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

**FORM 10-Q**

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

For the quarterly period ended October 1, 2005

Commission file number 0-21835

**SUN HYDRAULICS CORPORATION**

(Exact Name of Registration as Specified in its Charter)

FLORIDA

(State or Other Jurisdiction of  
Incorporation or Organization)

59-2754337

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

1500 WEST UNIVERSITY PARKWAY  
SARASOTA, FLORIDA

(Address of Principal Executive Offices)

34243

(Zip Code)

941/362-1200

(Registrant's Telephone Number, Including Area Code)

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The Registrant had 10,911,002 shares of common stock, par value \$.001, outstanding as of November 4, 2005.

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## PART I: FINANCIAL INFORMATION

Item 1.

**Sun Hydraulics Corporation**  
**Consolidated Balance Sheets**  
**(in thousands, except share data)**

	October 1, 2005 (unaudited)	December 25, 2004
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 6,809	\$ 9,300
Restricted cash	423	462
Accounts receivable, net of allowance for doubtful accounts of \$160 and \$170	10,697	8,611
Inventories	7,911	7,105
Deferred income taxes	392	392
Other current assets	900	776
Total current assets	27,132	26,646
Property, plant and equipment, net	44,315	43,687
Other assets	1,796	1,475
<b>Total assets</b>	<b>\$ 73,243</b>	<b>\$ 71,808</b>
<b>Liabilities and shareholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 3,740	\$ 2,536
Accrued expenses and other liabilities	4,511	4,609
Long-term debt due within one year	454	1,058
Dividends payable	1,091	522
Taxes payable	302	1,198
Total current liabilities	10,098	9,923
Long-term debt due after one year	2,021	11,196
Deferred income taxes	4,980	4,986
Other noncurrent liabilities	286	300
Total liabilities	17,385	26,405
Commitments and contingencies	—	—
Shareholders' equity:		
Preferred stock, 2,000,000 shares authorized, par value \$0.001, no shares outstanding	—	—
Common stock, 20,000,000 shares authorized, par value \$0.001, 10,906,248 and 10,441,920 shares outstanding	11	10
Capital in excess of par value	32,686	28,579
Unearned compensation related to outstanding restricted stock	(381)	(608)
Retained earnings	21,607	13,867
Accumulated other comprehensive income	1,935	3,566
Treasury stock	—	(11)
Total shareholders' equity	55,858	45,403
<b>Total liabilities and shareholders' equity</b>	<b>\$ 73,243</b>	<b>\$ 71,808</b>

The accompanying Notes to the Consolidated, Unaudited Financial Statements are an integral part of these financial statements.

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**Consolidated Statements of Operations**  
**(in thousands, except per share data)**

	Three months ended	
	October 1, 2005 (unaudited)	September 25, 2004 (unaudited)
<b>Net sales</b>	<b>\$ 28,726</b>	<b>\$ 23,164</b>
Cost of sales	19,701	16,117
<b>Gross profit</b>	<b>9,025</b>	<b>7,047</b>
Selling, engineering and administrative expenses	4,644	4,002
<b>Operating income</b>	<b>4,381</b>	<b>3,045</b>
Interest expense	102	123
Foreign currency transaction gain	(23)	(43)
Miscellaneous expense/(income), net	100	(7)
<b>Income before income taxes</b>	<b>4,202</b>	<b>2,972</b>
Income tax provision	1,284	1,092
<b>Net income</b>	<b>\$ 2,918</b>	<b>\$ 1,880</b>
<b>Basic net income per common share</b>	<b>\$ 0.27</b>	<b>\$ 0.18</b>
<b>Weighted average basic shares outstanding</b>	<b>10,894</b>	<b>10,343</b>
<b>Diluted net income per common share</b>	<b>\$ 0.27</b>	<b>\$ 0.18</b>
<b>Weighted average diluted shares outstanding</b>	<b>10,991</b>	<b>10,459</b>
<b>Dividends declared per share</b>	<b>\$ 0.100</b>	<b>\$ 0.050</b>

The accompanying Notes to the Consolidated, Unaudited Financial Statements are an integral part of these financial statements.

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**Consolidated Statements of Operations**  
**(in thousands, except per share data)**

	Nine months ended	
	October 1, 2005 (unaudited)	September 25, 2004 (unaudited)
<b>Net sales</b>	<b>\$ 88,819</b>	<b>\$ 71,077</b>
Cost of sales	59,956	49,338
<b>Gross profit</b>	<b>28,863</b>	<b>21,739</b>
Selling, engineering and administrative expenses	13,387	12,262
<b>Operating income</b>	<b>15,476</b>	<b>9,477</b>
Interest expense	385	405
Foreign currency transaction gain	(290)	(75)
Miscellaneous expense/(income), net	78	(25)
<b>Income before income taxes</b>	<b>15,303</b>	<b>9,172</b>
Income tax provision	5,384	3,343
<b>Net income</b>	<b>\$ 9,919</b>	<b>\$ 5,829</b>
<b>Basic net income per common share</b>	<b>\$ 0.92</b>	<b>\$ 0.57</b>
<b>Weighted average basic shares outstanding</b>	<b>10,797</b>	<b>10,217</b>
<b>Diluted net income per common share</b>	<b>\$ 0.91</b>	<b>\$ 0.57</b>
<b>Weighted average diluted shares outstanding</b>	<b>10,893</b>	<b>10,304</b>
<b>Dividends declared per share</b>	<b>\$ 0.225</b>	<b>\$ 0.140</b>

The accompanying Notes to the Consolidated, Unaudited Financial Statements are an integral part of these financial statements.

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**Sun Hydraulics Corporation**  
**Consolidated Statement of Changes in Shareholders' Equity and Comprehensive Income (unaudited)**

(in thousands)

	Preferred shares	Preferred stock	Common shares	Common stock	Capital in excess of par value	Unearned compensation related to restricted stock	Retained earnings	Accumulated other comprehensive income	Treasury stock	Total
Balance, December 25, 2004	—	\$ —	10,442	\$ 10	\$ 28,579	\$ (608)	\$13,867	\$ 3,566	\$ (11)	\$45,403
Recognition of unearned compensation, restricted stock						227				227
Shares issued, stock options			347	1	2,366					2,367
Shares issued, ESPP			10		111					111
Shares issued, ESOP			110		1,058					1,058
Purchase and retirement of treasury stock			(3)		(38)				11	(27)
Stock option income tax benefit					610					610
Dividends declared							(2,179)			(2,179)
Comprehensive income:										
Net income							9,919			9,919
Foreign currency translation adjustments								(1,631)		(1,631)
Comprehensive income										8,288
Balance, October 1, 2005	—	\$ —	10,906	\$ 11	\$ 32,686	\$ (381)	\$21,607	\$ 1,935	\$ —	\$55,858

The accompanying Notes to the Consolidated, Unaudited Financial Statements are an integral part of this financial statement.

[Table of Contents](#)**Sun Hydraulics Corporation**  
**Consolidated Statements of Cash Flows**  
(in thousands)

	Nine months ended October 1, 2005 (unaudited)	September 25, 2004 (unaudited)
<b>Cash flows from operating activities:</b>		
Net income	\$ 9,919	\$ 5,829
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	4,172	4,073
Loss on disposal of assets	18	43
Provision for deferred income taxes	(6)	(93)
Allowance for doubtful accounts	(10)	6
Stock-based compensation expense	245	186
(Increase) decrease in:		
Accounts receivable	(2,076)	(2,211)
Inventories	(806)	(173)
Other current assets	(124)	(56)
Other assets	72	31
Increase (decrease) in:		
Accounts payable	1,204	(226)
Accrued expenses and other liabilities	960	1,533
Taxes payable	(286)	2,050
Other liabilities	(14)	(23)
Net cash provided by operating activities	13,268	10,969
<b>Cash flows from investing activities:</b>		
Investment in WhiteOak	(400)	—
Capital expenditures	(6,207)	(3,531)
Proceeds from dispositions of equipment	1	19
Net cash used in investing activities	(6,606)	(3,512)
<b>Cash flows from financing activities:</b>		
Proceeds from debt	10,099	—
Repayment of debt	(19,878)	(5,837)
Proceeds from exercise of stock options	2,348	1,387
Proceeds from stock issued	111	—
Payments for purchase of treasury stock	(27)	(657)
Proceeds from reissuance of treasury stock	—	589
Dividends to shareholders	(1,609)	(885)
Net cash used in financing activities	(8,956)	(5,403)
Effect of exchange rate changes on cash and cash equivalents	(236)	359
Net (decrease) increase in cash and cash equivalents	(2,530)	2,413
Cash and cash equivalents, beginning of period	9,762	5,219
Cash and cash equivalents, end of period	\$ 7,232	\$ 7,632
Supplemental disclosure of cash flow information:		
Cash paid:		
Interest	\$ 385	\$ 405
Income taxes	\$ 6,286	\$ 1,386

The accompanying Notes to the Consolidated, Unaudited Financial Statements are an integral part of these financial statements.

SUN HYDRAULICS CORPORATION  
NOTES TO THE CONSOLIDATED, UNAUDITED FINANCIAL STATEMENTS  
(Dollars in thousands except per share data)

1. BASIS OF PRESENTATION AND SUMMARY OF BUSINESS

Sun Hydraulics Corporation, and its wholly-owned subsidiaries and joint ventures, design, manufacture, and sell screw-in cartridge valves and manifolds used in hydraulic systems. The Company has facilities in the United States, the United Kingdom, Germany, Korea, France, and China. Sun Hydraulics Corporation ("Sun Hydraulics"), with its main offices located in Sarasota, Florida, designs, manufactures, and sells primarily through distributors. Sun Hydraulik Holdings Limited ("Sun Holdings"), a wholly-owned subsidiary of Sun Hydraulics, was formed to provide a holding company for the European market operations; its wholly-owned subsidiaries are Sun Hydraulics Limited (a British corporation, "Sun Ltd.") and Sun Hydraulik GmbH (a German corporation, "Sun GmbH"). Sun Ltd. operates a manufacturing and distribution facility located in Coventry, England, and Sun GmbH operates a manufacturing and distribution facility located in Erkelenz, Germany. Sun Hydraulics Korea Corporation ("Sun Korea"), a wholly-owned subsidiary of Sun Hydraulics, located in Inchon, South Korea, operates a manufacturing and distribution facility. Sun Hydraulics, SARL ("Sun France"), a wholly-owned subsidiary of Sun Hydraulics, located in Bordeaux, France, operates a sales and engineering support facility. Sun Hydraulics Systems (Shanghai) Co., Ltd. ("Sun China"), a 50/50 joint venture between Sun Hydraulics and Links Lin, the owner of Sun Hydraulics' Taiwanese distributor, is located in Shanghai, China, and operates a manufacturing and distribution facility. Sun Hydraulics acquired a 40% equity method investment in WhiteOak Controls, Inc. ("WhiteOak"), on June 28, 2005 (see Note 3). WhiteOak, located in Mediapolis, Iowa, designs and produces complementary electronic control products.

The accompanying unaudited interim consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission for reporting on Form 10-Q. Accordingly, certain information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements are not included herein. The financial statements are prepared on a consistent basis (including normal recurring adjustments) and should be read in conjunction with the consolidated financial statements and related notes contained in the Annual Report on Form 10-K for the fiscal year ended December 25, 2004, filed by Sun Hydraulics Corporation (together with its subsidiaries, the "Company") with the Securities and Exchange Commission on March 24, 2005. In Management's opinion, all adjustments necessary for a fair presentation of the Company's financial statements are reflected in the interim periods presented. Operating results for the three and nine month periods ended October 1, 2005, are not necessarily indicative of the results that may be expected for the period ending December 31, 2005.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Stock-Based Compensation

The Company has adopted the disclosure only provisions of Statements of Financial Accounting Standards (FAS) No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure, an amendment to FAS No. 123, Accounting for Stock-Based Compensation* ("FAS 148"), and has elected to follow Accounting Principles Board Opinion (APB) No. 25, *Accounting for Stock Issued to Employees* and related interpretations in accounting for its employee stock options. Under APB 25, because the exercise price of employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recorded.



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If the company had elected to recognize compensation expense for stock options based on the fair value at grant date, consistent with the method prescribed by FAS No. 123, *Accounting for Stock-Based Compensation* ("FAS 123"), net income and earnings per share would have been reduced to the pro forma amounts below. The pro forma amounts were determined using the Black-Scholes valuation model with weighted average assumptions as set forth below.

	Three Months Ended		Nine Months Ended	
	October 1, 2005	September 25, 2004	October 1, 2005	September 25, 2004
Net Income as Reported	\$ 2,918	\$ 1,880	\$ 9,919	\$ 5,829
Stock-based compensation reported in net income, net of related taxes	48	35	144	117
Stock compensation expense calculated under FAS 123, net of related taxes	(67)	(49)	(223)	(159)
Pro Forma Net Income	\$ 2,899	\$ 1,866	\$ 9,840	\$ 5,787
<b>Basic net income per common share:</b>				
As reported	\$ 0.27	\$ 0.18	\$ 0.92	\$ 0.57
Pro forma	\$ 0.27	\$ 0.18	\$ 0.91	\$ 0.57
<b>Diluted net income per common share:</b>				
As reported	\$ 0.27	\$ 0.18	\$ 0.91	\$ 0.57
Pro forma	\$ 0.26	\$ 0.18	\$ 0.90	\$ 0.56
<b>Assumptions</b>				
Risk-free interest rate	4.22%	4.03%	4.22%	4.03%
Expected lives (in years)	6.5	6.5	6.5	6.5
Expected volatility	30.32%	40.00%	30.32%	40.00%
Dividend yield	2.19%	1.53%	2.19%	1.53%

### Earnings per share

The following table represents the computation of basic and diluted earnings per common share as required by FAS No. 128, *Earnings Per Share* (in thousands, except per share data):

	Three Months Ended		Nine Months Ended	
	October 1, 2005	September 25, 2004	October 1, 2005	September 25, 2004
<b>Net income</b>	\$ 2,918	\$ 1,880	\$ 9,919	\$ 5,829
Weighted average basic shares outstanding	10,894	10,343	10,797	10,217
<b>Basic net income per common share</b>	\$ 0.27	\$ 0.18	\$ 0.92	\$ 0.57
Effect of dilutive stock options	97	116	96	87
Weighted average diluted shares outstanding	10,991	10,459	10,893	10,304
<b>Diluted net income per common share</b>	\$ 0.27	\$ 0.18	\$ 0.91	\$ 0.57

Diluted earnings per common share excludes antidilutive stock options of approximately 68 for the periods ended September 25, 2004.

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### Stock Split

On June 10, 2005, the Company declared a three-for-two stock split, effected in the form of a 50% stock dividend, to shareholders of record on June 30, 2005, payable on July 15, 2005. The Company issued approximately 3,600,000 shares of common stock as a result of the stock split. The effect of the stock split on outstanding shares and earnings per share was retroactively applied to all periods presented.

