, being taken to cure it.

(d) Reports to the SEC and to Shareholders.

Promptly upon the filing or sending thereof, copies of all regular, periodic or special reports of any Loan Party filed with the SEC; copies of all registration statements of any Loan Party filed with the SEC (other than on Form S-8); and copies of all proxy statements or other communications made to security holders generally.

(e) Notice of Litigation and ERISA Matters.

Promptly upon becoming aware of any of the following, written notice describing the same and the steps being taken by the Company or the Subsidiary affected thereby with respect thereto:

(i) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by the Company to the Lenders which has been instituted or, to the knowledge of the Company, is threatened against any Loan Party or to which any of the properties of any thereof is subject or any change or adverse development in any such litigation, arbitration or governmental investigation or proceeding whether or not such litigation, arbitration or governmental investigation or proceeding was previously disclosed by the Company to the Lenders (including any change in insurance coverage or rights of indemnification or contribution with respect thereto), which in any case might reasonably be expected to have a Material Adverse Effect;

(ii) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a material Lien under Section 302(f) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that the Company furnish a material bond or other security to the

PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for material withdrawal liability or material partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of the Company with respect to any post-retirement welfare benefit plan or other employee benefit plan of the Company or another member of the Controlled Group, or any notice that any Multiemployer Pension Plan is in reorganization, that material increased contributions may be required to avoid a reduction in plan benefits or the imposition of a material excise tax, that any such plan is or has been funded at a rate materially less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent; or

(iii) any violation of any Environmental Law or the assertion of any Environmental Claim which would reasonably be expected to have a Material Adverse Effect.

(f) [Reserved.]

(g) Management Reports.

Promptly upon receipt thereof, copies of all detailed financial and management reports submitted to the Company by independent auditors in connection with each annual or interim audit made by such auditors of the books of the Company.

(h) Projections.

As soon as practicable, and in any event not later than the last day of February of each year beginning with February 29, 2004, the annual forecasts (to include the balance sheet, profit and loss statement and statement of cash flows) of the Company and its Subsidiaries taken together, prepared in a manner consistent with the projections delivered by the Company to the Lenders prior to the Closing Date or otherwise in a manner reasonably satisfactory to the Administrative Agent, accompanied by a certificate of a Senior Officer of the Company on behalf of the Company to the effect that (a) such projections were prepared by the Company in good faith, (b) the Company has a reasonable basis for the assumptions contained in such projections and (c) such projections have been prepared in accordance with such assumptions.

(i) Indenture Debt Notices.

Promptly following receipt, copies of any notices (including notices of default or acceleration) received from any holder or trustee of, under or with respect to the Permitted Note Indenture.

(j) Notice of Default.

Promptly after any officer of the Company has learned of the occurrence of an Event of Default or Unmatured Event of Default, a certificate signed by a Senior Officer of the Company

setting forth the details of such Event of Default or Unmatured Event of Default and the action which the Company and any other Loan Party proposes to take with respect thereto.

(k) Notice of Litigation.

Promptly after the commencement thereof, notice of all actions, suits, or governmental investigations or proceedings (as to which the Company or any Subsidiary of the Company has actual knowledge) against the Company or any Subsidiary of the Company, involving a claim or series of claims in excess of \$10,000,000 or which if adversely determined could reasonably be expected to have a Material Adverse Effect.

(l) Other Information.

Promptly from time to time, such other information concerning the Loan Parties as any Lender or the Administrative Agent may reasonably request.

10.02 Books, Records and Inspections.

Keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP; permit, and cause each other Loan Party to permit, any Lender or the Administrative Agent or any representative thereof to inspect the properties and operations of the Loan Parties; and permit, and cause each other Loan Party to permit, at any reasonable time and with reasonable notice (or at any time without notice if an Event of Default exists), any Lender or the Administrative Agent or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and the Company hereby authorizes such independent auditors to discuss such financial matters with any Lender or the Administrative Agent or any representative thereof), and to examine (and, at the expense of the Loan Parties, photocopy extracts from) any of its books or other records. All such inspections or audits by the Administrative Agent shall be at the Company's expense, provided that so long as no Event of Default or Unmatured Event of Default exists, the Company shall not be required to reimburse the Administrative Agent for inspections or audits.

10.03 Maintenance of Property; Insurance.

(i) Keep, and cause each other Loan Party to keep, all material property necessary in the business of the Loan Parties in working order and condition, ordinary wear and tear excepted except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(ii) Insure its properties and assets against loss or damage by fire and such other insurable hazards as such assets are commonly insured (including fire, extended coverage, property damage, workers' compensation, public liability, and business interruption insurance) and against other risks (including errors and omissions) in such amounts as similar properties and assets are insured by prudent companies in similar circumstances carrying on similar businesses, and with insurers believed by the Company to be reputable and financially sound, including self-insurance to the extent customary. The Company shall provide to the Administrative Agent (who

shall forward a copy of the same to each of the Lenders), no later than the date on which annual financial statements are to be provided to the Agent pursuant to Section 10.1.1, evidence (in such form as is satisfactory to the Agent) of compliance with the terms of this Section.

#### 10.04 Compliance with Laws; Payment of Taxes and Liabilities.

(i) Comply, and cause each other Loan Party and each non-domestic Subsidiary of a Loan Party to comply, in all material respects with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply could not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party and each non-domestic Subsidiary of a Loan Party to ensure, that no person who owns a controlling interest in or otherwise controls a Loan Party or any non-domestic Subsidiary of a Loan Party is or shall be (i) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control (“OFAC”), Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders, (c) without limiting clause (a) above, comply, and cause each other Loan Party and each non-domestic Subsidiary of a Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations and (d) pay, and cause each other Loan Party and each non-domestic Subsidiary of a Loan Party to pay, prior to delinquency, all material taxes and other governmental charges against it or any collateral (if any), as well as material claims of any kind which, if unpaid, could become a Lien on any of its property; provided that the foregoing shall not require any Loan Party or any non-domestic Subsidiary of a Loan Party to pay any such tax or charge so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP and, in the case of a claim which could become a Lien on any collateral (if any), such contest proceedings shall stay the foreclosure of such Lien or the sale of any portion of the collateral (if any) to satisfy such claim.

#### 10.05 Maintenance of Existence, etc.

Maintain and preserve, and (subject to Section 11.5) cause each other Loan Party and each non-domestic Subsidiary of a Loan Party to maintain and preserve, (a) its existence and good standing in the jurisdiction of its organization and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary (other than such jurisdictions in which the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect).

#### 10.06 Use of Proceeds.

Use the proceeds of the Loans, and the Letters of Credit, solely to refinance the indebtedness outstanding under the Prior Credit Agreement, for working capital purposes, for Acquisitions permitted by Section 11.5, for Capital Expenditures and for other general business purposes; and not use or permit any proceeds of any Loan or Letters of Credit to be used, either directly or indirectly, for any purpose which contravenes any applicable law.

#### 10.07 Employee Benefit Plans.

(i) Maintain, and cause each other member of the Controlled Group to maintain, each Pension Plan in substantial compliance with all applicable requirements of law and regulations.

(ii) Make, and cause each other member of the Controlled Group to make, on a timely basis, all required contributions to any Multiemployer Pension Plan.

(iii) Not, and not permit any other member of the Controlled Group to (i) seek a waiver of the minimum funding standards of ERISA, (ii) terminate or withdraw from any Pension Plan or Multiemployer Pension Plan or (iii) take any other action with respect to any Pension Plan that would reasonably be expected to entitle the PBGC to terminate, impose liability in respect of, or cause a trustee to be appointed to administer, any Pension Plan, unless the actions or events described in clauses (i), (ii) and (iii), individually or in the aggregate would not have a Material Adverse Effect.

#### 10.08 Environmental Matters.

If any release or threatened release or other disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of any Loan Party, the Company shall, or shall cause the applicable Loan Party to, cause the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, the Company shall, and shall cause each other Loan Party to, comply with any Federal or state judicial or administrative order requiring the performance at any real property of any Loan Party of activities in response to the release or threatened release of a Hazardous Substance. To the extent that the transportation of Hazardous Substances is permitted by this Agreement, the Company shall, and shall cause its Subsidiaries to, dispose of such Hazardous Substances, or of any other wastes, only at licensed disposal facilities operating in compliance with Environmental Laws.

#### 10.09 Tax Shelter Registration.

Notify the Administrative Agent of any action (or the intention to take an action) inconsistent with the representation in Section 9.13(b). If the Company so notifies the Administrative Agent, the Company acknowledges and agrees that the Administrative Agent and the Lenders may treat the transactions contemplated hereby (or any single transaction contemplated hereby) as part of a transaction that is subject to Treasury Regulation Section 301.6112-1, and the Administrative Agent and such Lender, as applicable, may maintain the lists and other regulations required by such Treasury Regulation. To the extent the Administrative Agent or a Lender determines to maintain such list, each Loan Party shall cooperate with the Administrative Agent and Lenders in obtaining the information required under such Treasury Regulation. Within 10 days after notifying the Administrative Agent under this Section 10.9, the Company shall deliver to the Administrative Agent a duly completed copy of IRS Form 8886 or any successor form.

#### 10.10 Further Assurances.

(a) Take, and cause each other Loan Party to take, such actions as are necessary or as the Administrative Agent or the Required Lenders may reasonably request from time to time to ensure that the Obligations of each Loan Party under the Loan Documents are guaranteed by each domestic Subsidiary (including, upon the acquisition or creation thereof, any Subsidiary acquired or created after the Closing Date), in each case as the Administrative Agent may determine, including the execution and delivery of guaranties and other documents, and (b) do all such other acts and things as the Agent in its reasonable discretion may deem necessary or advisable from time to time in order to more effectively carry out the provisions and goals of this Agreement and the other Loan Documents.

#### 11. **NEGATIVE COVENANTS**

Until the expiration or termination of the Commitments and thereafter until all Obligations hereunder and under the other Loan Documents are paid in full and all Letters of Credit have been terminated, each of the Loan Parties agrees that, unless at any time the Required Lenders shall otherwise expressly consent in writing, it will (and, where applicable, will cause any non-domestic Subsidiary of a Loan Party to):

##### 11.01 Debt.

Not, and not permit any other Loan Party or any non-domestic Subsidiary of a Loan Party to, create, incur, assume or suffer to exist any Debt, except:

(i) Obligations under this Agreement and the other Loan Documents;

(ii) Debt secured by Liens permitted by Section 11.2(d) and Section 11.2(i), and extensions, renewals and refinancings thereof; provided that the aggregate amount of all such Debt at any time outstanding shall not exceed \$30,000,000;

(iii) Debt of the Company to any domestic Wholly-Owned Subsidiary or Debt of any domestic Wholly-Owned Subsidiary to the Company or another domestic Wholly-Owned Subsidiary; provided that the obligations under such Debt shall be subordinated to the Obligations of the Company hereunder in a manner reasonably satisfactory to the Administrative Agent;

(iv) Debt arising under the Permitted Note Indenture;

(v) Hedging Obligations approved by Administrative Agent and incurred in favor of a Lender or an Affiliate thereof for bona fide hedging purposes and not for speculation;

(vi) Debt described on Schedule 11.1 and, subject to Section 11.16, any extension, renewal or refinancing thereof to the extent the principal amount thereof is not increased or made senior in right of payment to the Loans, and so long as the terms

thereof are not materially more burdensome than those of the Debt being extended, renewed, or refinanced;

(vii) Contingent Liabilities of the Loan Parties or any non-domestic Subsidiary of a Loan Party arising with respect to (i) any Debt permitted hereby, (ii) a guaranty by the Company of the obligations of Vapor Management to the lender providing financing to Vapor Management in connection with the Vapor Power Sale in an amount not to exceed \$2,916,666.75, and (iii) notwithstanding any other provision hereof (but subject to the proviso below), guaranties of performance, completion, quality, and the like provided by the Company or any Subsidiary of the Company with respect to performance or similar obligations owing to a Person by the Company or any of its Subsidiaries provided, however, that the sum of all amounts paid plus all costs incurred, as the case may be, by the Loan Parties with respect to guaranties of the performance, completion, quality, or similar obligations of all non-domestic Subsidiaries of the Company, to the extent such amounts paid or costs incurred by Loan Parties are not repaid or reimbursed by the non-domestic Subsidiaries of the Company, shall be deemed to be Debt of non-domestic Subsidiaries of the Company owing to Loan Parties for the purposes, and subject to the limitations, of Section 11.1(i) (for the avoidance of doubt, none of such obligations incurred or amounts paid or costs incurred by the Company or any of its Subsidiaries with respect to guaranties of the performance, completion, quality, or similar obligations of the Company or any of its Subsidiaries shall be deemed to be Indebtedness of, or a loan to, the Company or any of its Subsidiaries for the purposes of the calculation of any of the financial covenants of Section 11.14);

(viii) Debt of the Loan Parties and any non-domestic Subsidiary of a Loan Party in respect of surety bonds, performance bonds, bid bonds, or similar obligations arising in the ordinary course of business up to an amount reasonably determined to be payable under all surety bonds then outstanding not to exceed at any time \$200,000,000 in the aggregate;

(ix) Debt of any non-domestic Subsidiary of the Company to any Loan Party or to any other Person, *provided* that the aggregate of all such Indebtedness in existence at any time of calculation shall not exceed the equivalent amount of \$65,000,000; and

(x) other unsecured Debt of any Loan Party, in addition to the Debt listed above, in an aggregate outstanding amount not at any time exceeding \$50,000,000.

#### 11.02 Liens.

Not, and not permit any other Loan Party or any non-domestic Subsidiary of a Loan Party to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

(i) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being contested in good faith by appropriate proceedings and, in each case, for which it maintains adequate reserves;

(ii) Liens arising in the ordinary course of business (such as (i) Liens of carriers, warehousemen, mechanics and materialmen and other similar Liens imposed by law and (ii) Liens in the form of deposits or pledges incurred in connection with worker's compensation, unemployment compensation and other types of social security (excluding Liens arising under ERISA) or in connection with surety bonds, bids, performance bonds and similar obligations) for sums not overdue or being contested in good faith by appropriate proceedings and not involving any advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves;

(iii) Liens arising under the Loan Documents from time to time;

(iv) subject to the limitation set forth in Section 11.1(b), (i) Liens arising in connection with Capital Leases (and attaching only to the property being leased), (ii) Liens existing on property at the time of the acquisition thereof by any Loan Party or any non-domestic Subsidiary of a Loan Party (and not created in contemplation of such acquisition) and (iii) Liens that constitute purchase money security interests on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring such property, provided that any such Lien attaches to such property within 60 days of the acquisition thereof and attaches solely to the property so acquired;

(v) attachments, appeal bonds, judgments and other similar Liens, for sums not exceeding \$10,000,000 arising in connection with court proceedings, provided the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings;

(vi) Liens on contracts entered into with its customers by a Loan Party or any non-domestic Subsidiary of a Loan Party and the assets related thereto to secure the obligations of the Loan Party or the non-domestic Subsidiary of a Loan Party in respect of such contracts or in respect of surety bonds, performance bonds, bid bonds, or similar obligations arising in the ordinary course of business issued on its behalf, in each case to assure performance of such contracts;

(vii) easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of any Loan Party;

(viii) Liens arising under Securitizations, and

(ix) Other Liens securing payment of an aggregate amount of Indebtedness not to exceed \$10,000,000.

### 11.03 Operating Leases.

Not permit the aggregate amount of all rental payments under Operating Leases made (or scheduled to be made) by the Loan Parties (on a consolidated basis) to exceed \$25,000,000 in any Fiscal Year.



#### 11.04 Restricted Payments.

Not, and not permit any other Loan Party or any non-domestic Subsidiary of a Loan Party to, (a) make any distribution to any holders of its Capital Securities, (b) purchase or redeem any of its Capital Securities, (c) pay any management fees or similar fees to any of its equityholders or any Affiliate thereof, (d) make any redemption, prepayment, defeasance, repurchase or any other principal payment in respect of the Permitted Note Indenture or (e) set aside funds for any of the foregoing. Notwithstanding the foregoing, (i) any Subsidiary may pay dividends or make other distributions to the Company or to a domestic Wholly-Owned Subsidiary; (ii) so long as no Event of Default or Unmatured Event of Default exists or would result therefrom, the Company may (A) pay any management fees or similar fees to any of its equityholders or any Affiliate thereof up to an amount not to exceed \$500,000 in any Fiscal Year, provided that the Company may pay all of the reasonable fees of an investment bank of recognized standing that is also an equityholder of the Company or any Affiliate thereof; (B) repurchase its common stock; (C) declare and pay cash dividends in respect of its common stock; provided that the aggregate amount of repurchases, redemptions, and dividends (net of dividends on unallocated shares of common stock of the Company that are returned to the Company) made pursuant to clauses (B) and (C) of this Section 11.4 shall not exceed \$10,000,000 plus 50% of the accumulated Consolidated Net Income of the Company and its Subsidiaries for each fiscal year since the Closing Date; (D) make redemptions, prepayments, defeasance, repurchases or other payments in respect of the Permitted Note Indenture up to an aggregate amount not in excess of \$50,000,000 from the Closing Date through the Termination Date, provided that, at the time of any such redemption, prepayment, defeasance, repurchases or other payment, the Total Debt to EBITDA Ratio as of the last day of the most recent previous Computation Period is no greater than 2.50 to 1.00, and (E) make redemptions, prepayments, defeasance, repurchases or other payments in respect of the Permitted Note Indenture in connection with a Significant Asset Disposition after compliance with Section 6.2.2 of this Agreement.

#### 11.05 Acquisitions, Mergers, Consolidations, Sales.

Not, and not permit any other Loan Party or any non-domestic Subsidiary of a Loan Party to, (I) be a party to any merger or consolidation, or purchase or otherwise acquire all or substantially all of the assets or any Capital Securities of any class of, or any partnership or joint venture interest in, any other Person, (II) sell, transfer, convey or lease all or any substantial part of its assets or Capital Securities (including the sale of Capital Securities of any Subsidiary, but excluding the Capital Securities of the Company), or (III) sell or assign with or without recourse any receivables, except for

(i) any such merger, consolidation, sale, transfer, conveyance, lease or assignment of or by any Wholly-Owned Subsidiary into the Company or into any other domestic Wholly-Owned Subsidiary or any such purchase or other acquisition by the Company or any domestic Wholly-Owned Subsidiary of the assets or Capital Securities of any Wholly-Owned Subsidiary;

(ii) any sale, lease, or other disposition of assets in the ordinary course of business; or

(iii) any sale, lease, or other disposition of assets (other than those specifically excepted pursuant to clauses (a) and (b) above), including any one or more Securitizations, provided that (i) at the time of any such disposition, no Event of Default shall exist or shall result from such disposition, (ii) the Company shall demonstrate that it shall be in pro forma compliance with all the financial ratios and restrictions set forth in Section 11.14 immediately after giving effect to any disposition of a Subsidiary or material line of business or a material division, by delivering to the Administrative Agent (who shall forward a copy of the same to the Lenders) at least five (5) Business Days prior to any such disposition a certificate similar in form to Exhibit G evidencing such compliance (iii) the aggregate value of all assets so transferred or disposed of by the Company or any domestic Subsidiary of the Company shall not exceed: (1) in any fiscal year when no Securitization shall occur, ten percent (10%) of the total tangible assets of the Loan Parties at the time of such disposition, and (2) in any fiscal year in which a Securitization shall occur, five percent (5%) of the total tangible assets of the Loan Parties at the time of such disposition (excluding, but solely in the calculation of this clause (2), the value of the assets subject to such one or more Securitizations conducted during such fiscal year from the value of the assets transferred or disposed of in such fiscal year), and (3) for the period commencing on the date hereof and continuing until the Termination Date, ten percent (10%) of the total tangible assets of the Loan Parties at the time of any such disposition (excluding (but solely in the calculation of this clause (3)) the value of the assets subject to any one or more Securitizations conducted during such period from the value of the assets transferred or disposed of during such period), and (iv) with respect to any one or more Securitizations occurring at any time or times from the date hereof until the Expiration Date, (X) all Securitizations shall be on a non-recourse basis to the Company and its Subsidiaries (except for fraud or breaches of representations and warranties), (Y) the aggregate face amount of all assets transferred, disposed of, or otherwise directly or indirectly subject to any Securitization shall not exceed at any one time an aggregate amount of \$100,000,000, and (Z) all Securitizations shall be on terms reasonably acceptable to the Administrative Agent and the Administrative Agent's acceptance thereof shall not be unreasonably withheld.