### Reclassification

Certain amounts shown in the 2004 consolidated financial statements have been reclassified to conform to the 2005 presentation.

### 52-53 Week Fiscal Year

The Company's fiscal year ends on the Saturday nearest to the end of the month of December. Each quarter consists of two 4-week periods and one 5-week period. The 2005 fiscal year will end on December 31, 2005, resulting in a 53-week year. As a result of the 2004 fiscal year ending December 25, 2004, the year-to-date period ending October 1, 2005, consists of five 4-week periods and four 5-week periods.

### 3. ACQUISITIONS

On June 28, 2005, Sun Hydraulics acquired shares of common stock representing 40% of the outstanding shares of WhiteOak Controls, Inc. ("WhiteOak"). WhiteOak designs and produces electronic amplifiers and other control products. The Company, together with WhiteOak, will co-develop products to be used in and in conjunction with other Company products. The acquisition price paid by the Company was \$400. The excess paid over pro rata share of net assets of \$274 is being classified as developed technology and is being amortized over a period of 10 years.

### 4. RESTRICTED CASH

The restricted cash balance at October 1, 2005, consisted of \$423 in reserves as a required deferment for customs and excise taxes in the U.K. operation. The restricted amount was calculated as an estimate of two months of customs and excise taxes for items coming into the Company's U.K. operations and is held with Lloyd's TSB in the U.K.

### 5. INVENTORIES

	<u>October 1, 2005</u>	<u>December 25, 2004</u>
Raw materials	\$ 2,523	\$ 2,523
Work in process	2,916	2,487
Finished goods	2,720	2,402
Provision for slow moving inventory	<u>(248)</u>	<u>(307)</u>
Total	<u>\$ 7,911</u>	<u>\$ 7,105</u>

### 6. GOODWILL

On October 1, 2005, the Company had \$715 of goodwill, related to its acquisition of Sun Korea. Goodwill is held in other assets on the balance sheet. Valuation models reflecting the expected future

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cash flow projections were used to value Sun Korea at December 25, 2004. The analysis indicated that there was no impairment of the carrying value of the goodwill. As of October 1, 2005, no factors were identified that indicated impairment of the carrying value of the goodwill.

### 7. LONG-TERM DEBT

	<u>October 1, 2005</u>	<u>December 25, 2004</u>
\$11,000 five-year note, collateralized by U.S. real estate and equipment and a 65% stock pledge in the foreign subsidiaries, interest rate Libor + 1.9% or prime rate at Company's discretion, due July 23, 2008.	\$ —	\$ 10,220
\$12,000 revolving line of credit, collateralized by U.S. real estate and equipment and a 65% stock pledge in the foreign subsidiaries, interest rate Libor + 1.9% or prime rate at Company's discretion, due July 23, 2006.	—	—
\$35,000 revolving line of credit, collateralized by U.S. assets, interest rate Libor + 1.5% or Bank's Base Rate at Company's discretion ( 5.228% at October 1, 2005), due August 1, 2011.	999	—
\$2,400 12-year mortgage note on the German facility, fixed interest rate of 6.05%, due September 30, 2008.	687	947
10-year notes, fixed interest rates ranging from 3.5-5.1%, collateralized by equipment in Germany, due between 2009 and 2011.	728	1,009
Other	61	78
	<u>2,475</u>	<u>12,254</u>
Less amounts due within one year	<u>(454)</u>	<u>(1,058)</u>
<b>Total</b>	<b>\$ 2,021</b>	<b>\$ 11,196</b>

On August 11, 2005, the Company completed a refinancing of its existing debt in the U.S. with Fifth Third Bank (the "Bank"). The new financing consists of a secured revolving line of credit of \$35 million (the "Line of Credit"). The Line of Credit is secured by the Company's U.S. assets, including its manufacturing facilities, and requires monthly payments of interest. The Line of Credit has a floating interest rate for the first year of 1) 1.5% over the 30-day LIBOR Rate (as defined), or 2) the Bank's Base Rate (as defined), at the Company's discretion. Thereafter, the interest rate will vary based upon the Company's leverage ratio. The Line of Credit is payable in full on August 1, 2011, but maturity may be accelerated by the Bank upon an Event of Default (as defined). Prepayment may be made without penalty or premium at any time upon the required notice to the Bank. At October 1, 2005, the Line of Credit had an outstanding balance of \$999.

The Line of Credit is subject to debt covenants including: 1) Debt (as defined) to Tangible Net Worth (as defined) ratio of not more than 1.5:1.0, 2) Funded Debt (as defined) to EBITDA (as defined) ratio of not more than 2.5:1.0, and 3) EBIT (as defined) to Interest Expense (as defined) ratio of not less than 1.1:1.0; and requires the Company to maintain its primary domestic deposit accounts with the Bank. As of October 1, 2005, the Company was in compliance with all debt covenants.

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### 8. SEGMENT REPORTING

The individual subsidiaries comprising the Company operate predominantly in a single industry as manufacturers and distributors of hydraulic components. The Company is multinational with operations in the United States, and subsidiaries in the United Kingdom, Germany, Korea, and France. Amounts for France, due to their immateriality, are included with the U.S. In computing operating profit for the foreign subsidiaries, no allocations of general corporate expenses have been made. Management bases its financial decisions by the geographical location of its operations.

Identifiable assets of the foreign subsidiaries are those assets related to the operation of those companies. United States assets consist of all other operating assets of the Company.

Segment information is as follows:

	United States	Korea	Germany	United Kingdom	Elimination	Consolidated
<b>Three Months Ended October 1, 2005</b>						
Sales to unaffiliated customers	\$18,118	\$ 2,992	\$ 3,736	\$ 3,880	\$ —	\$ 28,726
Intercompany sales	5,179	—	16	721	(5,916)	—
Operating income	3,121	377	617	270	(4)	4,381
Depreciation	973	37	121	255	—	1,386
Capital expenditures	1,733	7	712	117	—	2,569

<b>Three Months Ended October 1, 2004</b>						
Sales to unaffiliated customers	\$14,676	\$ 1,900	\$ 3,390	\$ 3,198	\$ —	\$ 23,164
Intercompany sales	4,112	—	19	465	(4,596)	—
Operating income	1,921	201	791	135	(3)	3,045
Depreciation	960	34	132	259	—	1,385
Capital expenditures	883	32	38	99	—	1,052

<b>Nine Months Ended October 1, 2005</b>						
Sales to unaffiliated customers	\$55,821	\$ 8,909	\$ 11,914	\$ 12,175	\$ —	\$ 88,819
Intercompany sales	16,614	—	59	2,068	(18,741)	—
Operating income	10,855	1,174	2,705	923	(181)	15,476
Depreciation	2,934	112	340	779	—	4,165
Capital expenditures	4,565	14	806	822	—	6,207

<b>Nine Months Ended September 25, 2004</b>						
Sales to unaffiliated customers	\$44,566	\$ 6,744	\$ 9,860	\$ 9,907	\$ —	\$ 71,077
Intercompany sales	12,029	—	52	1,301	(13,382)	—
Operating income	6,361	776	2,013	338	(11)	9,477
Depreciation	2,835	102	341	795	—	4,073
Capital expenditures	2,921	40	105	465	—	3,531

Operating income is total sales and other operating income less operating expenses. Segment operating income does not include interest expense and net miscellaneous income/expense.

### 9. NEW ACCOUNTING PRONOUNCEMENTS

In November 2004, the FASB issued FAS No. 151 ("FAS 151"), *Inventory Costs, an amendment of ARB No. 43, Chapter 4*. The amendments made by FAS 151 clarify that abnormal amounts of idle facility expense, freight, handling costs and wasted materials (spoilage) should be recognized as current-period charges and requires the allocation of fixed production overheads to inventory based on the normal capacity of the production facilities. While FAS 151 enhances Accounting Research Bulletin No. 43,

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*Restatement and Revision of Accounting Research Bulletins*, and clarifies the accounting for abnormal amounts of idle facility expense, freight, handling costs and wasted material (spoilage), the statement also removes inconsistencies between ARB 43 and International Accounting Standards No. 2 ("IAS 2") and amends ARB 43 to clarify that abnormal amounts of costs should be recognized as period costs. Under some circumstances, according to ARB 43, the above listed costs may be so abnormal as to require treatment as current period charges. FAS 151 requires these items be recognized as current-period charges regardless of whether they meet the criterion of "so abnormal" and requires allocation of fixed production overheads to the costs of conversion.

This standard will be effective for inventory costs incurred during fiscal years beginning after June 15, 2005. The impact of the adoption of FAS 151 on the Company's reported operating results, financial position and existing financial statement disclosure is not expected to be material.

In December, 2004, the FASB issued FAS No. 123 (revised 2004) ("FAS 123(R)"), *Share-Based Payment*, which is a revision of FAS 123. FAS 123(R) supersedes APB 25 and FAS 123, and amends FAS No. 95, *Statement of Cash Flows*. This Statement requires entities to recognize the cost of employee services received in exchange for awards of equity instruments based on the grant-date fair value of those awards (with limited exceptions). This Statement eliminates the alternative to use APB 25's intrinsic value method of accounting that was provided in FAS 123 as originally issued. Under APB 25, issuing stock options to employees at or above fair value generally resulted in no recognition of compensation cost.

FAS 123(R) also requires that the Company estimate the number of awards that are expected to vest and to revise the estimate as the actual forfeitures differ from the estimate. This standard is effective as of the beginning of the first annual reporting period that begins after June 15, 2005. The effect of these items and other changes in FAS 123(R) as well as the potential impact on the Company's reported operating results, financial position and existing financial statement disclosure is currently being evaluated.

FAS 123(R) requires that the benefits of tax deductions in excess of recognized compensation cost be reported as a financing cash flow, rather than as an operating cash flow, thus reducing net operating cash flows and increasing net financing cash flows in the periods after the effective date. The Company cannot estimate what these amounts will be in the future because they depend on, among other things, when employees exercise stock options.

The Company currently follows the disclosure only provisions of FAS 148, and has elected to follow APB 25 and related interpretations in accounting for its employee stock options. The Company uses the Black-Scholes formula to estimate the value of stock options granted to employees for disclosure purposes. FAS 123(R) requires that the Company use the valuation technique that best fits the circumstances. The Company is currently evaluating other techniques.

In December 2004, the FASB issued FASB Staff Position ("FSP") 109-1 ("FSP 109-1") and 109-2 ("FSP 109-2"). FSP 109-1 provides guidance on the application of FAS No. 109, *Accounting for Income Taxes* ("FAS 109"), with regard to the tax deduction on qualified production activities provision within H.R. 4520, The American Jobs Creation Act of 2004 ("Act"), that was enacted on October 22, 2004. FSP 109-2 provides guidance on a special one-time dividends received deduction on the repatriation of certain foreign earnings to qualifying U.S. taxpayers. The Act contains numerous provisions related to corporate and international taxation including repeal of the Extraterritorial Income (ETI) regime, creation of a new Domestic Production Activities (DPA) deduction and a temporary dividends received deduction related to repatriation of foreign earnings. The Act contains various effective dates and transition periods. Under the guidance provided in FSP 109-1, the new DPA deduction will be treated as a "special deduction" as described in FAS 109. As such, the special deduction has no effect on the Company's deferred tax assets and liabilities existing at the enactment date. Rather, the impact of this deduction will be reported in the period in which the deduction is claimed on the Company's income tax return. The Company does not expect the net effect of the phase-out of the ETI deduction and phase-in of the new DPA deduction to result in a material impact on its effective income tax rate in 2005.

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In FSP 109-2, the FASB acknowledged that, due to the proximity of the Act's enactment date to many companies' year-ends and the fact that numerous provisions within the Act are complex and pending further regulatory guidance, many companies might not be in a position to assess the impacts of the Act on their plans for repatriation or reinvestment of foreign earnings. Therefore, the FSP provided companies with a practical exception to the permanent reinvestment standards of FAS 109 and APB No. 23, *Accounting for Income Taxes — Special Areas*, by providing additional time to determine the amount of earnings, if any, that they intend to repatriate under the Act's provisions. The Company is not yet in a position to decide whether, and to what extent, it might repatriate foreign earnings to the U.S. Therefore, under the guidance provided in FSP 109-2, no deferred tax liability has been recorded in 2005 in connection with the repatriation provisions of the Act. The Company is currently analyzing the future impact of the temporary dividends received deduction provisions contained in the Act.

### 10. COMMITMENTS AND CONTINGENCIES

The Company is not a party to any legal proceedings other than routine litigation incidental to its business. In the opinion of management, the amount of ultimate liability with respect to these actions will not materially affect the results of operations, financial position or cash flows of the Company.

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

### OVERVIEW

Sun Hydraulics Corporation is a leading designer and manufacturer of high-performance screw-in hydraulic cartridge valves and manifolds, which control force, speed and motion as integral components in fluid power systems. The Company sells its products globally through wholly-owned companies and independent distributors with some direct accounts. Sales outside the United States for the Quarter ended October 1, 2005, were 50% of total net sales.

Approximately 66% of product sales are used by the mobile market, which is characterized by applications where the equipment is not fixed in place, the operating environment is often unpredictable, and duty cycles are generally moderate to low. Some examples of mobile equipment include off-road construction equipment, fire and rescue equipment and mining machinery.

The remaining 34% of sales are used by industrial markets, which are characterized by equipment that is fixed in place, typically in a controlled environment, and which operates at higher pressures and duty cycles. Automation machinery, metal cutting machine tools and plastics machinery are some examples of industrial equipment. The Company sells to both markets with a single product line.

#### *Industry conditions*

Demand for the Company's products is dependent on demand for the capital goods into which the products are incorporated. The capital goods industries in general, and the fluid power industry specifically, are subject to economic cycles. According to the National Fluid Power Association (the fluid power industry's trade association in the United States), the United States index of shipments of hydraulic products decreased -16%, -3% and -2% in 2001, 2002 and 2003, respectively. This trend reversed in 2004 as the United States index of shipments of hydraulics products increased 25%. The index of shipments has continued to show growth through August 2005, increasing 17%.

The Company's order trend has historically tracked closely to the United States Purchasing Managers Index (PMI). The index was 59.4 at the end of September 2005 compared to 58.5 at the end of September 2004. When PMI is over 50, it indicates economic expansion; when it is below 50, it indicates contraction in the economy.

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Results for the third quarter  
(Dollars in millions except net income per share)

	October 1, 2005	September 25, 2004	Increase
<b>Three Months Ended</b>			
Net Sales	\$ 28.7	\$ 23.2	24%
Net Income	\$ 2.9	\$ 1.9	53%
Net Income per share:			
Basic	\$ 0.27	\$ 0.18	50%
Diluted	\$ 0.27	\$ 0.18	50%
<b>Nine Months Ended</b>			
Net Sales	\$ 88.8	\$ 71.1	25%
Net Income	\$ 9.9	\$ 5.8	71%
Net Income per share:			
Basic	\$ 0.92	\$ 0.57	61%
Diluted	\$ 0.91	\$ 0.57	60%

The Company had another excellent quarter with sales increasing 24% bringing year to date sales to 25% over last year. The Company is confident going into the fourth quarter, as economic indicators in the U.S. capital goods market remain strong. The PMI, which Sun's business historically tracks, continues to show purchasing strength in the economy.