(iv) any Acquisition by the Company or any Wholly-Owned Subsidiary where:

(A) the business or division acquired are for use, or the Person acquired is engaged, in the businesses conducted by the Loan Parties on the Closing Date or in other activities reasonably incidental thereto or to the operations of a company of the size or nature of any of the Loan Parties, and a Loan Party shall be the surviving Person in the event of a merger or consolidation with a domestic Person, and a Subsidiary of the Company shall be the surviving Person in the event of a merger or consolidation with a non-domestic Person;

(B) immediately before and after giving effect to such Acquisition, no Event of Default or Unmatured Event of Default shall exist;

(C) the aggregate consideration to be paid by the Loan Parties (including any Debt assumed or issued in connection therewith, the amount thereof to be calculated in accordance with GAAP) in connection with such Acquisition (or any series of related Acquisitions) is less than \$100,000,000 and the aggregate to be paid by the Loan Parties (including any Debt assumed or issued in connection therewith, the amount thereof to be

calculated in accordance with GAAP) in connection with all such Acquisitions shall not exceed \$150,000,000, provided that with respect to any acquisition which results in the acquisition of a non-domestic Subsidiary of the Company or of assets held by a non-domestic Subsidiary of the Company, the aggregate amount to be paid by the Loan Parties or any non-domestic Subsidiary of a Loan Party (including any Debt assumed or issued in connection therewith, the amount thereof to be calculated in accordance with GAAP) in connection with such Acquisition (or any series of related Acquisitions) shall not exceed \$65,000,000;

(D) the Company shall demonstrate that it shall be in pro forma compliance with all the financial ratios and restrictions set forth in Section 11.14, immediately after giving effect to such Acquisition, by delivering to the Administrative Agent (who shall forward a copy of the same to the Lenders) at least five (5) Business Days prior to such Acquisition a certificate substantially in the form of Exhibit G evidencing such compliance;

(E) in the case of the Acquisition of any Person, the Board of Directors or similar governing body of such Person has approved such Acquisition;

(F) reasonably prior to such Acquisition, the Administrative Agent shall have received copies of each material document, instrument and agreement to be executed in connection with such Acquisition together with all lien search reports and lien release letters and other documents as the Administrative Agent may require to evidence the existence of any potential Liens and the termination of any Liens on the assets or business to be acquired which are not permitted by the terms of this Agreement; and

(G) the provisions of Section 10.10 have been satisfied.

#### 11.06 Modification of Organizational Documents.

Not permit the articles, charter, by-laws or other organizational documents of any Loan Party or any non-domestic Subsidiary of a Loan Party to be amended or modified in any way which could reasonably be expected to materially adversely affect the interests of the Lenders.

#### 11.07 Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than with respect to transactions with any of the Loan Parties or any other Subsidiary of a Loan Party for which there exists a reasonable economic, legal, or related motivation.

#### 11.08 Unconditional Purchase Obligations.

Not, and not permit any other Loan Party to, enter into or be a party to any contract for the purchase of materials, supplies or other property or services if such contract requires that payment be made by it regardless of whether delivery is ever made of such materials, supplies or other property or services except for such contracts in an aggregate amount not at any time exceeding \$5,000,000.

#### 11.09 Inconsistent Agreements.

Not, and not permit any other Loan Party to, enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by the Company hereunder or by the performance by any Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit any Loan Party from granting to the Administrative Agent and the Lenders, a Lien on any of its assets or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (i) pay dividends or make other distributions to the Company or any other Subsidiary, or pay any Debt owed to the Company or any other Subsidiary, (ii) make loans or advances to any Loan Party or (iii) transfer any of its assets or properties to any Loan Party, other than (A) customary restrictions and conditions contained in agreements relating to the sale of all or a substantial part of the assets of any Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary to be sold and such sale is permitted hereunder (B) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt and (C) customary provisions in leases and other contracts restricting the assignment thereof.

#### 11.10 Business Activities; Issuance of Equity.

Not, and not permit any other Loan Party or any non-domestic Subsidiary of a Loan Party to, engage in any line of business other than the businesses engaged in on the date hereof and businesses and other activities reasonably incidental thereto or to the operations of a company of the size or nature of any of the Loan Parties. Not, and not permit any other Loan Party (other than the Company) to, issue any Capital Securities other than (a) any issuance of shares of the Company's common Capital Securities pursuant to any employee or director option program, benefit plan or compensation program or (b) any issuance by a Subsidiary to the Company or another Subsidiary in accordance with Section 11.4.

#### 11.11 Investments.

Not, and not permit any other Loan Party or any non-domestic Subsidiary of a Loan Party to, make or permit to exist any Investment in any other Person, except the following:

(i) contributions by the Company to the capital of any Wholly-Owned Subsidiary, or by any Subsidiary to the capital of any other domestic Wholly-Owned Subsidiary, so long as the recipient of any such capital contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its Capital Securities and substantially all of its real and personal property, in each case in accordance with Section 10.10;

(ii) Investments constituting Debt permitted by Section 11.1;

(iii) Contingent Liabilities constituting Debt permitted by Section 11.1 or Liens permitted by Section 11.2;

- (iv) Cash Equivalent Investments;
- (v) bank deposits in the ordinary course of business;
- (vi) a loan from the Company to Vapor Management for the consummation of the Vapor Power Sale in an amount outstanding not to exceed \$567,709.52;
- (vii) intercompany loans or investments by domestic Loan Parties to or in domestic Loan Parties;
- (viii) Investments to or in Ventures or non-domestic Subsidiaries of the Company in an aggregate amount at any time of calculation not in excess of \$65,000,000;
- (ix) loans by non-domestic Subsidiaries to the Company, *provided* that each such loan is subject to a subordination agreement satisfactory to Administrative Agent;
- (x) Investments to consummate Acquisitions permitted by Section 11.5; and
- (xi) Investments listed on Schedule 11.11 as of the Closing Date,

provided that (x) any Investment which when made complies with the requirements of the definition of the term “Cash Equivalent Investment” may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements; (y) no Investment otherwise permitted by clause (h), or (j) shall be permitted to be made if, immediately before or after giving effect thereto, any Event of Default or Unmatured Event of Default exists.

11.12 Restriction of Amendments to Certain Documents.

Not amend or otherwise modify, or waive any material rights under, the Permitted Note Indenture.

11.13 Fiscal Year.

Not change its Fiscal Year.

11.14 Financial Covenants.

(a) Interest Coverage Ratio.

Not permit the Interest Coverage Ratio for any Computation Period to be less than 3.00 to 1.00.

(b) Total Debt to EBITDA Ratio.

Not permit the Total Debt to EBITDA Ratio as of the last day of any Computation Period (i) ending on or before June 30, 2004, to exceed 3.50 to 1.00, and (ii) ending after June 30, 2004, to exceed 3.25 to 1.00.

(c) Minimum Net Worth.

Not at any time permit Consolidated Net Worth to be less than the sum of \$180,000,000 plus 50% of the Consolidated Net Income of the Company and its Subsidiaries for each previous fiscal quarter since September 30, 2003.

(d) Capital Expenditures.

Not permit the aggregate amount of all Capital Expenditures made by the Loan Parties in any Fiscal Year to exceed \$32,500,000 (excluding Acquisitions permitted by Section 11.5). The amount of Capital Expenditures permitted pursuant to this Section 11.14.4 in any Fiscal Year (other than the Fiscal Year ending December 31, 2003) shall be increased by the total amount of unused permitted Capital Expenditures for the immediately preceding fiscal year (less an amount equal to any unused Capital Expenditures carried forward to such preceding year) with Capital Expenditures made by the Loan Parties in such succeeding Fiscal Year applied last to such unutilized amount. All such Capital Expenditures shall be made under usual and customary terms and in the ordinary course of business.

(e) Covenant Calculations.

In the event of a proposed Acquisition, the Company shall demonstrate pro forma compliance with each of Sections 11.14.1 through 11.14.3 by determining the calculations of each such Section as if such Acquisition and all obligations of the Company and its Subsidiaries incurred in connection therewith had been completed and incurred at the beginning of the period for each such calculation.

11.15 Cancellation of Debt.

Not, and not permit any other Loan Party to, cancel any claim or debt owing to it, except for reasonable consideration or in the ordinary course of business.

11.16 Limitations on Amendments to Indenture.

Not agree to, permit, or suffer to exist any amendment, restatement, refinancing, or the like of the Permitted Note Indenture unless the Permitted Note Indenture as amended, restated, refinanced, or the like and the Indebtedness relating to the Permitted Note Indenture, as amended, restated, refinanced or the like, meets all of the following criteria:

(a) no amendment, restatement, refinancing, or the like of the Permitted Note Indenture shall increase the aggregate principal amount of Indebtedness then outstanding thereunder or permit the reborrowing of principal amounts paid thereunder;

(b) no portion of the principal amount of the Indebtedness outstanding under the Permitted Note Indenture as amended, restated, refinanced, or the like shall be due prior to August 6, 2013, other than any mandatory payments required solely in the event of a Significant Disposition or change of control, *provided* that proceeds arising from a Significant Disposition are

first allowed to be utilized by the Company to prepay Obligations or to be timely utilized by the Company to acquire replacement or additional assets;

(c) the rate of interest (other than after a default) applicable to the Indebtedness outstanding under the Permitted Note Indenture as amended, restated, refinanced, or the like shall not exceed 7.0%;

(d) after giving effect to the Permitted Note Indenture as amended, restated, refinanced, or the like, the Loan Parties shall be in compliance with the covenants and other requirements of this Agreement (including those set forth at Section 11.14 of this Agreement) and no Event of Default or Unmatured Event of Default shall exist or be continuing;

(e) the events of default and covenants set forth in the Permitted Note Indenture as amended, restated, refinanced, or the like shall not be more restrictive, in any material respect, than the Events of Default and covenants set forth in this Agreement;

(f) the payment of the Indebtedness outstanding under the Permitted Note Indenture as amended, restated, refinanced, or the like shall not be secured (other than to the extent of customary rights of set off) by any Lien on any property or assets of any Loan Party;

(g) no Person other than a Loan Party shall provide any guaranty of the Indebtedness outstanding under the Permitted Note Indenture as amended, restated, refinanced, or the like;

(h) the Permitted Note Indenture as amended, restated, refinanced, or the like shall not prohibit or restrict any Loan Party from providing any Lien, now or hereafter, to the Agent or any Lender to secure the payment or performance of any or all of the Obligations and, in the event any such Lien is provided, the Permitted Note Indenture as amended, restated, refinanced, or the like shall not require the Company or any of its Subsidiaries to provide any Lien to secure payment or performance of any obligation arising under the Permitted Note Indenture as amended, restated, refinanced, or the like;

(i) no Obligations of the Loan Parties under this Agreement and the other Loan Documents shall conflict with or violate the terms of the Permitted Note Indenture as amended, restated, refinanced, or the like, and any Loans made or hereafter made to the Company and any Letters of Credit issued or hereafter issued under this Agreement shall continue to be permitted to be incurred under the Permitted Note Indenture as amended, restated, refinanced, or the like; and

(j) the Indebtedness outstanding under the Permitted Note Indenture as amended, restated, refinanced, or the like will not conflict with or violate the terms of this Agreement or any other Loan Document.

## 12. EFFECTIVENESS; CONDITIONS OF LENDING, ETC.

The obligation of each Lender to make its Loans and of the Issuing Lender to issue Letters of Credit is subject to the following conditions precedent:

### 12.01 Initial Credit Extension.

The obligation of the Lenders to make the initial Loans and the obligation of the Issuing Lender to issue its initial Letter of Credit (whichever first occurs) is, in addition to the conditions precedent specified in Section 12.2, subject to the conditions precedent that (a) the Company shall have given notice to the Lenders and the Agent under (as each of the foregoing two capitalized terms are defined in) the Prior Credit Agreement that the Company shall on the Closing Date permanently terminate all Commitments under (and as defined in) the Prior Credit Agreement, and all Debt outstanding under the Prior Credit Agreement has been (or concurrently with the initial borrowing will be) paid in full and all agreements and instruments governing the Debt outstanding under the Prior Credit Agreement have been (or concurrently with the initial borrowing will be) terminated, (b) since December 31, 2002, no Material Adverse Change has occurred, (c) the making of the Loans and the issuance of the Letters of Credit shall not contravene any law applicable to any Loan Party or any of the Lenders and no action, proceeding, investigation, regulation, or legislation shall have been instituted, threatened, or proposed before any court, governmental agency, or legislative body to enjoin, restrain, or prohibit, or to obtain damages in respect of, this Agreement, the other Loan Documents, or the consummation of any of the transactions contemplated hereby or thereby or which, in the Administrative Agent's sole discretion, would make it inadvisable to consummate the transactions contemplated by this Agreement or any of the other Loan Documents, and (d) the Administrative Agent shall have received all of the following, each duly executed, delivered and dated the Closing Date (or such earlier date as shall be satisfactory to the Administrative Agent) (or such later date as provided in Section 12.1.2 below), in form and substance satisfactory to the Administrative Agent (and the date on which all such conditions precedent have been satisfied or waived in writing by the Administrative Agent and the Lenders is called the "Closing Date"):

(a) Notes.

A Note for each Lender.

(b) Authorization Documents.

Within forty-five (45) days of the Closing Date, for each Loan Party, such Person's (a) charter (or similar formation document), certified by the appropriate governmental authority; (b) good standing certificates in its state of incorporation (or formation) and in each other state requested by the Administrative Agent; (c) bylaws (or similar governing document); (d) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby; and (e) signature and incumbency certificates of its officers executing any of the Loan Documents (it being understood that the Administrative Agent and each Lender may conclusively rely on each such certificate until formally advised by a like certificate of any changes therein), all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification.



(c) Consents, etc.

Certified copies of all documents evidencing any necessary corporate or partnership action (other than that addressed in Section 12.1.2 above), consents and governmental approvals (if any) required for the execution, delivery and performance by the Loan Parties of the documents referred to in this Section 12.

(d) Letter of Direction.

A letter of direction containing funds flow information with respect to the proceeds of the Loans on the Closing Date.

(e) Guaranty Agreement.

The Guaranty Agreement and Intercompany Subordination Agreement, executed by each Loan Party, and the other Loan Documents shall have been duly delivered to the Agent for the benefit of the Lenders.

(f) Opinions of Counsel.

Opinions of counsel for each Loan Party.

(g) Insurance.

Evidence of the existence of insurance required to be maintained pursuant to Section 10.3(b).

(h) Payment of Fees.

Evidence of payment by the Company of all accrued and unpaid fees, costs and expenses to the extent then due and payable on the Closing Date, together with all Attorney Costs of the Administrative Agent to the extent invoiced prior to the Closing Date, plus such additional amounts of Attorney Costs as shall constitute the Administrative Agent's reasonable estimate of Attorney Costs incurred or to be incurred by the Administrative Agent through the closing proceedings (provided that such estimate shall not thereafter preclude final settling of accounts between the Company and the Administrative Agent).

(i) Closing Certificate, Consents and Permits.

A certificate executed by an officer of the Company on behalf of the Company certifying the matters set forth in Section 12.2.1 as of the Closing Date.

(j) Other.

Such other documents as the Administrative Agent or any Lender may reasonably request.

## 12.02 Conditions.

The obligation (a) of each Lender to make each Loan and (b) of the Issuing Lender to issue each Letter of Credit is subject to the following further conditions precedent that:

(a) Compliance with Warranties, No Default, etc.

Both before and after giving effect to any borrowing and the issuance of any Letter of Credit, the following statements shall be true and correct:

(i) the representations and warranties of each Loan Party set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects with the same effect as if then made (except to the extent stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date); and

(ii) no Event of Default or Unmatured Event of Default shall have then occurred and be continuing.

(b) Confirmatory Certificate.

If requested by the Administrative Agent or any Lender, the Administrative Agent shall have received (in sufficient counterparts to provide one to each Lender) a certificate dated the date of such requested Loan or Letter of Credit and signed by a duly authorized representative of the Company as to the matters set out in Section 12.2.1 (it being understood that each request by the Company for the making of a Loan or the issuance of a Letter of Credit shall be deemed to constitute a representation and warranty by the Company that the conditions precedent set forth in Section 12.2.1 will be satisfied at the time of the making of such Loan or the issuance of such Letter of Credit), together with such other documents as the Administrative Agent or any Lender may reasonably request in support thereof.

## **13. EVENTS OF DEFAULT AND THEIR EFFECT.**

### 13.01 Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

(a) Non-Payment of the Loans, etc.

Default in the payment when due of the principal of any Loan; or default, and continuance thereof for five days, in the payment when due of any interest, fee, reimbursement obligation with respect to any Letter of Credit or other amount payable by the Company hereunder or under any other Loan Document.

(b) Non-Payment of Other Debt.

Any default shall occur under the terms applicable to any Debt of any Loan Party in an aggregate amount (for all such Debt so affected and including undrawn committed or available

amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding \$7,500,000 and such default shall (a) consist of the failure to pay such Debt when due, whether by acceleration or otherwise, or (b) accelerate the maturity of such Debt or permit the holder or holders thereof, or any trustee or agent for such holder or holders, to cause such Debt to become due and payable (or require any Loan Party to purchase or redeem such Debt or post cash collateral in respect thereof) prior to its expressed maturity.

(c) Other Material Obligations.

Default in the payment when due, or in the performance or observance of, any material obligation of, or condition agreed to by, any Loan Party with respect to any material purchase or lease of goods or services where such default, singly or in the aggregate with all other such defaults, would reasonably be expected to have a Material Adverse Effect.

(d) Bankruptcy, Insolvency, etc.

Any Loan Party becomes insolvent or generally fails to pay, or admits in writing its inability or refusal to pay, debts as they become due; or any Loan Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for such Loan Party or any property thereof, or makes a general assignment for the benefit of creditors; or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for any Loan Party or for a substantial part of the property of any thereof and is not discharged within 60 days; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is commenced in respect of any Loan Party, and if such case or proceeding is not commenced by such Loan Party, it is consented to or acquiesced in by such Loan Party, or remains for 60 days undismissed; or any Loan Party takes any action to authorize, or in furtherance of, any of the foregoing.

(e) Non-Compliance with Loan Documents.

(a) Failure by any Loan Party to comply with or to perform any covenant set forth in Section 11 (other than Section 11.14.5); or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document (and not constituting an Event of Default under any other provision of this Section 13) and continuance of such failure described in this clause (b) for 45 days.

(f) Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is breached or is false or misleading in any material respect, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to the Administrative Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

(g) Pension Plans.