The Company continues to strengthen its balance sheet by building cash and paying down debt. In September, the Company doubled its quarterly dividend from \$0.05 to \$0.10. It is also in a great position to take advantage of potential future internal or external investment opportunities through utilization of its new \$35 million credit facility.

In addition to Robert W. Baird, which has provided independent research coverage on Sun Hydraulics since 1997, Westminster Securities Corporation initiated independent research on the Company in October, 2005.

The Company's CFO, Dick Dobbyn, will be retiring early next year, and Tricia Fulton will assume the CFO position. Ms. Fulton has been with the Company since 1997 and has worked closely with Mr. Dobbyn since this time. The Company is proud that it was able to fill this important position from inside and has complete confidence that Ms. Fulton will do an outstanding job. Mr. Dobbyn, who will retain the CFO position through the close of 2005, will continue to work with the Company in an advisory role, including work on special projects.

### *Outlook*

Historically, demand in the fourth quarter slows compared to prior periods, particularly in foreign markets. The Company estimates sales for the fourth quarter will be approximately \$27 million, a 15% increase over the fourth quarter last year, and annual sales will be approximately \$116 million, a 22% increase compared to 2004. Fourth quarter earnings per share are estimated to be between \$0.20 and \$0.23 per share, compared to \$0.19 per share in the fourth quarter last year.



## COMPARISON OF THE THREE MONTHS ENDED OCTOBER 1, 2005 AND SEPTEMBER 25, 2004

### **Net Sales**

Net sales were \$28.7 million, an increase of \$5.5 million, or 24.0%, compared to \$23.2 million in 2004. The increase was due in large part to the continued growth of the manufacturing sector, particularly in North America where sales increased 22.2%, as shipments within the U.S. increased 21.5% and Canadian shipments increased 30.0%.

European sales increased 15.9%, or \$1.1 million, to \$7.9 million. Significant increases were noted in Finland, Sweden, Italy and the Netherlands.

Asian sales increased 52.8%, or \$1.5 million, to \$4.3 million, led by domestic sales in Korea and China.

### **Gross Profit**

Gross profit increased \$2.0 million, or 28.1%, to \$9.0 million. Gross profit as a percentage of net sales increased to 31.4% in the third quarter of 2005, compared to 30.4% in the third quarter last year. Gross profit increases primarily related to higher sales volume.

### **Selling, Engineering and Administrative Expenses**

Selling, engineering and administrative expenses increased 16.0%, or \$0.6 million, to \$4.6 million compared to the same quarter last year. The increase was primarily due to increased audit and contract labor fees, including Sarbanes-Oxley 404 compliance, foreign compensation expense, and a write-off of the remaining deferred loan costs related to the extinguishment of debt.

### **Interest Expense**

Interest expense for the quarter ended October 1, 2005, remained flat at \$0.1 million compared to the quarter ended September 25, 2004. Total average debt for the quarter ended October 1, 2005, was \$7.0 million compared to \$13.6 million for the quarter ended September 25, 2004. Although average debt outstanding decreased during the period ended October 1, 2005, the average interest rate on variable debt increased from the period ended September 25, 2004.

### **Foreign Currency Transaction Gain**

There was minimal impact to net income in the quarters ended October 1, 2005, and September 25, 2004, as a result of foreign currency transactions.

### **Miscellaneous Expense/(Income), Net**

Miscellaneous expense increased \$0.1 million compared to the quarter ended September 25, 2004. The increase was due to expenses related to a sales tax audit in Florida, which was completed during the quarter.

### **Income Taxes**

The provision for income taxes for the quarter ended October 1, 2005, was 30.6% of pretax income compared to 36.7% for the quarter ended September 25, 2004. The change was attributable to a change in the U.S. effective tax rate of approximately 1% for some additional permanent benefits estimated this quarter and a true-up to the Company's completed 2004 U.S. tax return.

## COMPARISON OF THE NINE MONTHS ENDED OCTOBER 1, 2005 AND SEPTEMBER 25, 2004

The Company's fiscal year ends on the Saturday nearest to the end of the month of December. Each quarter consists of two 4-week periods and one 5-week period. The 2005 fiscal year will end on December 31, 2005, resulting in a 53-week year. As a result of the 2004 fiscal year ending December 25, 2004, the year-to-date period ending October 1, 2005, consists of five 4-week periods and four 5-week periods.

### **Net Sales**

Net sales were \$88.8 million, an increase of \$17.7 million, or 25.0%. This increase reflected the continued economic recovery of the manufacturing sector in the United States, increased domestic sales in Korea and China, and strong demand in Continental Europe and Scandinavia.

### **Gross Profit**

Gross profit increased 32.8%, or \$7.1 million. Gross profit as a percentage of net sales increased to 32.5% from 30.6% last year. A moderate and selective sales price increase in January this year, coupled with increased sales volume and improved productivity, offset the increased cost of parts and raw materials.

### **Selling, Engineering, and Administrative Expenses**

Selling, engineering and administrative expenses increased 9.2%, or \$1.1 million, to \$13.4 million compared to last year. The increase was primarily due to increased audit and contract labor fees related to 2005, including Sarbanes-Oxley 404 compliance, personnel related expenses, foreign compensation expense, a write-off of the remaining deferred loan costs related to the extinguishment of debt and costs for a bi-annual European trade show.

### **Interest Expense**

Interest expense for the nine months ended October 1, 2005, remained flat at \$0.4 million compared to the nine months ended September 25, 2004. Total average debt for the period ended October 1, 2005, was \$7.4 million compared to \$15.3 million for the period ended September 25, 2004. Although average debt outstanding decreased during the period ended October 1, 2005, the average interest rate on variable debt increased from the period ended September 25, 2004.

### **Foreign Currency Transaction Gain**

Foreign currency gains were \$0.3 and \$0.1 million for the nine months ended October 1, 2005, and September 25, 2004, respectively. While the Euro, the Korean Won and the British Pound made gains against the U.S. dollar during each of the nine month periods, the U.K. operations experienced losses related to sales conducted in U.S. dollars.

### **Miscellaneous Expense/(Income), Net**

Miscellaneous expense increased \$0.1 million compared to the quarter ended September 25, 2004. The increase was due to expenses related to a sales tax audit in Florida, which was completed during the quarter.

### **Income Taxes**

The provision for income taxes for the nine months ended October 1, 2005, was 35.2% of pretax income compared to 36.4% for the nine months ended September 25, 2004. The change was primarily due to

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the relative mix of income and different tax rates in effect among the countries in which the Company sells its products.

### **LIQUIDITY AND CAPITAL RESOURCES**

Historically, the Company's primary source of capital has been cash generated from operations, although fluctuations in working capital requirements have from time to time been met through borrowings under revolving lines of credit. The Company's principal uses of cash have been to pay operating expenses, make capital expenditures, pay dividends to shareholders and service debt.

Cash from operations for the nine months ended October 1, 2005, was \$13.3 million, compared to \$11.0 million for the nine months ended September 25, 2004. The \$4.1 million increase in net income was offset by working capital changes related to increased volume. Days sales outstanding (DSO) were 34 and 33 at October 1, 2005, and September 25, 2004, respectively. Inventory turns were 10.0 as of October 1, 2005, compared to 9.5 as of September 25, 2004.

Capital expenditures, consisting primarily of purchases of machinery and equipment, were \$6.2 million for the nine months ended October 1, 2005, compared to \$3.5 million for the nine months ended September 25, 2004. Capital expenditures for the year are projected to be approximately \$8.5 million.

The Company declared quarterly dividends of \$0.10 per share to shareholders of record September 30, 2005, payable on October 15, 2005. The declaration and payment of future dividends is subject to the sole discretion of the Board of Directors, and any determination as to the payment of future dividends will depend upon the Company's profitability, financial condition, capital needs, future prospects and other factors deemed pertinent by the Board of Directors.

On August 11, 2005, the Company completed a refinancing of its existing debt in the U.S. with Fifth Third Bank (the "Bank"). The new financing consists of a secured revolving line of credit of \$35 million. (the "Line of Credit"). The Line of Credit is secured by the Company's U.S. assets, including its manufacturing facilities, and requires monthly payments of interest. The Line of Credit has a floating interest rate for the first year of 1) 1.5% over the 30-day LIBOR Rate (as defined), or 2) the Bank's Base Rate (as defined), at the Company's discretion. Thereafter, the interest rate will vary based upon the Company's leverage ratio. The Line of Credit is payable in full on August 1, 2011, but maturity may be accelerated by the Bank upon an Event of Default (as defined). Prepayment may be made without penalty or premium at any time upon the required notice to the Bank.

The Company believes that cash generated from operations and its borrowing availability under its revolving Line of Credit will be sufficient to satisfy the Company's operating expenses and capital expenditures for the foreseeable future. In the event that economic conditions were to severely worsen for a protracted period of time, the Company would have several options available to ensure liquidity in addition to increased borrowing. Capital expenditures could be postponed since they primarily pertain to long-term improvements in operations. Additional operating expense reductions also could be made. Finally, the dividend to shareholders could be reduced or suspended.

### **Off Balance Sheet Arrangements**

The Company uses the equity method of accounting to account for its investments in Sun China and WhiteOak. The Company does not have a majority ownership in or exercise control over either of the entities. The Company does not believe that its investments in Sun China or WhiteOak qualify as Variable Interest Entities, within the scope of FASB Interpretation (FIN) No. 46, *Consolidation of Variable Interest Entities, an interpretation of ARB No. 5*, nor are they material to the financial statements of the Company at October 1, 2005.

### **Seasonality**

The Company generally has experienced increased sales during the second quarter of the year, largely as a result of the order patterns of our customers. As a result, the Company's second quarter net sales, income from operations and net income historically are the highest of any quarter during the year.

### **Inflation**

The impact of inflation on the Company's operating results has been moderate in recent years, reflecting generally lower rates of inflation in the economy. While inflation has not had, and the Company does not expect that it will have, a material impact upon operating results, there is no assurance that the Company's business will not be affected by inflation in the future.

### **Critical Accounting Policies and Estimates**

The Company currently only applies judgment and estimates which may have a material effect on the eventual outcome of assets, liabilities, revenues and expenses for impairment of long-lived assets, accounts receivable, inventory, goodwill and accruals. The following explains the basis and the procedure for each account where judgment and estimates are applied.

#### *Revenue Recognition*

The Company reports revenues, net of sales incentives, when title passes and risk of loss transfers to the customer. The effect of material non-recurring events is provided for when they become known.

#### *Impairment of Long-Lived Assets*

In accordance with Statement of Financial Accounting Standards ("FAS") No. 144, *Accounting for Impairment or Disposal of Long-lived Assets* ("FAS 144"), long-lived assets, such as property and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of the asset is measured by comparison of its carrying amount to future net cash flows the asset is expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the asset exceeds its fair market value.

The Company assesses the recoverability of goodwill and intangible assets not subject to amortization under FAS No. 142, *Goodwill and Other Intangible Assets* ("FAS 142"). See Goodwill below.

#### *Accounts Receivable*

The Company sells to most of its customers on a recurring basis, primarily through distributors with which the Company maintains long-term relationships. As a result, bad debt experience has not been material. The allowance for doubtful accounts is determined on a specific identification basis by a review of those accounts that are significantly in arrears. There can be no assurance that a distributor or a large direct sale customer with overdue accounts receivable balances will not develop financial difficulties and default on payment. See balance sheet for allowance amounts.

#### *Inventory*

The Company offers a wide variety of standard products and as a matter of policy does not discontinue products. On an ongoing basis, component parts found to be obsolete through design or process changes are disposed of and charged to material cost. The Company reviews on-hand balances of products and component parts against specific criteria. Products and component parts without usage or that have excess quantities on hand are evaluated. An inventory reserve is then established for the full inventory carrying value of those products and component parts deemed to be obsolete or slow moving. See Note 5 for inventory reserve amounts.

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### *Goodwill*

The Company acquired its Korean operations in September 1998 using the purchase method. As a result, goodwill is reflected on the consolidated balance sheet. A valuation based on the cash flow method was performed at December 25, 2004. It was determined that the value of the goodwill was not impaired. There is no assurance that the value of the acquired company will not decrease in the future due to changing business conditions. See Note 5 for goodwill amounts.

### *Accruals*

The Company makes estimates related to certain employee benefits and miscellaneous accruals. Estimates for employee benefit accruals are based on information received from plan administrators in conjunction with management's assessments of estimated liabilities related to workers' compensation, health care benefits and annual contributions to an employee stock ownership plan ("ESOP"), established in 2004 as part of the Company's retirement plan. Estimates for miscellaneous accruals are based on management's assessment of estimated liabilities for costs incurred.

## **FORWARD-LOOKING INFORMATION**

*Certain oral statements made by management from time to time and certain statements contained herein that are not historical facts are "forward-looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934 and, because such statements involve risks and uncertainties, actual results may differ materially from those expressed or implied by such forward-looking statements. Forward-looking statements, including those in Management's Discussion and Analysis of Financial Condition and Results of Operations, are statements regarding the intent, belief or current expectations, estimates or projections of the Company, its Directors or its Officers about the Company and the industry in which it operates, and assumptions made by management, and include among other items, (i) the Company's strategies regarding growth, including its intention to develop new products; (ii) the Company's financing plans; (iii) trends affecting the Company's financial condition or results of operations; (iv) the Company's ability to continue to control costs and to meet its liquidity and other financing needs; (v) the declaration and payment of dividends; and (vi) the Company's ability to respond to changes in customer demand domestically and internationally, including as a result of standardization. Although the Company believes that its expectations are based on reasonable assumptions, it can give no assurance that the anticipated results will occur.*

*Important factors that could cause the actual results to differ materially from those in the forward-looking statements include, among other items, (i) the economic cyclicalities of the capital goods industry in general and the hydraulic valve and manifold industry in particular, which directly affect customer orders, lead times and sales volume; (ii) conditions in the capital markets, including the interest rate environment and the availability of capital; (iii) changes in the competitive marketplace that could affect the Company's revenue and/or cost bases, such as increased competition, lack of qualified engineering, marketing, management or other personnel, and increased labor and raw materials costs; (iv) changes in technology or customer requirements, such as standardization of the cavity into which screw-in cartridge valves must fit, which could render the Company's products or technologies noncompetitive or obsolete; (v) new product introductions, product sales mix and the geographic mix of sales nationally and internationally; and (vi) changes relating to the Company's international sales, including changes in regulatory requirements or tariffs, trade or currency restrictions, fluctuations in exchange rates, and tax and collection issues. Further information relating to factors that could cause actual results to differ from those anticipated is included but not limited to information under the headings "Business" (including under the subheading "Business Risk Factors") in the Company's Form 10-K for the year ended December 25, 2004, and "Management's Discussion and Analysis of Financial Conditions and Results of Operations" in this Form 10-Q for the quarter ended October 1, 2005. The Company disclaims any intention or obligation to update or revise forward-looking statements, whether as a result of new information, future events or otherwise.*

**Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The Company is exposed to market risk from changes in interest rates on borrowed funds, which could affect its results of operations and financial condition. The Company had approximately \$1.1 million in variable-rate debt outstanding at October 1, 2005. The Company has managed this risk by its ability to select the interest rate on its debt financing at LIBOR plus 1.5% or the Bank's Base Rate, whichever is more advantageous. Beginning in August 2006, the interest rate on its debt financing will remain variable based upon the Company's leverage ratio. At October 1, 2005, a 1% change in interest rates up or down would have affected the Company's income statement on an annual basis by approximately \$11,000 at the current, variable-rate outstanding debt level.