(a) Any Person institutes steps to terminate a Pension Plan if as a result of such termination the Company or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$15,000,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a material Lien under Section 302(f) of ERISA; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that the Company or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$15,000,000.

(h) Judgments.

Final judgments which exceed an aggregate of \$10,000,000 shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within 60 days after entry or filing of such judgments.

(i) Invalidity of Collateral Documents, etc.

Any Collateral Document shall cease to be in full force and effect; or any Loan Party (or any Person by, through or on behalf of any Loan Party) shall contest in any manner the validity, binding nature or enforceability of any Collateral Document.

(j) Change of Control.

A Change of Control shall occur.

(k) Material Adverse Effect.

The occurrence of any event having a Material Adverse Effect.

13.02 Effect of Event of Default.

If any Event of Default described in Section 13.1.4 shall occur in respect of the Company, the Commitments shall immediately terminate and the Loans and all other Obligations hereunder shall become immediately due and payable and the Company shall become immediately obligated to Cash Collateralize all Letters of Credit, all without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, the Administrative Agent may (and, upon the written request of the Required Lenders shall) declare the Commitments to be terminated in whole or in part and/or declare all or any part of the Loans and all other Obligations hereunder to be due and payable and/or demand that the Company immediately Cash Collateralize all or any Letters of Credit, whereupon the Commitments shall immediately terminate (or be reduced, as applicable) and/or the Loans and other Obligations hereunder shall become immediately due and payable (in whole or in part, as applicable) and/or the Company shall immediately become obligated to Cash Collateralize the Letters of Credit (all or any, as applicable), all without presentment, demand, protest or notice of any kind. The

Administrative Agent shall promptly advise the Company of any such declaration, but failure to do so shall not impair the effect of such declaration. Any cash collateral delivered hereunder shall be held by the Administrative Agent (without liability for interest thereon) and applied to the Obligations arising in connection with any drawing under a Letter of Credit. After the expiration or termination of all Letters of Credit, such cash collateral shall be applied by the Administrative Agent to any remaining Obligations hereunder and any excess shall be delivered to the Company or as a court of competent jurisdiction may elect.

#### **14. THE AGENT[S].**

##### **14.01 Appointment and Authorization.**

Each Lender hereby irrevocably (subject to Section 14.10) appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Administrative Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in other Loan Documents with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

##### **14.02 Issuing Lender.**

The Issuing Lender shall act on behalf of the Lenders (according to their Pro Rata Shares) with respect to any Letters of Credit issued by it and the documents associated therewith. The Issuing Lender shall have all of the benefits and immunities (a) provided to the Administrative Agent in this Section 14 with respect to any acts taken or omissions suffered by the Issuing Lender in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term “Administrative Agent”, as used in this Section 14, included the Issuing Lender with respect to such acts or omissions and (b) as additionally provided in this Agreement with respect to the Issuing Lender.

##### **14.03 Delegation of Duties.**

The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such

duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

14.04 Exculpation of Administrative Agent.

None of the Administrative Agent nor any of its directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct in connection with its duties expressly set forth herein as determined by a final, nonappealable judgment by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Loan Party or Affiliate of the Company, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of the Company or any other party to any Loan Document to perform its Obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Company or any of the Company's Subsidiaries or Affiliates.

14.05 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, electronic mail message, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Company), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, confirmation from the Lenders of their obligation to indemnify the Administrative Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender. For purposes of determining compliance with the conditions specified in Section 12, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the

Administrative Agent shall have received written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

14.06 Notice of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Unmatured Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender or the Company referring to this Agreement, describing such Event of Default or Unmatured Event of Default and stating that such notice is a “notice of default”. The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to such Event of Default or Unmatured Event of Default as may be requested by the Required Lenders in accordance with Section 13; provided that unless and until the Administrative Agent has received any such request, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Unmatured Event of Default as it shall deem advisable or in the best interest of the Lenders.

14.07 Credit Decision.

Each Lender acknowledges that the Administrative Agent has not made any representation or warranty to it, and that no act by the Administrative Agent hereafter taken, including any consent and acceptance of any assignment or review of the affairs of the Loan Parties, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender as to any matter, including whether the Administrative Agent has disclosed material information in its possession. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties, and made its own decision to enter into this Agreement and to extend credit to the Company hereunder. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Company. Except for notices, reports and other documents expressly herein required to be furnished to the Lenders by the Administrative Agent, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of the Company which may come into the possession of the Administrative Agent.

#### 14.08 Indemnification.

Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify upon demand the Administrative Agent and its directors, officers, employees and agents (to the extent not reimbursed by or on behalf of the Company and without limiting the obligation of the Company to do so), according to its applicable Pro Rata Share, from and against any and all Indemnified Liabilities (as hereinafter defined); provided that no Lender shall be liable for any payment to any such Person of any portion of the Indemnified Liabilities to the extent determined by a final, nonappealable judgment by a court of competent jurisdiction to have resulted from the applicable Person's own gross negligence or willful misconduct. No action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs and Taxes) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Company. The undertaking in this Section shall survive repayment of the Loans, cancellation of the Notes, expiration or termination of the Letters of Credit, any foreclosure under, or modification, release or discharge of, any or all of the Collateral Documents, termination of this Agreement and the resignation or replacement of the Administrative Agent.

#### 14.09 Administrative Agent in Individual Capacity.

LaSalle and its Affiliates 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 the Loan Parties and Affiliates as though LaSalle were not the Administrative Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, LaSalle or its Affiliates may receive information regarding the Company or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Company or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), LaSalle and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though LaSalle were not the Administrative Agent, and the terms "Lender" and "Lenders" include LaSalle and its Affiliates, to the extent applicable, in their individual capacities.

#### 14.10 Successor Administrative Agent.

The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Lenders. If the Administrative Agent resigns under this Agreement, the Required Lenders shall, with (so long as no Event of Default exists) the consent of the Company (which shall not be unreasonably withheld or delayed), appoint from among the Lenders a successor agent for the Lenders. If no successor agent is appointed prior to the effective date of the resignation of the



Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and the Company, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor agent, and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 14 and Sections 15.5 and 15.16 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

14.11 Guaranty Matters.

The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Loan Party from the Guaranty Agreement if the sale, transfer or other disposition of such Loan Party is permitted by the terms of this Agreement.

14.12 Administrative Agent May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Company) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 5, 15.5 and 15.16) allowed in such judicial proceedings; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent

and its agents and counsel, and any other amounts due the Administrative Agent under Sections 5, 15.5 and 15.16.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

14.13 Other Agents; Arrangers and Managers.

None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a “syndication agent,” “documentation agent,” “co-agent,” “book manager,” “lead manager,” “arranger,” “lead arranger,” “co-arranger,” or the like, if any, shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

**15. GENERAL.**

15.01 Waiver; Amendments.

No delay on the part of the Administrative Agent or any Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or the other Loan Documents shall in any event be effective unless the same shall be in writing and acknowledged by Lenders having an aggregate Pro Rata Shares of not less than the aggregate Pro Rata Shares expressly designated herein with respect thereto or, in the absence of such designation as to any provision of this Agreement, by the Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No amendment, modification, waiver or consent shall (a) extend or increase the Commitment of any Lender without the written consent of such Lender, (b) extend the date scheduled for payment of any principal (excluding mandatory prepayments) of or interest on the Loans or any fees payable hereunder without the written consent of each Lender directly affected thereby, (c) reduce the principal amount of any Loan, the rate of interest thereon or any fees payable hereunder, without the consent of each Lender directly affected thereby; or (d) release any party from its obligations under the Guaranty Agreement (other than as permitted in Section 14.11), change the definition of Required Lenders, any provision of this Section 15.1 or reduce the aggregate Pro Rata Share required to effect an amendment, modification, waiver or consent, without, in each case, the written consent of all Lenders. No provision of Section 14 or other provision of this Agreement affecting the Administrative Agent in its capacity as such shall be amended, modified or waived without the consent of the Administrative Agent. No provision of this Agreement relating to the rights or duties of the Issuing Lender in its capacity as such shall be

amended, modified or waived without the consent of the Issuing Lender. No provision of this Agreement relating to the rights or duties of the Swing Line Lender in its capacity as such shall be amended, modified or waived without the consent of the Swing Line Lender.

#### 15.02 Confirmations.

The Company and each holder of a Note agree from time to time, upon written request received by it from the other, to confirm to the other in writing (with a copy of each such confirmation to the Administrative Agent) the aggregate unpaid principal amount of the Loans then outstanding under such Note.

#### 15.03 Notices.

Except as otherwise provided in Sections 2.2.2 and 2.2.3, all notices hereunder shall be in writing (including facsimile transmission) and shall be sent to the applicable party at its address shown on Annex A or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by facsimile transmission shall be deemed to have been given when sent; notices sent by mail shall be deemed to have been given three Business Days after the date when sent by registered or certified mail, postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. For purposes of Sections 2.2.2 and 2.2.3, the Administrative Agent shall be entitled to rely on telephonic instructions from any person that the Administrative Agent in good faith believes is an authorized officer or employee of the Company, and the Company shall hold the Administrative Agent and each other Lender harmless from any loss, cost or expense resulting from any such reliance.

#### 15.04 Computations.

Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made, for the purpose of this Agreement, such determination or calculation shall, to the extent applicable and except as otherwise specified in this Agreement, be made in accordance with GAAP, consistently applied; provided that if the Company notifies the Administrative Agent that the Company wishes to amend any covenant in Section 11 (or any related definition) to eliminate or to take into account the effect of any change in GAAP on the operation of such covenant (or if the Administrative Agent notifies the Company that the Required Lenders wish to amend Section 11 (or any related definition) for such purpose), then the Company's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant (or related definition) is amended in a manner satisfactory to the Company and the Required Lenders.

#### 15.05 Costs, Expenses and Taxes.

The Company agrees to pay on demand all reasonable out-of-pocket costs and expenses of the Administrative Agent (including Attorney Costs and any Taxes) in connection with the

preparation, execution, syndication, delivery and administration (including the costs of Intralinks (or other similar service), if applicable) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith (including any amendment, supplement or waiver to any Loan Document), whether or not the transactions contemplated hereby or thereby shall be consummated, and all reasonable out-of-pocket costs and expenses (including Attorney Costs and any Taxes) incurred by the Administrative Agent and each Lender after an Event of Default in connection with the collection of the Obligations or the enforcement of this Agreement, the other Loan Documents or any such other documents or during any workout, restructuring or negotiations in respect thereof. The Lenders will attempt to minimize the Attorney Costs which are subject to reimbursement by the Company hereunder by considering the usage of one law firm to represent the Lenders and the Administrative Agent if appropriate under the circumstances. In addition, the Company agrees to pay, and to save the Administrative Agent and the Lenders harmless from all liability for, any fees of the Company's auditors in connection with any reasonable exercise by the Administrative Agent and the Lenders of their rights pursuant to Section 10.2. All Obligations provided for in this Section 15.5 shall survive repayment of the Loans, cancellation of the Notes, expiration or termination of the Letters of Credit and termination of this Agreement.

#### 15.06 Assignments.

(i) Any Lender may at any time assign to one or more Persons (any such Person, an "Assignee") all or any portion of such Lender's Loans and Commitments, with the prior written consent of the Administrative Agent and the Issuing Lender (which consents shall not be unreasonably withheld and shall not be required for an assignment by a Lender to a Lender or an Affiliate of a Lender) and, so long as no Event of Default exists, the Company (which consent shall not be required for an assignment by a Lender to a Lender or an Affiliate of a Lender). Except as the Administrative Agent may otherwise agree, any such assignment shall be in a minimum aggregate amount equal to \$5,000,000 or, if less, the remaining Commitment and Loans held by the assigning Lender. The Company and the Administrative Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Assignee until the Administrative Agent shall have received and accepted an effective assignment agreement in substantially the form of Exhibit D hereto (an "Assignment Agreement") executed, delivered and fully completed by the applicable parties thereto and a processing fee of \$3,500. No assignment may be made to any Person if at the time of such assignment the Company would be obligated to pay any greater amount under Section 7.6 or 8 to the Assignee than the Company is then obligated to pay to the assigning Lender under such Sections (and if any assignment is made in violation of the foregoing, the Company will not be required to pay such greater amounts). Any attempted assignment not made in accordance with this Section 15.6.1 shall be void.

(ii) From and after the date on which the conditions described above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights (other than its

indemnification rights) and obligations hereunder. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, the Company shall execute and deliver to the Administrative Agent for delivery to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee's Pro Rata Share of the Revolving Commitment (and, as applicable, a Note in the principal amount of the Pro Rata Share of the Revolving Commitment retained by the assigning Lender). Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to the Company any prior Note held by it.

(iii) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

#### 15.07 Register.

The Administrative Agent shall maintain a copy of each Assignment Agreement delivered and accepted by it and register (the "Register") for the recordation of names and addresses of the Lenders and the Commitment of each Lender from time to time and whether such Lender is the original Lender or the Assignee. No assignment shall be effective unless and until the Assignment Agreement is accepted and registered in the Register. All records of transfer of a Lender's interest in the Register shall be conclusive, absent manifest error, as to the ownership of the interests in the Loans. The Administrative Agent shall not incur any liability of any kind with respect to any Lender or the Company with respect to the maintenance of the Register.

#### 15.08 GOVERNING LAW.

**THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.**

#### 15.09 Confidentiality.

The Administrative Agent and each Lender agree to use commercially reasonable efforts (equivalent to the efforts the Administrative Agent or such Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information provided to them by any Loan Party and designated as confidential, except that the Administrative Agent and each Lender may disclose such information (a) to Persons employed or engaged by the Administrative Agent or such Lender in evaluating, approving, structuring or administering the Loans and the Commitments; (b) to any assignee or potential assignee that has agreed to comply with the covenant contained in this Section 15.9 (and any such assignee or potential assignee may disclose such information to Persons employed or engaged by them as described in clause (a)).

above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by the Administrative Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of the Administrative Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which the Administrative Agent or such Lender is a party; (f) to any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender; (g) to any Affiliate of the Administrative Agent, the Issuing Lender or any other Lender who may provide services or products to the Loan Parties; or (h) that ceases to be confidential through no fault of the Administrative Agent or any Lender. Notwithstanding the foregoing, the Company consents to the publication by the Administrative Agent or any Lender of a tombstone or similar advertising material relating to the financing transactions contemplated by this Agreement, and the Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, any information with respect to the "tax treatment" or "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby shall not be confidential and the Administrative Agent and the Lenders and other parties hereto may disclose without limitation of any kind any information that is provided to the Administrative Agent or the Lenders or any other party hereto with respect to the "tax treatment" or "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) other than to the extent necessary to comply with any applicable federal or state securities laws; and, provided, that to the extent any Loan Document contains information that relates to the "tax treatment" or "tax structure" and contains other information, this paragraph shall only apply to the information regarding the "tax treatment" or "tax structure."

15.10 Severability.

Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All obligations of the Company and rights of the Administrative Agent and the Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law.

15.11 Nature of Remedies.

All Obligations of the Company and rights of the Administrative Agent and the Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15.12 Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof (except as relates to the fees described in Section 5.3) and any prior arrangements made with respect to the payment by the Company of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of the Administrative Agent or the Lenders.

15.13 Counterparts.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective execution and delivery thereof. Electronic records of executed Loan Documents maintained by the Lenders shall be deemed to be originals.

15.14 Successors and Assigns.

This Agreement shall be binding upon the Company, the Lenders and the Administrative Agent and their respective successors and assigns, and shall inure to the benefit of the Company, the Lenders and the Administrative Agent and the successors and assigns of the Lenders and the Administrative Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. The Company may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of the Administrative Agent and each Lender.

15.15 Captions.

Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

**15.16 INDEMNIFICATION BY THE COMPANY.**

**IN CONSIDERATION OF THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY THE ADMINISTRATIVE AGENT AND THE LENDERS AND THE AGREEMENT TO EXTEND THE COMMITMENTS PROVIDED HEREUNDER, THE COMPANY HEREBY AGREES TO INDEMNIFY, EXONERATE AND HOLD THE ADMINISTRATIVE AGENT, EACH LENDER AND EACH OF THE OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS OF THE ADMINISTRATIVE AGENT AND EACH LENDER (EACH A "LENDER PARTY") FREE AND HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, CAUSES OF ACTION, SUITS, LOSSES, LIABILITIES, DAMAGES AND EXPENSES, INCLUDING ATTORNEY COSTS (COLLECTIVELY, THE "INDEMNIFIED)**

**LIABILITIES”), INCURRED BY THE LENDER PARTIES OR ANY OF THEM AS A RESULT OF, OR ARISING OUT OF, OR RELATING TO (A) ANY TENDER OFFER, MERGER, PURCHASE OF CAPITAL SECURITIES, PURCHASE OF ASSETS (INCLUDING THE [RELATED TRANSACTIONS]) OR OTHER SIMILAR TRANSACTION FINANCED OR PROPOSED TO BE FINANCED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, WITH THE PROCEEDS OF ANY OF THE LOANS, (B) THE USE, HANDLING, RELEASE, EMISSION, DISCHARGE, TRANSPORTATION, STORAGE, TREATMENT OR DISPOSAL OF ANY HAZARDOUS SUBSTANCE AT ANY PROPERTY OWNED OR LEASED BY ANY LOAN PARTY, (C) ANY VIOLATION OF ANY ENVIRONMENTAL LAWS WITH RESPECT TO CONDITIONS AT ANY PROPERTY OWNED OR LEASED BY ANY LOAN PARTY OR THE OPERATIONS CONDUCTED THEREON, (D) THE INVESTIGATION, CLEANUP OR REMEDIATION OF OFFSITE LOCATIONS AT WHICH ANY LOAN PARTY OR THEIR RESPECTIVE PREDECESSORS ARE ALLEGED TO HAVE DIRECTLY OR INDIRECTLY DISPOSED OF HAZARDOUS SUBSTANCES OR (E) THE EXECUTION, DELIVERY, PERFORMANCE OR ENFORCEMENT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BY ANY OF THE LENDER PARTIES, EXCEPT FOR ANY SUCH INDEMNIFIED LIABILITIES ARISING ON ACCOUNT OF THE APPLICABLE LENDER PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION. IF AND TO THE EXTENT THAT THE FOREGOING UNDERTAKING MAY BE UNENFORCEABLE FOR ANY REASON, THE COMPANY HEREBY AGREES TO MAKE THE MAXIMUM CONTRIBUTION TO THE PAYMENT AND SATISFACTION OF EACH OF THE INDEMNIFIED LIABILITIES WHICH IS PERMISSIBLE UNDER APPLICABLE LAW. ALL OBLIGATIONS PROVIDED FOR IN THIS SECTION 15.16 SHALL SURVIVE REPAYMENT OF THE LOANS, CANCELLATION OF THE NOTES, EXPIRATION OR TERMINATION OF THE LETTERS OF CREDIT, ANY FORECLOSURE UNDER, OR ANY MODIFICATION, RELEASE OR DISCHARGE OF, ANY OR ALL OF THE COLLATERAL DOCUMENTS AND TERMINATION OF THIS AGREEMENT.**