The Company's exposure to foreign currency exchange fluctuations relates primarily to the direct investment in its facilities in the United Kingdom, Germany and Korea. The Company does not use financial instruments to hedge foreign currency exchange rate changes.

**Item 4. CONTROLS AND PROCEDURES**

As of October 1, 2005, the Company's management, under the direction of its Chief Executive Officer and the Chief Financial Officer, carried out an evaluation of the effectiveness of the design and operation of the disclosure controls and procedures pursuant to Exchange Act Rule 13a-15. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be disclosed in our SEC reports is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms, and is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. Based upon that evaluation, the Company's Chief Executive Officer and the Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective at the reasonable assurance level as of October 1, 2005, in timely alerting them to material information required to be included in the Company's periodic SEC filings.

There were no significant changes in the Company's internal controls over financial reporting during the period ended October 1, 2005, that materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II  
OTHER INFORMATION

Item 1. Legal Proceedings.  
None.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

In November 2004, the Company's Board of Directors authorized the repurchase of up to \$2.5 million of Company stock, to be completed no later than January 15, 2006. The stock purchases will be made in the open market or through privately negotiated transactions. Market purchases will be made subject to restrictions relating to volume, price and timing in an effort to minimize the impact of the purchases on the market for the Company's securities. The amount of the stock repurchases was set based upon the anticipated number of shares that will be required to fund the Company's ESOP and employee stock purchase plan, through fiscal year 2005.

The Company did not purchase any shares during the third quarter under the plan. The total number of shares that have been purchased through the plan is 7,600. Under the Plan, the Company may still purchase approximately \$2.4 million of Company.

Item 3. Defaults upon Senior Securities.  
None.

Item 4. Submission of Matters to a Vote of Security Holders.  
None.

Item 5. Other Information. None.

Item 6. Exhibits.

Exhibits:

<b>Exhibit Number</b>	<b>Exhibit Description</b>
4.1	Credit and Security Agreement dated August 11, 2005, between the Company, as Borrower, and Fifth Third Bank, as Lender.
4.2	Renewal and Future Advance Revolving Line of Credit Promissory Note dated August 11, 2005, between the Company, as Borrower, and Fifth Third Bank, as Lender.
4.3	Renewed, Amended and Restated Mortgage and Security Agreement dated August 11, 2005, between the Company, as Mortgagor, and Fifth Third Bank, as Mortgagee.
31.1	CEO Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	CFO Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

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32.1 CEO Certification pursuant to 18 U.S.C. § 1350.

32.2 CFO Certification pursuant to 18 U.S.C. § 1350.



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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Sarasota, State of Florida on November 14, 2005.

SUN HYDRAULICS CORPORATION

By: /s/ Richard J. Dobbyn

Richard J. Dobbyn  
Chief Financial Officer (Principal  
Financial and Accounting Officer)

## CREDIT AND SECURITY AGREEMENT

This Credit and Security Agreement (the "Agreement") dated as of this 11<sup>th</sup> day of August, 2005, is by and between **SUN HYDRAULICS CORPORATION**, a Florida corporation, (the "Borrower") and **FIFTH THIRD BANK**, a Michigan banking corporation (the "Bank").

The Borrower and the Bank agree as follows:

### ARTICLE I

#### DEFINITIONS AND ACCOUNTING TERMS

**SECTION 1.01. Defined Terms.** As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

**"Account" or "Accounts"** means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health-care-insurance receivables.

**"Advance" or "Advances"** means advances made to Borrower by the Bank under the Revolving Line of Credit Facility.

**"Affiliate"** means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with that Person. For purposes of this definition, "control" as applied to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract, or otherwise.

**"Agreement"** means this Credit Agreement, as amended, supplemented, or modified from time to time.

**"Applicable Margin"** means the percentage added to the LIBOR Rate at which interest shall accrue on the Loan and, when the Base Rate applies to the Loan, the percentage added to the Base Rate, determined as follows:

- (1) Commencing on the Closing Date and continuing to the first anniversary of the Closing Date:
-

LIBOR Margin	Base Rate Margin	Facility Fee
1.50%	0.00%	0.000%

(2) Commencing on the first anniversary of the Closing Date and continuing through the Maturity Date, the Applicable Margin shall be adjusted in accordance with the following Performance Pricing Matrix:

Leverage Ratio Funded Debt/EBITDA	LIBOR Margin	Base Rate Margin	Facility Fee
<2.25:1.0	1.50%	0.00%	0.000%
>=2.25:1.0	2.00%	0.00%	0.150%

The Applicable Margin shall be based on changes in the Funded Debt to EBITDA Ratio as set forth above calculated quarterly based upon a rolling four quarter calculation of EBITDA, and shall be determined based on the computations set forth in the Compliance Certificate furnished to the Bank pursuant to **Section 6.08** and shall be effective commencing on the date following the date such Certificate is received (or if earlier, the date such Certificate was required to be delivered), and in each case, until the date following the date on which a new Certificate is delivered or is required to be delivered, whichever shall first occur, provided however, that if the Borrower shall fail to deliver any such Certificate within the time period required by **Section 6.08**, or if the Bank in the exercise of reasonable business judgment determines that the calculations contained in such Certificate are inaccurate or incomplete and such inaccuracy or incompleteness is not cured by Borrower to the Bank's reasonable satisfaction within 15 days after receipt by Borrower of a written notice of such inaccuracy or incompleteness from the Bank, then the Applicable Margin shall be at the highest level until an appropriate, accurate and complete Certificate is delivered to the Bank showing that a different level is applicable.

**"Applicable Rate"** means the interest rate selected by Borrower to apply to Advances under the Revolving Line of Credit Facility and which may be either the Base Rate plus the Applicable Margin or the LIBOR Rate plus the Applicable Margin.

**"Assets"** means, at any time, all assets that should, in accordance with GAAP consistently applied, be classified as assets on a balance sheet of the Borrower.

**"Bank Affiliate"** means any entity directly or indirectly controlling, controlled by, or under common control with the Bank. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that entity, whether through the ownership of voting securities, by contract, or otherwise.

**"Base Rate"** means the lending rate as announced by the Bank from time to time, as its base rate which may change as often as daily, provided however, that at no time shall the rate of interest exceed the

highest rate allowed by law. In the event that Bank does not, for any reason, announce a Base Rate or discontinues the use of the term “Base Rate” as a benchmark for interest rate on its loans, the Base Rate shall be the rate quoted as the “prime rate” as reported in the “Money Rates” section of the Wall Street Journal (or the arithmetic average of the rates so quoted, if more than one rate is quoted) or, in the event of discontinuance of such publication or such section thereof, the Base Rate shall mean the monthly average prime rate as reported and published in the Federal Reserve Bulletin published monthly by the Board of Governors of the Federal Reserve System under the table styled “Prime Rate Charged by Banks on Short Term Business Loans”. In the event of the discontinuance of both such publications or such section or table thereof, the Base Rate shall mean the prime rate as from time to time announced or published by Citibank, N.A. at its principal office in New York, New York.

The terms “Base Rate” and “Prime Rate” are intended by the parties to be benchmarks only and are not to be construed as indicating that such rates are the best or lowest rates offered by the Lender to any of its customers regardless of their creditworthiness.

“**Base Rate Advance**” means an advance under the Revolving Line of Credit Facility bearing interest at the Base Rate plus the Applicable Margin.

“**Borrower’s Books**” means all of the Borrower’s books and records including, without limitation, ledgers; records indicating, summarizing or evidencing Borrower’s properties or assets (including the Collateral) or liabilities; all information relating to Borrower’s business operations or financial condition; and all computer programs, disc or tape files, printouts, runs, or other computer prepared information.

“**Business Day**” means any day other than a Saturday, Sunday, or other day on which commercial banks in Tampa, Florida are authorized or required to close under applicable law.

“**Capital Lease**” means all leases which have been or should be capitalized on the books of the lessee in accordance with GAAP.

“**Chattel Paper**” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. For the purposes hereof, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

“**Closing Date**” means the date of this Credit Agreement upon which the Loan Documents have been executed by the Borrower and delivered to the Bank.

“**Collateral**” means the Real Property Collateral and all of the Borrower’s domestic assets

including, without limitation, Items of Payment, Accounts, Chattel Paper, Commercial Tort Claims, Commodity Accounts, Commodity Contracts, Deposit Accounts, Equipment, General Intangibles, Goods, Health Care Insurance Receivables, Instruments, Inventory, Investment Property, Letter of Credit Rights, Payment Intangibles and all other tangible and intangible Assets of Borrower including, without limitation, Borrower's Books relating to Collateral, and the proceeds of Collateral whether cash or non-cash including, without limitation, insurance proceeds.

**"Commercial Tort Claims"** means a claim or claims arising in tort with respect to which:

- (A) the claimant is an organization; or
- (B) the claimant is an individual and the claim:
  - (i) arose in the course of the claimant's business or profession; and
  - (ii) does not include damages arising out of personal injury to or the death of an individual.

**"Commitment"** means the Bank's obligation to make Advances to the Borrower under the Revolving Line of Credit Facility pursuant to Article II of this Agreement in the amount referred to therein.

**"Commodity Account"** means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

**"Commodity Contract"** means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

**"Debt"** means (1) indebtedness or liability for borrowed money or for the deferred purchase price of property or services (including trade obligations); (2) obligations as lessee under Capital Leases; (3) current liabilities in respect of unfunded vested benefits under any Plan; (4) obligations under letters of credit issued for the account of any Person; (5) all obligations arising under a Note; (6) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a creditor against loss; and (7) obligations secured by any Lien on property owned by the Borrower, whether or not the obligations have been assumed.

**"Default"** means any of the events specified in [Section 9.01](#), whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

**"Default Rate"** means a rate of interest equal to the Base Rate plus five percent per annum.

**“Deposit Accounts”** means, singly or collectively as the context may require, a demand, time, savings, passbook, or similar account maintained with a bank.

**“EBIT”** means net income before provision for interest and income taxes.

**“EBITDA”** means net income before provision for interest, income taxes, depreciation, and amortization.

**“Eligible Accounts”** means Borrower’s domestic Accounts in which the Bank has a first priority, perfected security interest, that are owing to Borrower by solvent account debtors less Accounts (i) outstanding for more than 90 days or (ii) in default, contested, subject to an asserted setoff, defense, counterclaim or claim of any person, other than the Borrower or the Bank, or (iii) billed but for which goods have not been shipped, or (iv) owed by any Affiliate. Any Account of the Borrower in which the Bank does not have a first priority, perfected security interest shall not be an Eligible Account.

**“Eligible Inventory”** means all Borrower’s domestic Inventory.

**“Equipment”** means goods other than inventory, farm products or consumer goods and includes, without limitation, machinery of all types, heavy equipment, non-titled vehicles, computers, printers and office equipment.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations and published interpretations thereof.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) which together with the Borrower would be treated as a single employer under Section 4001 of ERISA.

**“Eurocurrency Reserve Percentage”** means, with respect to each Interest Period, a percentage (expressed as a decimal) equal to the percentage in effect two Business Days prior to the first day of such Interest Period, as prescribed by the Board of Governors of the Federal Reserve System (or any successor), for determining reserve requirements applicable to any “Eurocurrency liabilities” pursuant to Regulation D or any other applicable regulation of the Board of Governors which prescribes reserve requirements applicable to “Eurocurrency liabilities” as presently defined in Regulation D.

**“Event of Default”** means any of the events specified in **Section 9.01**, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

**“Funded Debt”** means the sum of all debt for borrowed money (including, without limitation, capital lease obligations, subordinated debt, and unreimbursed drawings under letters of credit) or evidenced by a note, bond, debenture or similar instrument of that person, and shall, in addition, include contingent reimbursement obligations for outstanding letters of credit (to the extent not resulting in double-counting).

**“GAAP”** means generally accepted accounting principles in the United States consistently applied.

**“General Intangibles”** means any personal property, including things in action, other than Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Goods, Instruments, Investment Property, Letter-of-Credit Rights, Letters of Credit, Money and oil, gas, or other minerals before extraction. The term includes, without limitation, payment intangibles and software, books, correspondence, credit files, records, computer programs, computer tapes, cards and other papers and documents in the possession or control of Borrower, claims (including without limitation all claims for income tax and other refunds), choses in action, contract rights, judgments, patents, patent licenses, trademarks, trademark licenses, licensing agreements, rights in intellectual property, goodwill (including all goodwill of the Borrower’s business symbolized by and associated with any and all trademarks, trademark licenses, copyrights and/or service marks), royalty payments, contractual rights, rights as lessee under any lease of real or personal property, literary rights, copyrights, service names, service marks, logos, trade secrets, all amounts received as an award in or settlement of a suit in damages, deposit accounts interest in joint ventures or general or limited partnerships, rights in applications for any of the foregoing, and all proceeds (cash and non-cash) of the foregoing.

**“Goods”** means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded.

**“Health Care Insurance Receivable”** means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

**“Hedge Agreement”** means any ISDA Master Agreement, Confirmation and Schedules between a Borrower and Bank or any Bank Affiliate executed at closing or at any time prior to or after closing or any other agreement between Borrower and Bank or any Bank Affiliate heretofore or hereafter entered into, which provides for an interest rate, currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign exchange transaction, cross-currency rate swap, currency option, any combination thereof, or option with respect to, any of the foregoing or any similar transactions, for the purpose of hedging Borrower’s exposures to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (including any such or similar agreement or transaction entered into by Bank or any Bank Affiliate thereof in connection with any other agreement or transaction between Borrower and Bank or any Bank Affiliate thereof).

**“Instrument”** means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment.

**“Interbank Rate”** means, with respect to each Interest Period, the rate per annum at which dollar deposits in immediately available funds are offered to the Bank two Business Days prior to the beginning of such Interest Period by major banks in the London interbank eurodollar market as at or about 11:00 a.m. London time, for delivery on the first day of such Interest Period, for the number of days comprised therein and in an amount comparable to the amount of the Loan to which such Interest Period relates.