15.17 Nonliability of Lenders.

The relationship between the Company on the one hand and the Lenders and the Administrative Agent on the other hand shall be solely that of borrower and lender. Neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to any Loan Party arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Loan Parties, on the one hand, and the Administrative Agent and the Lenders, on the other hand, in connection herewith or therewith is solely that of debtor and creditor. Neither the Administrative Agent nor any Lender undertakes any responsibility to any Loan Party to review or inform any Loan Party of any matter in connection with any phase of any Loan Party’s business or operations. The Company agrees, on behalf of itself and each other Loan Party, that neither the Administrative Agent nor any Lender shall have liability to any Loan Party (whether sounding in tort, contract or otherwise) for losses suffered by any Loan Party in connection with, arising out of, or in any way related to the transactions contemplated and the



relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought. **NO LENDER PARTY SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY OTHERS OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH INTRALINKS OR OTHER SIMILAR INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH THIS AGREEMENT, NOR SHALL ANY LENDER PARTY HAVE ANY LIABILITY WITH RESPECT TO, AND THE COMPANY ON BEHALF OF ITSELF AND EACH OTHER LOAN PARTY, HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ARISING OUT OF ITS ACTIVITIES IN CONNECTION HERewith OR THEREWITH (WHETHER BEFORE OR AFTER THE CLOSING DATE).** The Company acknowledges that it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party. No joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Grantors and the Lenders

**15.18 FORUM SELECTION AND CONSENT TO JURISDICTION.**

**ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE COMMONWEALTH OF PENNSYLVANIA OR IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE ADMINISTRATIVE AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. THE COMPANY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE COMMONWEALTH OF PENNSYLVANIA AND OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. THE COMPANY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE COMMONWEALTH OF PENNSYLVANIA. THE COMPANY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

**15.19 WAIVER OF JURY TRIAL.**

**EACH OF THE COMPANY, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

**[SIGNATURE PAGES FOLLOW]**

[SIGNATURE PAGE 1 OF 13 TO REFINANCING CREDIT AGREEMENT]

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

[COMPANY]:

WESTINGHOUSE AIR BRAKE TECHNOLOGIES  
CORPORATION

By: \_\_\_\_\_ (SEAL)

Name:

Title:

[ADDITIONAL LOAN PARTIES]:

RAILROAD FRICTION PRODUCTS  
CORPORATION; WABTEC HOLDING CORP.; RFPC  
HOLDING CORP.; MOTIVEPOWER, INC.; YOUNG  
TOUCHSTONE COMPANY; WABTEC  
DISTRIBUTION COMPANY; WABTEC  
CORPORATION

By: \_\_\_\_\_ (SEAL)

Name:

Title: Vice President of each of the above listed  
companies

*[LENDERS]:*

LaSALLE BANK NATIONAL ASSOCIATION, as  
Administrative Agent, Lead Arranger & Sole Bookrunner and as  
a Lender and as an Issuing Lender

By: \_\_\_\_\_

Name:

Title:

JPMORGAN CHASE BANK, as Syndication Agent and Co-Arranger and as an Issuing Lender and as a Lender

By: \_\_\_\_\_

Name:

Title:

CITIZENS BANK OF PENNSYLVANIA, as a  
Co-Documentation Agent and as a Lender

By: \_\_\_\_\_

Name:

Title:

THE BANK OF NEW YORK, as a Co-Documentation Agent and as a Lender

By: \_\_\_\_\_

Name:

Title:

NATIONAL CITY BANK OF  
PENNSYLVANIA, as a Co-Documentation  
Agent and as a Lender

By: \_\_\_\_\_

Name:

Title:



PNC BANK, NATIONAL ASSOCIATION, as  
a Senior Managing Agent and as a Lender

By: \_\_\_\_\_

Name:

Title:

THE BANK OF NOVA SCOTIA, as a Senior  
Managing Agent and as a Lender

By: \_\_\_\_\_

Name:

Title:

BANK OF TOKYO-MITSUBISHI TRUST  
COMPANY, as a Senior Managing Agent and as  
a Lender

By: \_\_\_\_\_

Name:

Title:

MANUFACTURERS AND TRADERS TRUST COMPANY, as  
a Lender

By: \_\_\_\_\_

Name:

Title:

BRANCH BANKING & TRUST COMPANY,  
as a Lender

By: \_\_\_\_\_

Name:

Title:

FIFTH THIRD BANK, as a Lender

By:

\_\_\_\_\_

Name:

Title:

ABN AMRO BANK N.V., as an Issuing Lender

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**ANNEX A**

**LENDERS AND PRO RATA SHARES**

**Part 1 - Commitments of Lenders and Addresses for Notices to Lenders**

<u>Lender</u>	<u>Revolving Commitment Amount</u>	<u>Swing Line Loan Commitment Amount (and Pro Rata Share)</u>	<u>Revolving Commitment Pro Rata Share</u>
<i>Name:</i> <b>LaSalle Bank National Association</b>	\$ 22,000,000	\$ 10,000,000 (100.00%)	12.57142857%

*Address:*  
1300 East Ninth Street, Suite 1000  
Cleveland, OH 44114  
Attn: Mr. Roy D. Hasbrook  
Senior Vice President  
Telephone: (216) 802-2211  
Telecopy: (216)802-2212  
Email: roy.hasbrook@abnamro.com

*Address for Notices:*  
Agency Services  
135 South LaSalle Street  
Chicago, IL 60603  
Attn: Mr. Steven Simkus  
Telephone: (312) 904-8533  
Telecopy: (312) 904-4448  
Email: steven.simkus@abnamro.com

<i>Name:</i> <b>JPMorgan Chase Bank</b>	\$ 22,000,000	0.00 (0.00%)	12.571428571%
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*Address for Notices:*  
One Oxford Centre, 11th Floor  
Pittsburgh, PA 15219  
Attn: John A. Malone  
Vice President  
Telephone: (412) 291-2031  
Telecopy: (412) 456-5566  
Email: john.malone@chase.com

*Address of Lending Office:*  
2300 Main Plain Tower  
Buffalo, NY 14202  
Attn: Marie Browne  
Telephone: (716) 858-1409  
Telecopy: (716) 843-4938  
Email: marie.browne@chase.com



<u>Lender</u>	<u>Revolving Commitment Amount</u>	<u>Swing Line Loan Commitment Amount (and Pro Rata Share)</u>	<u>Revolving Commitment Pro Rata Share</u>
<i>Name:</i>			
<b>Citizens Bank of Pennsylvania</b>	\$ 17,500,000	\$ 0.00 (0.00%)	10.000000000%

*Address for Notices:*  
Citizens Financial Group  
Mail Stop: RDC 160  
One Citizens Drive  
Riverside, RI 02915  
Attn: Karen Hazard  
Telephone: (401) 734-5297  
Telecopy: (401) 734-5385  
Email: karen.hazard@citizensbank.com

*Address of Lending Office:*  
Citizens Bank of Pennsylvania  
525 William Penn Place, 29th Floor  
Pittsburgh, PA 15219  
Attn: Curtis C. Hunter III  
Telephone: (412) 867-2409  
Telecopy: (412) 552-6307  
Email: curtis.hunter@citizensbank.com

<i>Name:</i>			
<b>The Bank of New York</b>	\$ 17,500,000	0.00 (0.00%)	10.000000000%

*Address for Notices:*  
One Wall Street  
New York, NY 10286  
Attn: Ernest Fung, Vice President  
Telephone: (212) 635-6805  
Telecopy: (212) 635-7978  
E-mail: efung@bankofny.com

*Address of Lending Office:*  
Same as Notices

<u>Lender</u>	<u>Revolving Commitment Amount</u>	<u>Swing Line Loan Commitment Amount (and Pro Rata Share)</u>	<u>Revolving Commitment Pro Rata Share</u>
<i>Name:</i>			
<b>National City Bank of Pennsylvania</b>	\$ 17,500,000	0.00 (0.00%)	10.0000000000%

*Address for Notices:*  
National City Center  
20 Stanwix Street 19th Floor  
Pittsburgh, PA 15222  
Attn: J. Barrett Donovan, Vice President  
Telephone: (412) 644-7740  
Telecopy: (412) 471-4883  
Email:  
jbarrett.donovan@nationalcity.com

*Address of Lending Office:*  
Same as Notices

<i>Name:</i>			
<b>PNC Bank, National Association</b>	\$ 15,000,000	0.00 (0.00%)	8.571428571%

*Address for Notices:*  
One PNC Plaza, 6th Floor  
249 Fifth Avenue  
Pittsburgh, PA 15222  
Attn: Mr. Enrico A. Della Corna  
Managing Director  
Telephone: (412) 762-6036  
Telecopy: (412) 762-6484  
Email: enrico.dellacorna@pnc.com

*Address of Lending Office:*  
Same as Notices

<i>Name:</i>			
<b>The Bank of Nova Scotia</b>	\$ 15,000,000	0.00 (0.00%)	8.571428571%

*Address for Notices:*  
181 West Madison Street, Suite 3700  
Chicago, IL 60602  
Attn: Shirish Patel  
Telephone: (312) 201-4188  
Telecopy: (312) 201-4108  
Email: shirish\_patel@scotiacapital.com

*Address of Lending Office:*  
Same as Notices

<u>Lender</u>	<u>Revolving Commitment Amount</u>	<u>Swing Line Loan Commitment Amount (and Pro Rata Share)</u>	<u>Revolving Commitment Pro Rata Share</u>
<i>Name:</i>			
<b>Bank of Tokyo-Mitsubishi Trust Company</b>	\$ 15,000,000	0.00 (0.00%)	8.571428571%

*Address for Notices:*

1251 Avenue of the Americas  
New York, NY 10020  
Attn: Eduardo Abello  
Telephone: (212) 782-4281  
Telecopy: (212) 782-6440  
Email: eabello@btmna.com

*Address of Lending Office:*

Same as Notices

*Name:*

<b>Manufacturers and Traders Trust Company</b>	\$ 11,750,000	\$ 0.00 (0.00%)	6.714285714%
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*Address for Notices:*

25 South Charles Street  
Baltimore, MD 21201  
Attn: Brooks W. Thropp, Vice President  
Telephone: (410) 244-4387  
Telecopy: (410) 244-4239  
Email: bthropp@mandtbank.com

*Address of Lending Office:*

Same as Notices

*Name:*

<b>Branch Banking &amp; Trust Company</b>	\$ 11,750,000	\$ 0.00 (0.00%)	6.714285714%
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*Address for Notices:*