**“Interbank Rate (Reserve Adjusted)”** means, for any Interest Period, a rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined pursuant to the following formula:

$$\text{Interbank Rate (Reserve Adjusted)} = \frac{\text{Interbank Rate}}{1 - \text{Eurocurrency Reserve Percentage}}$$

**“Interest Period”** means (i) for Base Rate Advances, one (1) day; (ii) for LIBOR Advances, the period beginning on (and including) the date on which the Advance is made and ending on (but excluding) the first day of each month thereafter and each one month period thereafter.

**“Inventory”** means goods, other than farm products, which:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of services;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

**“Investment Property”** means a security, whether certificated or uncertificated, security entitlement, securities account, Commodity Contract, or Commodity Account.

**“Item of Payment” or “Items of Payment”** means, singly or collectively as the context may require, each check, draft, cash, money, instrument, item, and other remittance in payment or on account of payment with respect to any Collateral, and other proceeds or products of Collateral.

**“Letter of Credit Right”** means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

**“Leverage Ratio”** shall mean the sum of all Funded Debt divided by EBITDA.



**“LIBOR Advance”** means an Advance under the Revolving Line of Credit Facility bearing interest at the LIBOR Rate.

**“LIBOR Rate”** means an adjustable rate of interest per annum equal to the Interbank Rate (Reserve Adjusted) for Interest Periods of one month, plus the Applicable Margin, fixed for one month periods and adjusted on the first day of each calendar month.

**“Lien”** means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, priority, or other security agreement or preferential arrangement, charge, or encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction to evidence any of the foregoing).

**“Loan”** means the Advances made under the Revolving Line of Credit Facility.

**“Loan Documents”** means this Agreement, the Note, the Mortgage, any financing statements relating to the Collateral and all other documents executed by the parties in connection with the transactions contemplated thereby.

**“Master List”** is defined in [Section 3.01\(4\)](#).

**“Maximum Amount”** means the maximum principal amount of Advances outstanding from time to time under the Revolving Line of Credit Facility which shall not exceed THIRTY FIVE MILLION DOLLARS (\$35,000,000.00).

**“Mortgage”** means the Renewed, Amended and Restated Mortgage and Security Agreement of even date with this Agreement pursuant to which the Real Property Collateral is pledged and mortgaged to secure a portion of the Loan.

**“Multiemployer Plan”** means a multiemployer plan as defined in Sections 3(37) or 4001(a)(3) of ERISA or Section 414 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, in which employees of Borrower or an ERISA Affiliate participate or to which Borrower or any ERISA Affiliate contribute or are required to contribute.

**“Note”** means the Revolving Note and any renewals or replacements thereof.

**“Operating Account Advance”** means an advance under the Revolving Line of Credit Facility bearing interest at the Base Rate.

**“Other Agreements”** means all agreements, instruments and documents, including, without

limitation, the Note, any Hedge Agreement and any other notes, guarantees, mortgages, deeds of trust, chattel mortgages, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, leases, financing statements, borrowing base certificates, subordination agreements, trust account agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of Borrower with respect to, or in connection with, this Agreement, the transactions contemplated by this Agreement or the transactions contemplated by any other loan document or Hedge Agreement between the Borrower and the Bank or any Bank Affiliate, together with any and all amendments, modifications, extensions, substitutions and renewals thereof.

**“Payment Intangible”** means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

**“Person”** means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

**“Plan”** means any plan established, maintained, or to which contributions have been made by the Borrower or any ERISA Affiliate.

**“Real Property Collateral”** means the real property described in **Exhibit “A”** attached to this Agreement.

**“Responsible Officer”** means, as applicable, the chief executive officer of Borrower or the president of Borrower, or, with respect to financial matters, the chief financial officer and controller of Borrower.

**“Revolving Line of Credit Facility”** means the line of credit facility to be made available by the Bank to the Borrower pursuant to **Section 2.01** of this Agreement.

**“Revolving Line of Credit Facility Maturity Date”** means July 1, 2011.

**“Revolving Note”** means the promissory note of the Borrower of even date with this Agreement evidencing Borrower’s obligation to repay Advances under the Revolving Line of Credit Facility.

**“Subsidiary”** means, as to any Person, a corporation of which shares of stock having ordinary voting power (other than stock having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation are at the time owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

**“Tangible Net Worth”** means total assets minus Total Liabilities. For purposes of this computation, the aggregate amount owing from any officers, stockholders or other Affiliates and the aggregate amount of any intangible assets including, without limitation, goodwill, franchises,

licenses, patents, trademarks, trade names, copyrights, service marks, and brand names, shall be subtracted from total assets.

**“Total Liabilities”** means all liabilities including, without limitation, capitalized leases and all reserves for deferred taxes and other deferred sums appearing on the liabilities side of a balance sheet in accordance with GAAP applied on a consistent basis.

**SECTION 1.02. Accounting Terms and Uniform Commercial Code.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles. When used herein, the term “financial statements” shall include the notes and schedules thereto. Terms relating to Collateral, if not expressly defined herein, shall have the meanings ascribed thereto in the Uniform Commercial Code as enacted in the State of Florida including, without limitation, Florida Statutes Chapter 679 relating to secured transactions, as amended from time to time.

**SECTION 1.03. Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the term “including” is not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”. The words “hereof”, “herein”, “hereby”, “hereunder”, and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection, clause, schedule and exhibit references are to this Agreement unless otherwise specified. Any reference in this Agreement or in the Loan Documents to this Agreement or any of the Loan Documents shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions and supplements thereto and thereof, as applicable. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference. Each references to “Borrower” or “Borrowers” shall be deemed to relate to each Borrower individually and to all Borrowers collectively it being the intent of the parties that the obligations, representations, warranties and pledges of each Borrower hereunder shall be joint and several.

## **ARTICLE II**

### **THE LOAN**

#### **SECTION 2.01.**

**(a) The Revolving Line of Credit Facility.** The Bank agrees, on the terms hereinafter set forth, to make Advances to Borrower from time to time until the Revolving Line of Credit Facility Maturity Date in an aggregate principal amount outstanding at any time not to exceed the Maximum Amount. Within the aforesaid limits, and subject to the provisions of this Agreement, the Borrower may borrow, make payments, and reborrow under the Revolving Line of Credit Facility until the Revolving Line of Credit Facility Maturity Date, after which the Bank’s obligation to make advances to Borrower under the Revolving Line of Credit Facility shall terminate. Anything to the contrary in this Agreement notwithstanding, the Bank shall not be obligated to make Advances under the Revolving Line of Credit

Facility after the occurrence and during the pendency of an Event of Default or any occurrence which, with the passage of time or the giving of notice and without cure as may be provided in the applicable Loan Document, would constitute and Event of Default.

**(b) The Revolving Note.** The Borrower's obligation to repay Advances under the Revolving Line of Credit Facility shall be evidenced by a Revolving Note of Borrower of even date with this Agreement.

**(c) Revolving Line of Credit Facility Advances Interest Rate.** The principal amount of the Advances outstanding from time to time under the Revolving Note shall bear interest at the Applicable Rate based upon selections made by Borrower in accordance with **Section 2.01(e)**. Interest shall be calculated based on a 360 day year for the actual number of days elapsed during any Interest Period.

**(d) Requests for Revolving Line of Credit Facility Advances.**

- (1) All requests for Advances after the initial Advance made pursuant to **Section 2.02** shall be submitted to the Bank on a Business Day and all Advances shall be made on Business Days.
- (2) Requests for Advances shall be made in writing signed by the Borrower (which may be by facsimile) and shall specify the principal amount requested, which Advances shall be in a minimum principal amount of \$200,000.00, excluding however Operating Account Advances.
- (3) The Bank shall, if all of the conditions precedent set forth in this **Article II** and in **Article III** of this Agreement have been met, make the Advances requested by Borrower pursuant to this Agreement on the same Business Day after receipt of a written request for such Advance received by the Bank prior to 11:00 a.m. Eastern Time, and on the next Business Day after receipt of a written request for such Advance received by the Bank at or after 11:00 a.m. Eastern Time. Each written request for an Advance shall be effected by crediting the amount thereof to a deposit account designated by Borrower maintained with the Bank or with a Bank Affiliate.

**(e) Selection and Conversion of Interest Rate.**

- (1) An Operating Account Advance shall bear interest at the Base Rate, and Borrower shall have no right of conversion of such interest.
- (2) Except for an Operating Account Advance, and subject to the provisions hereof, the Borrower shall have the right to (i) select the initial Applicable Rate to apply to an Advance commencing on the date of the Advance, and (ii) to continue any Advance as a LIBOR Advance or as a Base Rate Advance, or (iii) to convert any Advance from either a LIBOR Advance or a Base Rate Advance to the other. In each case conversion shall be effected by submitting to the Bank written notice (effective upon receipt) (a) in the case of conversion from a Base Rate Advance to a LIBOR Advance, on or before 11:00 a.m. Eastern Time at least two (2) Business Days

prior to the effective date of conversion, and (b) in the case of conversion from a LIBOR Advance to a Base Rate Advance, on or before 11:00 a.m. Eastern Time on the last day of a current Interest Period. Such conversion shall take effect at the end of the current Interest Period. If no such notice of election is received by the Bank from the Borrower within the time prescribed prior to the end of a current Interest Period, then the Advance shall be continued as the same type of Advance with the same Interest Period. Notwithstanding anything herein to the contrary, no Interest Period may end later than the Revolving Line of Credit Maturity Date.

- (3) Except for an Operating Account Advance, and subject to the provisions hereof, the Borrower shall have the right to convert any Advance from either a LIBOR Advance or a Base Rate Advance to a fixed rate of interest (such fixed rate of interest to be determined at the time of such conversion in Bank's discretion based upon such factors, including but not limited to, Bank's then current underwriting standards) (the "**Fixed Rate**"). In such case conversion shall be effected by submitting to the Bank (i) written notice of conversion to a Fixed Rate on or before 11:00 a.m. Eastern time at least fifteen (15) days prior to the last day of a current Interest Period, and (ii) payment of any applicable fees and costs. Such conversions shall (a) be in minimum increments of \$1,000,000.00; and (b) take effect at the end of the current Interest Period. If no such notice of election is received by the Bank from the Borrower within the time prescribed prior to the end of a current Interest Period, then the Advance shall be continued as the same type of Advance with the same Interest Period. Notwithstanding anything herein to the contrary, no Interest Period may end later than the Revolving Line of Credit Maturity Date.
- (4) After the occurrence and during the continuance of an Event of Default, the interest rate may not be continued at the LIBOR Rate or the Base Rate plus the Applicable Margin, but shall be deemed automatically to have been converted to the Default Rate.

**(f) Payments Under the Revolving Note.** Interest shall be paid to the Bank on the amount of the Advances outstanding from time to time and shall be payable monthly commencing with a payment due on the first (1<sup>st</sup>) day of the month following the Closing Date and on the first (1<sup>st</sup>) day of each month thereafter (each such date being an "Interest Payment Date") provided, however, that all outstanding principal plus accrued interest on each Advance shall be due and payable on the Revolving Line of Credit Facility Maturity Date. All payments received by the Bank shall be applied first to payment of any costs and expenses to which the Bank may be entitled under any Loan Document, then to payment of accrued interest and then to payment of principal.

**(g) Right of Prepayment of Advances.** Borrower shall have the right any time and from time to time to prepay the Advances outstanding under the Revolving Line of Credit Facility, in whole or in part, without premium or penalty, except as provided herein, provided, however, that Borrower shall pay accrued interest to the date of such prepayment. Prepayments shall be made to Bank in immediately available funds, and any such prepayment shall not affect or vary the obligation of Borrower to pay any installment when due. Notwithstanding the foregoing, prepayment of Advances that have been converted

to the Fixed Rate shall require, in addition to payment of outstanding principal, accrued interest, and other sums due hereunder, payment of any loss or expense incurred by Bank as specified in **Section 2.08**.

**(h) Use of Proceeds of Revolving Line of Credit Facility Advances.** The proceeds of the Advances made under the Revolving Line of Credit Facility shall be used to refinance existing indebtedness, to fund future corporate acquisitions of Borrower, and to fund Borrower's working capital needs.

**(i) Collateral Security for the Revolving Line of Credit Facility Advances.** The Advances made under the Revolving Line of Credit Facility shall be secured by Borrower granting to the Bank a first mortgage on the Real Property Collateral, and a duly perfected first priority security interest in the Collateral other than the Real Property Collateral.

**(j) Facility Fee.** Borrower shall pay to the Bank annually, on the anniversary of the Closing Date, a facility fee calculated and due as shown in the pricing matrix used for determination of Applicable Margin. The facility fee shall be the percentage shown in said pricing matrix times the unused principal amount of the Revolving Note.

**SECTION 2.02. Closing Disbursements.** The Bank shall disburse the Revolving Line of Credit Facility at Closing first, to pay all closing costs and disbursements shown on a closing statement relating to the Loan executed by the Bank and the Borrower at Closing, then to refinance the existing indebtedness of Borrower. The remainder of the Revolving Line of Credit Facility shall be available for disbursement for Borrower after Closing. Borrower's execution of such closing statement shall be conclusive evidence of Borrower's approval of the disbursements shown on the closing statement and of Borrower's authorization for the Bank to pay such disbursements with the Revolving Line of Credit Facility.

**SECTION 2.03. Mandatory Prepayment of Advances.** Notwithstanding any other provision of this Agreement, the aggregate outstanding principal balance of the Revolving Line of Credit Facility Advances shall not at any time exceed the Maximum Amount. If the aggregate outstanding principal balance of such Advances at any time exceeds the Maximum Amount as otherwise determined by the Bank, then the Borrower shall immediately pay to the Bank an amount equal to such excess. Borrower shall not be entitled to borrow or reborrow under the Revolving Line of Credit Facility so long as the aggregate outstanding principal balance of Advances exceeds the Maximum Amount nor if the result of any requested Advance would cause the aggregate outstanding principal balance of all Advances to exceed the Maximum Amount.

**SECTION 2.04. Non Usury.** Notwithstanding any other provision of this Agreement, the Note or of any instrument securing the Note or any other instrument executed in connection with the Loan evidenced thereby, it is expressly agreed that amounts payable under the Note or under the other aforesaid instruments for the payment of interest or any other payment in the nature of or which would be considered as interest or other charge for the use or loan of money shall not exceed the highest rate allowed by law, from time to time, and in the event the provisions of this Agreement, the Note or of such

other instruments referred to above in this paragraph with respect to the payment of interest or other charge for the use or loan of money shall result in payments of interest exceeding such limitation, then the excess over such limitation shall not be payable and the amount otherwise agreed to have been paid shall be reduced by the excess so that such limitation will not be exceeded, and if any payment actually made shall result in such limitation being exceeded, the amount of the excess shall constitute and be treated as a repayment of principal and shall operate to reduce such principal by the amount of such excess, or if any such payment is in excess of the principal indebtedness, such excess shall be refunded.

**SECTION 2.05. LIBOR Rate Lending Unlawful.** If as a result of a regulatory change the Bank shall reasonably determine that it is unlawful for the Bank to make, continue or maintain any Loan accruing interest at a LIBOR Rate, the obligation of the Bank to make, continue or maintain any such Loan at a LIBOR Rate shall, upon such determination (and telephonic notice thereof, to be subsequently confirmed in writing, to the Borrower which notice shall, in the absence of manifest error, create a rebuttable presumption as to the effect of such regulatory change as specified above), forthwith be suspended until the earliest date the Bank can determine and notify the Borrower that the circumstances causing such suspension no longer exist, and the LIBOR Rate applicable to all Loans shall automatically convert to the Base Rate on the last day(s) of the then current respective Interest Period(s) with respect thereto or sooner, if required by such regulatory change, provided that the Bank shall take any reasonable actions available to it (including designation of its lending offices) consistent with legal and regulatory restrictions that will avoid the need for such suspension and will not, in the reasonable judgment of the Bank, be otherwise materially disadvantageous to the Bank.

**SECTION 2.06. Deposits Unavailable.** If the Bank shall have reasonably determined that quotations of interest rates for the relevant deposits referred to in the definition of "Interbank Rate" are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR Rate determinations as provided herein or that, by reason of circumstances affecting the London interbank eurodollar market, adequate means do not exist for ascertaining the LIBOR Rate for any Loan to which such rate is the Applicable Rate, then, upon telephonic notice from the Bank to the Borrower to be subsequently confirmed in writing (such notice, in the absence of manifest error, to create a rebuttable presumption as to the effect specified above), the obligations of the Bank to make or continue any Loan at a LIBOR Rate shall forthwith be suspended until the earliest date that the Bank can reasonably determine and notify the Borrower that the circumstances causing such suspension no longer exist, provided that the Bank shall take any reasonable actions available to it to obtain the necessary quotations of interest rates in the London interbank eurodollar market (or another eurodollar market acceptable to the Bank and to the Borrower).

**SECTION 2.07. Treatment of Affected Loans.** If the obligation of the Bank to make, continue or maintain any Loan at a LIBOR Rate shall be suspended pursuant to Section 2.05 or 2.06 above, the Applicable Rate shall be automatically converted to the Base Rate on the last day(s) of the then current Interest Period(s) for such Loan (or, in the case of a suspension pursuant to Section 2.05, sooner, if required by the regulatory change that gave rise to such suspension) and, unless and until the Bank gives notice as provided below that the circumstances specified in Section 2.05 or 2.06 (as the case may be) that gave rise to such suspension no longer exist all Loans that would otherwise be made or continued at a

LIBOR Rate by the Bank shall be made or continued instead at the Base Rate.

If the Bank gives notice to the Borrower that the circumstances specified in **Section 2.05 or 2.06** that gave rise to such suspension no longer exist (which the Bank agrees to do promptly upon such circumstances ceasing to exist) Advances converted to accrue interest at the Base Rate shall be re-converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Advances, to the LIBOR Rate based upon an Interest Period elected by the Borrower pursuant to written notice received by the Bank at least three (3) Business Days prior to the end of the current Interest Period and, if none is so elected by Borrower, for an Interest Period of thirty (30) days.

**SECTION 2.08. LIBOR Related Losses and Expenses.** In the event that the Bank shall incur any loss or expense (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by the Bank to make, continue or maintain any portion of the principal amount of any Loan at a LIBOR Rate) as a result of any repayment or prepayment of the principal amount of any Loan on a date other than the scheduled last day of the Interest Period applicable thereto then, upon written notice from the Bank to the Borrower the Borrower shall, within five days of its receipt thereof, pay directly to the Bank such amount as will (in the reasonable determination of the Bank) reimburse the Bank for such loss or expense. Such written notice shall, in the absence of manifest error, create a rebuttable presumption of the amount of such losses or expenses.

**SECTION 2.09. Payments and Computations.** All payments on account of the indebtedness evidenced by the Note shall be made in lawful money no later than 1:00 p.m. Eastern Time on the date due in immediately available United States funds. All payments shall be first applied to payment of costs and expenses to which the Bank may be entitled under the Loan Documents, then to accrued interest and the remainder to principal. All computations of interest shall be made on the basis of a year of 360 days charged for the actual number of days elapsed. Payments are to be made to the Bank in Tampa, Florida, or at any one other place in the continental United States as the Bank may, from time to time, in writing designate. Any payment made after 1:00 p.m. Eastern Time shall be deemed received on the next Business Day and must include interest up to but not including such next Business Day. If any payment becomes due on a Saturday, Sunday, or any day on which banks in Tampa, Florida are legally closed to business, such payment shall be made on the next succeeding Business Day, and, in the case of a principal payment, interest on such principal payment shall be payable for such extension of time and shall be included with such payment.

**SECTION 2.10. Default Rate.** Upon and after the occurrence of an Event of Default hereunder, all principal amounts due under the Note shall bear interest, payable on demand, at the Default Rate.

**SECTION 2.11. Costs.** If any miscellaneous items of cost or expense, or any other expenditures are incurred by Bank in connection with the Revolving Line of Credit Facility, or in order to protect, preserve or further secure the Bank's interests with respect thereto, or, if any action or proceedings shall be commenced by any person other than the Bank to which action or proceedings the Bank is made a party or in which it shall become necessary to defend the interests of the Bank or the provisions of this Agreement, all sums paid or incurred by the Bank for such expenses, including reasonable attorney's fees,



shall be paid by the Borrower, together with interest thereon at the Default Rate from the date of demand by the Bank for payment. The sums paid or incurred by the Bank in accordance with the terms of this paragraph shall be paid by the Borrower to the Bank within ten (10) days of demand and the failure or omission of the Borrower to do so shall entitle the Bank to add such sums to the principal indebtedness of the Note, or, at its option, to declare the Note to be in default, thereupon maturing all of the unpaid indebtedness including the sums advanced hereunder.

**SECTION 2.12. Creditors' Inquiries.** Borrower hereby grants to the proper officials of Bank the right to make response to any inquiries of creditors and/or suppliers of the Borrower concerning the status of the Loan. Bank agrees to furnish such information from time to time to the best of its knowledge, provided, however, that the only duty of Bank in the furnishing of such information shall be not to affirmatively deceive, as construed by decisions of the courts of the State of Florida, which is equivalent to fraud and willful misrepresentation.

**SECTION 2.13. Additional Remedies of Bank.** In addition to other remedies available to the Bank in an Event of Default under this Agreement, should Borrower default, violate, breach or fail to comply with and perform in any material respect any one or more of the express covenants, conditions, and provisions of this Agreement, which default, violation, breach or failure remains uncured ten (10) days after written notice thereof to the Borrower, or default under the Note then the Bank shall have the absolute right, at its option and election, to (1) cancel this Agreement by written notice to the Borrower; (2) institute appropriate proceedings to specifically enforce performance hereof; (3) withhold further Advances hereunder; (4) take immediate possession of the Collateral; (5) appoint a receiver, as a matter of strict right without regard to the solvency of Borrower, for the purpose of preserving the Collateral, preventing waste, and to protect all rights accruing to Bank by virtue of this Agreement. All expenses incurred in connection with the appointment of said receiver, or in protecting or preserving the Collateral shall be chargeable against the Borrower and shall be enforced as a lien against the Collateral. Nothing herein shall be construed to require notice or opportunity to cure in the event that Borrower defaults in any obligation to pay money under the Note. The said remedies and rights of Bank shall be cumulative and not exclusive, the Bank to be privileged and have the absolute right to resort to any one or more, or all of the said remedies, neither to the limited exclusion of the other, or any other remedy available to the Bank at law or equity, in the event of any such default or breach of said agreement or provisions by the Borrower. The Bank shall have the absolute right to apply any balance of the Loan funds as a payment toward the Note, and no other party shall have any interest in any Loan funds so applied and shall not have any right to garnish, require or compel payment thereof toward discharge or satisfaction of any claim or lien which they or any of them have or may have.

**SECTION 2.14. Further Assurances.** Borrower agrees upon demand to do any act or execute any additional documents (including, without limitation, security agreements and/or financing statements on any personalty included or to be included as Collateral) as may be required by Bank to secure the Note.

**SECTION 2.15. Time is of the Essence.** It is specifically agreed that time is of the essence of this Agreement, and that no waiver of any obligation or requirement hereunder shall at any time thereafter be held to be a waiver of the terms hereunder.

**SECTION 2.16. Taxes.** All payments of the principal of and interest on the Note shall be made without deduction for any present and future taxes, levies, imposts, deductions, charges or withholdings (other than any of the foregoing levied on or measured by the net income of the Bank pursuant to the tax laws of the jurisdictions in which it is incorporated or where such Bank's lending installations are located or managed and controlled) which amount shall be paid by Borrower. Borrower will pay the amounts necessary so that the gross amount of the principal and interest paid is not less than that which would have been required by the Note if such taxes and other items were not payable. All stamp and documentary taxes shall be paid by Borrower. If, notwithstanding the previous three sentences, the Bank pays any such taxes, Borrower will reimburse the Bank for the amount paid, including interest and penalties for late payment, if any.

### **ARTICLE III**

#### **CONDITIONS PRECEDENT**

**SECTION 3.01. Conditions Precedent to Making Advances.** In addition to the conditions precedent set forth in Article II of this Agreement, the obligation of the Bank to make Advances to Borrower as provided in Article II of this Agreement is subject to the further condition precedent that the Bank shall have received at Closing or on or before the day of closing each Advance, as applicable, each of the following in form and substance satisfactory to the Bank and its counsel:

(1) **Note.** The Revolving Note duly executed by Borrower;

(2) **Evidence of all authorizing action by the Borrower.** Copies of all corporate action taken by the Borrower, certified as of the date of this Agreement, including resolutions of Borrower's Board of Directors, authorizing the execution, delivery, and performance of the Loan Documents to which Borrower is a party;

(3) **Incumbency and signature certificate of the Borrower.** A certificate (dated as of the date of this Agreement) of Borrower certifying the names, incumbency and true signatures of Borrower's officers authorized to sign the Loan Documents to which Borrower is a party and the other documents to be delivered by the Borrower under this Agreement, and having attached thereto certified copies of Borrower's Articles of Incorporation and By-Laws, and all amendments thereto;

(4) **Items Relating to Collateral.** The Bank shall have received from Borrower prior to Closing (i) a list of all domestic machinery and Equipment currently owned by Borrower providing serial numbers or other identification numbers to the extent available and the net book value of each item of machinery and Equipment (the "Master List"); (ii) a current UCC lien search in a form and from a source satisfactory to the Bank relating to the Borrower and showing that no other liens or security interests of equal or greater priority than the lien or security interest of the Bank exist with respect to the non-real property Collateral except such as will be paid, satisfied and discharged with the proceeds of the Loan and, in such event, that each such lienor or secured party has prepared and delivered for filing with the

appropriate governmental agency upon payment an appropriate satisfaction of lien; (iii) a Security Agreement (which may be incorporated in this Agreement), in form and substance acceptable to the Bank, granting the Bank a security interest in the Collateral; (iv) UCC-1 financing statements, in form and substance acceptable to the Bank which, upon filing with the appropriate governmental office, will duly perfect a first priority security interest in the non-real property Collateral in favor of the Bank as secured party; and (v) Landlord's lien waivers as to all non-real property Collateral located in premises leased by Borrower, in form and substance acceptable to the Bank which will duly waive any priority such Landlord may have in the non-real property Collateral in favor of the security interest of the Bank. Notwithstanding the foregoing, as to the leased premises located at 1155 and 1165 Commerce Boulevard, Sarasota, Florida, Borrower shall use its commercially reasonable best efforts to either (A) obtain a landlord's lien waiver, or (b) in the event Borrower purchases such leased premises, grant a mortgage naming the Bank as mortgagee, within three (3) months from the date of this Agreement.

(5) **Items Relating to Real Property Collateral.** The Bank shall have received, at or prior to the Closing Date, (a) a mortgage from Borrower securing a portion of the Revolving Note, in form and substance acceptable to the Bank, duly executed in recordable form by Borrower naming the Bank as mortgagee, encumbering the Real Property Collateral; (b) a loan title insurance commitment relating to the Real Property Collateral, naming the Bank as the insured mortgagee, and showing (i) good and marketable fee simple title or a leasehold interest acceptable to the Bank being vested in Borrower, and (ii) that the Bank's mortgage will be a first priority lien encumbering the mortgaged property without qualification or exception other than permitted encumbrances accepted by the Bank in writing; and (c) an environmental indemnification agreement, in form and substance acceptable to the Bank, relating to the Real Property Collateral, whereupon Borrower agrees to indemnify the Bank against such environmental hazards and other matters as the Bank may require;

(6) **Insurance.** The Bank shall have received evidence satisfactory to it that all Collateral subject to theft or casualty loss, if any, is insured against fire, flood, theft and casualty loss to its full insurable value in substance and with coverage amounts reasonably satisfactory to the Bank; and that the Bank is named as loss payee and an additional insured as its interest may appear in all such insurance policies and certificates;

(7) **Opinion of Counsel for Borrower.** An opinion of counsel for the Borrower as to such matters and in form and substance acceptable to the Bank;

(8) **Other Documents.** The Bank shall have received such other approvals, opinions, or documents as the Bank may reasonably request;

(9) **No Defaults.** The Bank shall have received a certificate signed by the Borrower dated the date of such Advance, stating that no Default or Event of Default has occurred and is continuing, or would result from the passage of time or the giving of notice;

(10) **Payment of Fees.** Borrower shall have paid to or for the benefit of the Bank all fees properly payable by the Borrower to the Bank; and

(11) **General.** All agreements, instruments and proceedings in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to Bank, and Bank shall have received on the date of this Agreement copies of all documents which it may have requested in connection with this transaction.

**SECTION 3.02. Conditions Precedent for the Bank's Benefit.** The foregoing conditions precedent exist solely for the Bank's benefit, and the Bank in its sole discretion shall determine whether they have been satisfied. The Bank shall have the right, in its sole and absolute discretion, to waive any conditions precedent without notice to or the approval of any other entity or person including, without limitation, any guarantor, provided, however, that such waiver shall not be enforceable against the Bank without its consent unless the waiver is in writing signed by the Bank.

#### ARTICLE IV

##### SECURITY AGREEMENT

As security for the payment of the Loan and for the performance of all of Borrower's Obligations under the Loan Documents, the Borrower hereby assigns, grants and conveys to the Bank and agrees that the Bank shall have a perfected, continuing security interest in all of the Collateral. The Borrower further agrees that the Bank shall have in respect of the Collateral all of the rights and remedies of a secured party under the applicable provisions of the Uniform Commercial Code and under other applicable laws and Loan Documents, as well as those provided in this Agreement. The Borrower covenants and agrees to execute and deliver such financing statements and other instruments and filings as are necessary in the opinion of the Bank to perfect such security interest. Notwithstanding the fact that the proceeds of the Collateral constitute a part of the Collateral, the Borrower may not dispose of the Collateral, or any part thereof, other than in the ordinary course of business or otherwise as may be permitted by this Agreement. Borrower shall, if requested by the Bank, execute a separate Security Agreement in favor of the Bank relating to the Collateral which shall be construed in conjunction with and as supplemental to this section.