BB&T Capital Markets  
200 West Second Street, 16th Floor  
Winston-Salem, NC 27101  
Attn: Mr. John Reeves  
Telephone: (336) 733-2730  
Telecopy: (336) 733-2740  
Email: jreeves@bbandt.com

*Address of Lending Office:*

Same as Notices

<u>Lender</u>	<u>Revolving Commitment Amount</u>	<u>Swing Line Loan Commitment Amount (and Pro Rata Share)</u>	<u>Revolving Commitment Pro Rata Share</u>
<i>Name:</i>			
<b>Fifth Third Bank</b>	\$ 10,000,000	\$ 0.00 (0.00%)	5.714285714%
<i>Address for Notices:</i>			
1404 East Ninth Street Cleveland, OH 44114 Attn: Mayia Lowman Telephone: (216) 274-5578 Telecopy: (216) 274-5420 Email: mayia.lowman@53.com			
<i>Address of Lending Office:</i>			
Eleven Parkway Center, Suite 375 Pittsburgh, PA 15220 Attn: Mr. Christopher Helmecci Vice President Telephone: (412) 937-1855 (x24) Telecopy: (412) 937-9896 Email: Christopher.Helmecci@53.com			
<b>Total</b>	<b>\$ 175,000,000</b>	<b>\$ 10,000,000</b>	<b>100%</b>
		<b>(100%)</b>	

An Issuing Lender:  
*Name:*  
**ABN AMRO Bank N.V.**  
*Address for Notices:*  
 Credit Administration  
 208 S. LaSalle Street, Suite 1500  
 Chicago, IL 60604-1003  
 Attn: Ms. Kathryn C. Toth  
 Telephone: (312) 992-5140  
 Telecopy: (312) 992-5111  
 Email: kathryn.toth@abnamro.com  
*Copy to:*  
 Roy D. Hasbrook (address above)

Lender

Revolving  
Commitment  
Amount

Swing Line  
Loan  
Commitment  
Amount  
(and  
Pro Rata  
Share)

Revolving  
Commitment  
Pro Rata  
Share

An Issuing Lender:

Name:

**JPMorgan Chase Bank**

Address for Notices:

2300 Main Plain Tower

Buffalo, NY 14202

Attn: Marie Browne

Telephone: (716) 858-1409

Telecopy: (716) 843-4938

Email: marie.browne@chase.com

**COMMITMENTS OF LENDERS AND ADDRESSES FOR NOTICES**

***Part 2 - Addresses for Notices to Agent, Company, and Guarantors:***

**AGENT:**

*Name:* LaSalle Bank National Association  
*Address:* Agency Services  
135 South LaSalle Street  
Chicago, Illinois 60603  
*Attention:* Mr. Steven Simkus  
*Telephone:* (312) 904-8533  
*Telecopy:* (312) 904-4448  
*Email:* steven.simkus@abnamro.com

**COMPANY:**

*Name:* WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION  
*Address:* 1001 Airbrake Avenue  
Wilmerding, PA 15148  
*Attention:* Mr. Alvaro Garcia-Tunon  
Chief Financial Officer  
*Telephone:* (412) 825-1317  
*Telecopy:* (412) 825-1883  
*Email:* agarcia-tunon@wabtec.com

**GUARANTORS:**

*Address:* c/o Westinghouse Air Brake Technologies Corporation  
1001 Airbrake Avenue  
Wilmerding, PA 15148  
*Attention:* Mr. Alvaro Garcia-Tunon  
Chief Financial Officer  
*Telephone:* (412) 825-1317  
*Telecopy:* (412) 825-1883  
*Email:* agarcia-tunon@wabtec.com

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION  
SUBSIDIARIES AND AFFILIATES

Company	Jurisdiction of Incorporation	Ownership Interest
Allied Friction Products Australia Pty Ltd.	Australia	100%
Cobra Europe S.A.	France	100%
Evand Pty Ltd.	Australia	100%
F.I.P. Pty Ltd.	Australia	100%
H.P. s.r.l.	Italy	100%
Jinhu Control Systems Co. Ltd.	China	60%
Milufab, Inc.	Canada	100%
MotivePower Foreign Sales Corporation	Barbados	100%
MotivePower, Inc.	Delaware	100%
Pioneer Friction Limited	India	100%
Railroad Friction Products Corporation	Delaware	100%
RFPC Holding Corporation	Delaware	100%
Stone UK, Ltd.	United Kingdom	100%
ThermoSealed Castings Ltd.	Canada	100%
Vapor Rail Inc.	Canada	100%
Vapor Stone UK Limited	United Kingdom	100%
Wabco Freight Car Products Ltd.	Canada	100%
Wabtec Australia Pty. Limited	Australia	100%
Wabtec Corporation	New York	100%
Wabtec de Mexico S.A., de C.V.	Mexico	100%
Wabtec Distribution Company	Delaware	100%
Wabtec Foundry Ltd.	Canada	100%
Wabtec Holding Corp.	Delaware	100%
Wabtec Rail Limited	United Kingdom	100%
Wabtec Railway Electronics Corporation	Nova Scotia	100%
Wabtec Railway Products India Private Ltd.	India	100%
Wabtec Servicios Administrativos, S.A. de C.V.	Mexico	100%
Wabtec Transportation Technologies	Delaware	100%
Westinghouse International Corporation	Barbados	100%
Westinghouse Railway Holdings (Canada) Inc.	Canada	100%
Young Touchstone Company	Wisconsin	100%

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 33-80417, 333-59441, 333-53753, 333-39159 and 333-02979) of our report dated February 17, 2004, with respect to the consolidated financial statements and schedule of Westinghouse Air Brake Technologies Corporation, included in this Annual Report (Form 10-K) for the year ended December 31, 2003.

/s/ ERNST & YOUNG LLP  
March 15, 2004



## INFORMATION REGARDING CONSENT OF ARTHUR ANDERSEN LLP

Section 11(a) of the Securities Act of 1933, as amended (the "Securities Act"), provides that if part of a registration statement at the time it becomes effective contains an untrue statement of a material fact, or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring a security pursuant to such registration statement (unless it is proved that at the time of such acquisition such person knew of such untruth or omission) may assert a claim against, among others, an accountant who has consented to be named as having certified any part of the registration statement or as having prepared any report for use in connection with the registration statement.

Westinghouse Air Brake Technologies Corporation dismissed Arthur Andersen LLP ("Arthur Andersen") as its independent auditors, effective May 30, 2002. For additional information, see the Company's Current Report on Form 8-K dated May 30, 2002. After reasonable efforts, the Company has been unable to obtain Arthur Andersen's written consent to the incorporation by reference into the Company's registration statements (Form S-8 File Nos. 33-80417, 333-59441, 333-53753, 333-39159 and 333-02979) and the related prospectuses (the "Registration Statements") of Arthur Andersen's audit report with respect to the Company's consolidated financial statements as of December 31, 2001 and for the two years in the period then ended. Under these circumstances, Rule 437a under the Securities Act permits the Company to file the Annual Report on Form 10-K, which is incorporated by reference into the Registration Statements, without a written consent from Arthur Andersen. As a result, with respect to transactions in the Company's securities pursuant to the Registration Statements that occur subsequent to the date this Annual Report is filed with the Securities and Exchange Commission, Arthur Andersen will not have any liability under Section 11(a) of the Securities Act for any untrue statements of a material fact contained in the financial statements audited by Arthur Andersen or any omissions of a material fact required to be stated therein and thus no claim could be asserted against Arthur Andersen under Section 11(a) of the Securities Act.

## CERTIFICATION

I, Gregory T.H. Davies, certify that:

1. I have reviewed this annual report on Form 10-K of Westinghouse Air Brake Technologies Corporation.
2. Based on my knowledge, this annual 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 period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual 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 we 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 annual report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - (c) Disclosed in this annual 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 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: March 15, 2004

/s/ GREGORY T.H. DAVIES

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Name: Gregory T.H. Davies  
Title: President & Chief Executive Officer

## CERTIFICATION

I, Alvaro Garcia-Tunon, certify that:

1. I have reviewed this annual report on Form 10-K of Westinghouse Air Brake Technologies Corporation.
2. Based on my knowledge, this annual 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 period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual 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 we 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 annual report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - (c) Disclosed in this annual 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 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: March 15, 2004

/s/ ALVARO GARCIA-TUNON

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Name: **Alvaro Garcia-Tunon**  
Title: **Chief Financial Officer**

## CERTIFICATION

Pursuant to 18 U.S.C. § 1350, the undersigned officers of Wabtec Corporation (the "Company"), hereby certify, to the best of their knowledge, that the Company's Annual Report on Form 10-K for the year ended December 31, 2003 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ GREGORY T. H. DAVIES

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**Gregory T. H. Davies**  
**President & Chief Executive Officer**

Date: March 15, 2004

By: /s/ ALVARO GARCIA-TUNON

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**Alvaro Garcia-Tunon**  
**Chief Financial Officer**

Date: March 15, 2004

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 11-K**

(Mark One):

**ANNUAL REPORT PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2003

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-13782

A. Full title of the plan and the address of the plan, if different from that of the issuer named below:

Westinghouse Air Brake Technologies Corporation Savings Plan

B. Name of issuer of the securities held pursuant to the plan and the address of the principal executive office:

Westinghouse Air Brake Technologies Corporation  
1001 Air Brake Avenue  
Wilmerding, PA 15148

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 11-K**

(Mark One):

**ANNUAL REPORT PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2003

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-13782

B. Full title of the plan and the address of the plan, if different from that of the issuer named below:

Westinghouse Air Brake Technologies Corporation Savings Plan for Hourly Employees

B. Name of issuer of the securities held pursuant to the plan and the address of the principal executive office:

Westinghouse Air Brake Technologies Corporation  
1001 Air Brake Avenue  
Wilmerding, PA 15148

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