#### ARTICLE V

##### REPRESENTATION AND WARRANTIES

The Borrower represents and warrants to the Bank that:

**SECTION 5.01. Organization, Good Standing, and Due Qualification.** Borrower is a corporation duly organized, validly existing, and having an active status under the laws of Borrower's state or country of organization; has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged; and is duly qualified as a foreign business entity and in good standing under the laws of each other jurisdiction in which such qualification is required, if any, except where the failure to so qualify would not have a material adverse effect on Borrower's business or financial condition.

**SECTION 5.02. Power and Authority.** The execution, delivery, and performance by the Borrower of the Loan Documents to which Borrower is a party has been duly authorized by all necessary action of the Borrower's board of directors and does not and will not (1) require any consent or approval of the shareholders of the Borrower or of any other entity; (2) contravene any of Borrower's articles of incorporation or by-laws; (3) violate any provision of any law, rule, regulation (including, without limitation, Regulation U of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to Borrower; (4) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Borrower is a party or by which it or its properties may be bound or affected; (5) result in or require the creation or imposition of any Lien upon or with respect to any of the properties now owned or hereafter acquired by Borrower except as granted to the Bank; or (6) cause Borrower to be in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award or any such indenture, agreement, lease, or instrument.

**SECTION 5.03. Legally Enforceable Agreement.** This Agreement, and each of the other Loan Documents to which the Borrower is party, and all of Borrower's undertakings thereunder, when such Loan Documents have been duly executed and delivered under this Agreement will be, legal, valid, and binding obligations of the Borrower enforceable against Borrower in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally, and principles of equity. Each Borrower represents and warrants that it is not insolvent or contemplating filing a voluntary petition for bankruptcy nor are any of them aware of any possibility or threat of being subject to any petition for involuntary bankruptcy.

**SECTION 5.04. Financial Statements.** All financial statements of the Borrower which have been furnished to the Bank are complete and correct and fairly present in all material respects the financial condition of the Borrower and the results of the operations of the Borrower for the periods covered by such statements, all in accordance with GAAP consistently applied and there has been no material adverse change in the condition (financial or otherwise), business, or operations of the Borrower. There are no liabilities of the Borrower fixed or contingent which are material but are not reflected in the financial statements, other than liabilities arising in the ordinary course of business. No information, exhibit, or report furnished by the Borrower to the Bank in connection with the negotiation of this Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statement contained therein not materially misleading.

**SECTION 5.05. Labor Disputes and Acts of God.** Neither the business nor the properties of any Borrower are now affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty, nor does any Borrower have any reason to believe that they will be affected in the future, by any strike, lockout or other labor dispute or embargo (whether or not any of the foregoing are covered by insurance) materially and adversely affecting such business or properties or the operation of any Borrower.

**SECTION 5.06. Other Agreements.** Borrower is not a party to any indenture, loan, or credit agreement, or, to any Borrower's knowledge, to any lease or other agreement or instrument, or subject to any charter or corporate restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of Borrower, or the ability of Borrower to carry out its obligations under the Loan Documents to which it is a party. Borrower is not in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party.

**SECTION 5.07. Litigation.** There is no pending or, to Borrower's knowledge, threatened action or proceedings against or affecting Borrower before any court, governmental agency or arbitrator which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties, or business of any Borrower or the ability of any Borrower to perform its obligations under the Loan Documents to which it is a party.

**SECTION 5.08. No Defaults on Outstanding Judgments or Orders.** Borrower has satisfied all judgments against it and Borrower is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation of any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency or instrumentality, domestic or foreign.

**SECTION 5.09. Ownership and Liens.** Borrower has title to, or valid leasehold interests in, all of its properties and assets, real and personal, including the properties and assets pledged as Collateral to the Bank (other than any properties or assets disposed of in the ordinary course of business), and none of the properties and assets owned by the Borrower is subject to any Lien, except such as may be permitted by this Agreement.

**SECTION 5.10. ERISA.** Neither Borrower nor any ERISA Affiliate (if any) is party to or a participant in any Multiemployer Plan that is subject to ERISA.

**SECTION 5.11. Operation of Business.** To the best of Borrower's knowledge, Borrower possesses all licenses, permits, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, to conduct their business substantially as now conducted and as presently proposed to be conducted, and Borrower is not in violation of any valid rights of others with respect to any of the foregoing.

**SECTION 5.12. Taxes.** Borrower has filed all tax returns (federal, state and local) required to be filed and has paid all taxes, assessments, and governmental charges and levies thereon which are due, including interest and penalties.

## **ARTICLE VI**

### **AFFIRMATIVE COVENANTS**

So long as the Note shall remain unpaid or the Bank shall have any Commitment under this

Agreement, the Borrower will:

**SECTION 6.01. Maintenance of Existence.** Preserve and maintain its existence and good standing in the jurisdiction of its organization, and qualify and remain qualified as a foreign business entity in each jurisdiction in which such qualification is required, except where the failure to so qualify would not have a material adverse effect on Borrower's business or financial condition.

**SECTION 6.02. Maintenance of Records.** Keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, reflecting all financial transactions of the Borrower.

**SECTION 6.03. Maintenance of Properties.** Maintain, keep, and preserve, all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

**SECTION 6.04. Conduct of Business.** Continue to engage in business of the same general type as conducted by it on the date of this Agreement.

**SECTION 6.05. Maintenance of Insurance.** Maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibility from coverage thereof, and shall include, without limitation, (i) fire, theft and casualty insurance insuring property pledged to secure the Loan in an amount of not less than full replacement value and (ii) public liability insurance including, without limitation automobile and appropriate liability coverage relating to the Collateral in the amount of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate, and (iii) business interruption insurance. All personal property and Improvements pledged as Collateral for the Loan shall be insured against fire, theft and casualty loss to the full insurable value thereof.

Borrower shall immediately notify the Bank upon the occurrence of any material business interruption or of any material casualty, damage or loss to Collateral or seizure of any Collateral for any reason including, without limitation, action of any foreign government.

**SECTION 6.06. Compliance with Laws.** Comply in all material respects with all applicable laws, rules, regulations, and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments, and governmental charges imposed upon it or upon its property unless same are being contested by Borrower in good faith in a manner that precludes the issuance of any tax deed or foreclosure of any lien or claim for unpaid taxes against the Collateral.

**SECTION 6.07. Right of Inspection.** Upon reasonable prior notice, at any reasonable time and from time to time, permit the Bank or any agent or representative thereof to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances, and accounts of the Borrower with any of its officers and directors and the

Borrower's independent accountants.

**SECTION 6.08. Reporting Requirements.** Furnish to the Bank:

(1) (A) **Quarterly Financial Statements.** As soon as available and in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, internally prepared financial statements including, without limitation, statements of income of the Borrower and balance sheets for the period commencing at the end of the previous fiscal quarter, if any, and ending with the end of such quarter, and a statement of change in cash flow of the Borrower for the portion of the fiscal year ended with the last day of such quarter, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the previous fiscal year, if any, and all prepared on a consolidated and consolidating basis in accordance with GAAP consistently applied and certified by the controller, treasurer or chief financial officer of the Borrower (subject to year-end adjustments).

(B) **Annual Audited Financial Statements.** As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of the Borrower, audited financial statements prepared by an independent certified public accountant reasonably acceptable to the Bank including, without limitation, a balance sheet of the Borrower as of the end of such fiscal year and a statement of income and retained earnings of the Borrower for such fiscal year, and a statement of change in cash flow, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior fiscal year, if any, and all prepared on a consolidated and consolidating basis in accordance with GAAP consistently applied and certified by the controller, treasurer or chief financial officer of the Borrower.

(2) **Management Letters.** Promptly upon receipt thereof, copies of any reports submitted to the Borrower by independent certified public accountants in connection with examination of the financial statements of the Borrower or any Subsidiary made by such accountants;

(3) **Compliance Certificate.** As soon as available and in any event within thirty (30) days after the end of each of the first three fiscal quarters of Borrower, and concurrently with delivery to the Bank of the Borrower's annual, financial statements, a certificate signed by both the president and the chief financial officer of Borrower, certified as to accuracy and completeness, showing (i) compliance with the financial covenants set forth in **Article VIII** of this Agreement with all supporting calculations and data, and (ii) for the purpose of determining the Applicable Margin, a calculation of the Funded Debt to EBITDA Ratio, and (iii) certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto;

(4) **Notice of Litigation.** Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the Borrower or any Subsidiary, which, if determined adversely to the Borrower or such Subsidiary, would have a material adverse effect on the financial



condition, properties, or operations of the Borrower and its Subsidiaries taken as a whole;

(5) **Notice of Defaults and Events of Default.** Immediately after the occurrence of each Default or Event of Default, a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by the Borrower with respect thereto;

(6) **Proxy Statements, Etc.** Promptly after the sending or filing thereof, copies of all proxy statements, financial statements, and reports which the Borrower or any corporation of which such Borrower is a Subsidiary sends to its stockholders, and copies of all regular, periodic, and special reports, and all registration statements which the Borrower or any parent corporation files with the Securities and Exchange Commission or any governmental authority which may be substituted therefor, or with any national securities exchange;

(7) **Notice of Acquisition, Bulk Sale, Merger or Change in Control.** Prior to any (i) proposed acquisition of control of or purchase of all or any substantial part of the assets of any corporation or business entity by the Borrower; (ii) sale of all or any substantial part of the assets of the Borrower; or (iii) any merger by the Borrower with any other entity whether or not a Borrower is to survive the merger; the Bank shall be provided with not less than thirty (30) days advance written notice.

(8) **Notice of Business Interruption, etc.** Borrower shall immediately notify the Bank upon the occurrence of any business interruption, any casualty or damage or loss of property which could have a material adverse effect on the business of the Borrower for any reason, including, but not limited to any action of any foreign government.

(9) **Notice of Change of Borrower's Name or Change in Location of Collateral.** Borrower shall, prior to the effective date of any change in Borrower's name and prior to any change in location of any Collateral (except for Inventory and work in progress moving among Borrower's and Borrower's Subsidiaries' business locations in the ordinary course of Borrower's business), notify the Bank in writing of the impending occurrence of any such event and the effective date thereof.

(10) **General Information.** Such other information respecting the condition or operations, financial or otherwise, of the Borrower or any subsidiary as the Bank may from time to time reasonably request.

**SECTION 6.09. Hedge Agreements.** Borrower hereby grants to the Bank a right of first refusal to enter into any Hedge Agreements with Borrower. Borrower shall make first inquiry of the Bank regarding the availability of any such Hedge Agreements and the terms of such offered by the Bank. In the event that Borrower thereafter negotiates a Hedge Agreement with a third party on terms more favorable than those offered by the Bank, the Borrower shall thereupon provide the Bank with the written terms of such third party Hedge Agreement and the Bank shall have a right of first refusal to enter into a Hedge Agreement on the same terms. Violation by the Borrower of the Bank's right of first refusal hereunder shall constitute an Event of Default under this Agreement.

**SECTION 6.10. Unconditional Obligations.** The payment and performance by the Borrower of its obligations under the Loan Documents shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim Borrower might otherwise have against the Bank and the Borrower shall pay absolutely net all of its payment obligations under the Loan Documents free of any deductions and without abatement, diminution or set-off; and until payment in full of all such obligations, the Borrower: (a) will not suspend or discontinue any payments provided for in the Note; (b) will perform and observe all of its other agreements contained in the Loan Documents; and (c) will not terminate or attempt to terminate this Agreement for any cause.

**ARTICLE VII**  
**NEGATIVE COVENANTS**

So long as the Note shall remain unpaid or the Bank shall have any Commitment under this Agreement, the Borrower will not, without the prior written consent of the Bank:

**SECTION 7.01. Liens.** Create, incur, assume, or suffer to exist, or permit any Subsidiary to create, incur, assume, or suffer to exist, any Lien upon or with respect to any of the Collateral now owned or hereafter acquired except for Liens of the Bank, and except for purchase money Liens not exceeding \$1,000,000.00.

**SECTION 7.02. Mergers, Bulk Sale or Acquisition of Assets, Etc.** Merge or consolidate with, or sell, assign, lease, or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to any Person, or acquire all or substantially all of the assets or the business of any Person (whether in one transaction or in a series of transactions totaling \$500,000 or more in the aggregate), or permit any domestic Subsidiary to do so, except that (1) any Subsidiary may merge into or transfer assets to the Borrower and (2) any Subsidiary may merge into or consolidate with or transfer assets to any other Subsidiary. Bank's consent under this Section 7.02 shall not be unreasonably withheld.

**SECTION 7.03. Sale and Leaseback.** Sell, transfer, or otherwise dispose of, or permit any subsidiary to sell, transfer, or otherwise dispose of, any real or personal property to any Person and thereafter directly or indirectly lease back the same or similar property, for less than fair market value.

**SECTION 7.04. Sale of Assets.** Except for (i) the sale of goods and services in the ordinary course of Borrower's business, and (ii) the sale or other disposition of assets that have reached the end of their useful life for purposes of Borrower's business and which are to be replaced by assets of like kind or function, sell, lease, assign, transfer, or otherwise dispose of any of its now owned or hereafter acquired assets with an individual value of \$100,000 or more or in an aggregate value of more than \$350,000 annually for other than a price equal to 90% or more of the original purchase value to be paid to Borrower in currently available funds at or prior to the transfer.

**SECTION 7.05. Investments.** Make, or permit any domestic Subsidiary to make, any loan or

advance to any Person, or purchase or otherwise acquire, or permit any domestic Subsidiary to purchase or otherwise acquire, any capital stock or investment in an aggregate value of more than \$500,000 in any twelve (12) month period other than in the ordinary course of business, or other securities of, make any capital contribution to, or otherwise invest in or acquire any interest in any Person, except: (1) direct obligations of the United States or any agency thereof with maturities of one year or less from the date of acquisition; (2) commercial paper of a domestic issuer rated at least "A-1" by Standard & Poor's Corporation or "P-1" by Moody's Investors Service, Inc.; (3) certificates of deposit with maturities of one year or less from the date of acquisition issued by any commercial bank having capital and surplus in excess of Twenty Million Dollars (\$20,000,000.00); (4) stock, obligations, or securities received in settlement of debts (created in the ordinary course of business) owing to the Borrower or any Subsidiary; (5) loans to or to purchase securities of the Borrower or a Subsidiary; and (6) to accept promissory notes from employees as payment for the purchase price of stock purchased pursuant to an employee stock option plan.

**SECTION 7.06. Transactions With Affiliates.** Except as may otherwise be permitted by **Section 7.05**, make any loans to any Affiliate nor enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of the Borrower's business and upon fair and reasonable terms no less favorable to the Borrower than would obtain in a comparable arm's-length transaction with a Person not an Affiliate.

**SECTION 7.07. Stock of Subsidiary, Etc.** Sell or otherwise dispose of any shares of capital stock of any Subsidiary or permit any Subsidiary to issue any additional shares of its capital stock other than to Borrower or another Subsidiary.

**SECTION 7.08. Guaranties and Contingent Liabilities.** Enter into any guaranty agreement whereby Borrower guaranties payment or performance of any indebtedness or obligations of any Person other than a Subsidiary; nor assume any contingent liability of any kind or character whatsoever other than that of a Subsidiary.

**SECTION 7.09 Debt.** Enter into any capitalized leases or incur any indebtedness, whether direct or contingent, other than trade payables, equipment leases and normal accrued expenses which arise under normal operation of Borrower's business.

**SECTION 7.10. Transfer and Change of Location of Collateral.** Transfer or permit the transfer to another location not currently owned or leased by Borrower, of any of the Collateral or the books and records related to any of the Collateral. Borrower shall provide, at any time and from time to time, written lists of the location of Collateral within thirty (30) days after Bank's request.

**SECTION 7.11. Change of Borrower's Name.** Change Borrower's name without giving twenty (20) Business Days prior written notice to the Bank.

**SECTION 7.12 Foreign Asset Purchases.** Use any of the Revolving Line of Credit Facility in excess of \$5,000,000.00 to purchase foreign Assets or direct any Advances under the Revolving Line of Credit Facility in excess of \$5,000,000.00 to Borrower's foreign Subsidiaries.

## ARTICLE VIII

### FINANCIAL COVENANTS

**SECTION 8.01. Maximum Total Liabilities to Tangible Net Worth.** The Borrower shall maintain on a consolidated basis determined quarterly during the term of this Agreement a ratio of Debt to Tangible Net Worth of not more than 1.5 to 1.0.

**SECTION 8.02. Minimum EBIT to Interest Expenses.** The Borrower shall maintain on a consolidated basis determined quarterly during the term of this Agreement a minimum EBIT to Interest Expense Ratio of 1.1 to 1.0.

**SECTION 8.03. Maximum Leverage Ratio.** The Borrower shall maintain on a consolidated basis during the term of this Agreement a maximum ratio of Funded Debt to EBIDTA of less than 2.5 to 1.0. Compliance with this covenant shall be determined quarterly on a rolling four quarters basis.

**SECTION 8.04. Banking Deposit Relationship.** Borrower shall, during the term of this Agreement, maintain its primary domestic depository accounts with the Bank.

## ARTICLE IX

### EVENTS OF DEFAULT

**SECTION 9.01. Events of Default.** The occurrence of any of the following events shall constitute an Event of Default:

- (1) The Borrower should fail to pay the principal of or interest on the Note, or any fee, as and when due and payable;
- (2) Any representation or warranty made or deemed made by the Borrower in this Agreement or which is contained in any guaranty, certificate, document, opinion, or financial or other statement furnished at any time under or in connection with any Loan Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made;
- (3) Borrower shall fail to perform or observe in any material respect any term, covenant, or agreement or shall default under any material provision contained in any Loan Document including, without limitation, the financial reporting requirements in Article VI and the financial covenants in Article VIII of this Agreement which are expressly deemed to be material;

(4) Borrower or any Subsidiary shall (a) fail to pay any indebtedness for borrowed money in excess of \$50,000.00 (other than the Note), or any interest or premium thereon, when due or within any applicable grace period (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), or (b) fail to perform or observe any material term, covenant, or condition on its part to be performed or observed under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, if the effect of such failure of payment or to perform or observe is to accelerate, or to permit the acceleration after the giving of notice or passage of time, or both, of the maturity of such indebtedness; or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof;

(5) Borrower or any Subsidiary (a) shall generally not, or shall be unable to, or shall admit in writing its inability to pay its debts as such debts become due; or (b) shall make an assignment for the benefit of creditors, petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (c) shall commence any proceeding under any bankruptcy, reorganization, arrangements, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (d) shall have any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or adjudication or appointment is made and which remains undismissed for a period of sixty (60) days or more; or (e) by any act or omission shall indicate its consent to, approval of, or acquiescence in any such petition, application, or proceeding, or order for relief, or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties; or (f) shall suffer any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more;

(6) One or more judgments, decrees, or orders for the payment of money in excess of Fifty Thousand Dollars (\$50,000.00) in the aggregate shall be rendered against Borrower or any Guarantor and such judgments, decrees, or orders shall continue unsatisfied and in effect for a period of thirty (30) consecutive days without being vacated, discharged, satisfied, or stayed or bonded pending appeal;

(7) Borrower or any Subsidiary shall in any material respect fail to comply with any statute, rule, regulation, ordinance, order, or other law or judicial decree regarding such Borrower, its premises or assets;

(8) Borrower defaults under any Other Agreements and such default continues beyond any applicable cure period provided therein;

(9) Any foreclosure, execution or attachment shall be instituted or levied against the Collateral, or any part thereof, and such foreclosure, execution or attachment shall not be dismissed, set aside, discharged or stayed within thirty (30) days after the same shall have been levied; or

(10) If Borrower's existence shall be liquidated, dissolved or terminated, or Borrower shall suspend or terminate a substantial portion of its business operations.

**SECTION 9.02. Action if Bankruptcy.** If any Event of Default described in **Section 9.01 (5)** shall occur, the Commitment (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of the outstanding Loan and Advances and all other obligations of the Borrower under the Loan Documents shall automatically be and become immediately due and payable, without notice or demand or presentment and the Bank shall, subject to limitations imposed by laws relating to bankruptcy, moratorium and equitable limitations on enforcement of creditors' rights generally, pursue any and all rights of the Bank under the Loan Documents including, without limitation, foreclosure as to any and all pledged Collateral.

**SECTION 9.03. Action if Other Event of Default.** Upon the occurrence of any of the events described in **Section 9.01 (2), (3), (4) or (6) through (10)**, the Borrower shall have thirty (30) days after receipt of written notice from the Bank (which may be given by facsimile) within which to effect a cure. If any Event of Default (other than any Event of Default described in **Section 9.01 (5)**) shall occur for any reason, whether voluntary or involuntary, and be continuing after any applicable cure period, then, and in any such event, the Bank may: (1) declare its obligations under this Agreement to be terminated, whereupon the same shall forthwith terminate; (2) declare the Note, all interest thereon, and all other amounts payable under this Agreement and the Loan Documents to be forthwith due and payable, whereupon the Note, all such interest, and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by the Borrower; and (3) pursue any and all rights of the Bank under the Loan Documents including, without limitation, foreclosure as to any and all pledged Collateral.

**SECTION 9.04. Specific Rights With Regard to Collateral.** In addition to all other rights and remedies provided hereunder or as shall exist at law or in equity from time to time upon occurrence of an Event of Default, the Bank may (but shall be under no obligation to), without notice to the Borrower, and the Borrower hereby irrevocable appoints the Bank as its attorney-in-fact, with power of substitution, in the name of the Bank or in the name of the Borrower or otherwise, for the use and benefit of the Bank, but at the cost and expense of the Borrower and without notice to Borrower, upon the occurrence of an Event of Default:

- (i) request any lessee under any Lease to make payments directly to the Bank to the extent such payments are not already being made directly to the Bank, with the Bank taking control of the cash and non-cash proceeds thereof;
- (ii) compromise, extend or renew any of the Collateral or deal with the same as Bank may deem advisable subject to government tax liens in respective states and municipalities;
- (iii) make exchanges, substitutions or surrenders of all or any part of the Collateral;
- (iv) copy, transcribe or remove from any place of business of Borrower any of Borrower's Books, records, ledger sheets, correspondence, invoices and documents in any way relating to or evidencing any of the Collateral or without cost or expense to the Bank make such use of any of Borrower's places of business as may be reasonably necessary to

administer, control, and collect the Collateral;

- (v) repair, alter or supply goods if necessary to fulfill in whole or in part the purchase order of any Account debtor;
- (vi) demand, collect, receipt for and give renewals, extensions, discharges and releases of any of the Collateral;
- (vii) institute and prosecute legal and equitable proceedings to enforce collection of, or realize upon any of the Collateral;
- (viii) settle, renew, extend, compromise, compound, exchange or adjust claims in respect of any of the Collateral or any legal proceedings brought in respect thereof;
- (ix) endorse or sign the name of the Borrower upon any items of payment, certificates of title, instruments, securities, stock powers, documents, documents of title, or other writing relating to or part of the Collateral including, without limitation, on any Proof of Claim in Bankruptcy against an Account debtor;
- (x) take any other action necessary or beneficial to realize upon or dispose of the Collateral.

## ARTICLE X

### MISCELLANEOUS

**SECTION 10.01. Amendments, Etc.** No amendment, modification, termination, or waiver of any provision of any Loan Document to which the Borrower is a party, nor consent to any departure by the Borrower from any Loan Document to which it is a party, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**SECTION 10.02. Notices, Etc.** All notices and other communications provided for under this Agreement and under the other Loan Documents to which the Borrower is party shall be in writing (including facsimile) and mailed or delivered, if to the Borrower, at 1500 West University Parkway, Sarasota, FL 34243, Attention: Chief Financial Officer, Fax No. (941) 362- 1268; and if to the Bank, at its address at 4401 W. Kennedy Blvd., Suite 300, Tampa, FL 33609, Attention: John A. Marian, with copy to DLA Piper Rudnick Gray Cary US LLP, 101 E. Kennedy Blvd., Suite 2000, Tampa, FL 33602, Attention: Michael A. Bedke, Esq.; or, as to each party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this **Section 10.02**. All such notices and communications shall, when mailed or delivered, be effective when deposited in the mails or delivered to the courier service, respectively, addressed as aforesaid, except that notices to the Bank pursuant to the provisions of Article II shall not be effective until received by the Bank. Notices sent by facsimile shall be deemed to be effective upon machine confirmation of receipt.

**SECTION 10.03. No Waiver; Remedies.** No failure on the part of the Bank to exercise, and no delay in exercising, any right, power, or remedy under any Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any rights under any Loan Documents preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Loan Documents are cumulative and not exclusive of any remedies provided by law.

**SECTION 10.04. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Borrower and the Bank and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights under any Loan Document to which the Borrower is party without the prior written consent of the Bank.

**SECTION 10.05. Costs, Expenses, and Taxes.** The Borrower agrees to pay on demand all costs and expenses in connection with the preparation, execution, delivery, filing, recording, and administration of any of the Loan Documents, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Bank, with respect thereto and with respect to advising the Bank as to its rights and responsibilities under any of the Loan Documents, and all costs and expenses, if any, in connection with the enforcement of any of the Loan Documents. In addition, the Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of any of the Loan Documents and the other documents to be delivered under any such Loan Documents, and agree to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

**SECTION 10.06. Right of Setoff.** Upon the occurrence and during the continuance of any Event of Default the Bank is hereby authorized at any time and from time to time, without notice to the Borrower (any such notice being expressly waived by the Borrower), to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Bank to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or the Note or any other Loan Document, irrespective of whether or not the Bank shall have made any demand under this Agreement or the Note or such other Loan Document and although such obligations may be unmatured. The Bank agrees promptly to notify the Borrower after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Bank under this **Section 10.06** are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the Bank may have.

**SECTION 10.07. Governing Law and Venue.** This Agreement and the Note and all Loan Documents shall be governed by, and construed in accordance with, the laws of the State of Florida. Any suit brought under or relating to this Agreement, the Note or any Loan Document shall be brought exclusively in a court of competent jurisdiction in Hillsborough County, Florida. The foreign Borrowers expressly agree to and hereby do (i) submit to personal jurisdiction and venue in the United States District Court in and for the Middle District of Florida, and (ii) hereby appoint Sun Hydraulics Corporation as their respective agent in the United States of America for the purpose of receipt of service of process on



the foreign Borrowers, in each case of (i) and (ii) for any action arising under or in any way relating to the Loan Documents notwithstanding any provision to the contrary contained in any Loan Document. The prevailing party in any action brought under or relating to this Agreement, the Note or any Loan Document shall be entitled to recover its reasonable attorneys' fees, paralegal's fees and costs of suit, including fees and costs on appeal and in bankruptcy proceedings.

**SECTION 10.08. Severability of Provisions.** Any provision of any Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

**SECTION 10.09. Headings.** Article and Section headings in the Loan Documents are included in such Loan Documents for the convenience of reference only and shall not constitute a part of the applicable Loan Documents for any other purpose.

**SECTION 10.10. Waiver of Jury Trial.** As an important inducement to the Bank to enter this Agreement, Borrower and Bank each waive the right to trial by jury in any action arising under or in any way related to this Agreement.

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

**FIFTH THIRD BANK**

By: /s/ John A. Marian  
Name: John A. Marian  
Title: Vice President

**SUN HYDRAULICS CORPORATION,**  
a Florida corporation

By: /s/ Tricia Fulton  
Name: Tricia Fulton  
Title: Corp. Finance

**RENEWAL AND FUTURE ADVANCE  
REVOLVING LINE OF CREDIT PROMISSORY NOTE**

\$35,000,000.00

August 11, 2005  
Tampa, Florida

1. **Agreement to Pay.** FOR VALUE RECEIVED, SUN HYDRAULICS CORPORATION, a Florida corporation ("**Borrower**"), hereby promises to pay to the order of FIFTH THIRD BANK, a Michigan banking corporation, its successors and assigns ("**Lender**"), the principal sum of Thirty-Five Million Dollars (\$35,000,000.00) ("**Loan**"), or so much thereof as may be advanced pursuant to that certain Credit and Security Agreement dated on or about even date herewith, between Borrower and Lender ("**Loan Agreement**") at the place and in the manner hereinafter provided, together with interest thereon at the rate or rates described below, and any and all other amounts which may be due and payable hereunder from time to time. The outstanding principal balance plus all accrued interest thereon shall be due and payable, if not sooner paid, on August 1, 2011 (the "**Maturity Date**").

2. **Interest Rate.**

2.1 **Interest Prior to Default.**

(a) Interest shall accrue on the outstanding principal balance of this Note advanced from time to time to Borrower's operating account maintained with Lender (the "**Operating Account Advances**"), at an annual interest rate (the "**Operating Account Rate**") equal to the Base Rate (as hereafter defined), adjusted daily.

(b) Interest shall accrue on the outstanding principal balance of this Loan other than the amounts advanced from time to time to Borrower's operating account maintained with Lender (the "**Balance of the Loan**"), at an annual interest rate (the "**Balance Rate**") equal to the Base Rate. Borrower may request, upon not less than one business day's prior written notice to Lender, a conversion of the Balance Rate to the 30-day LIBOR Rate (as hereafter defined) plus the applicable LIBOR Margin set forth in the following pricing matrix.

Pricing Matrix

<b>Leverage Ratio</b>				
<b>Funded Debt/EBITDA</b>	<b>LIBOR Margin</b>	<b>Base Rate Margin</b>	<b>Facility Fee</b>	
<2.25:1.0	1.50 %	0.00 %		0.00%
>=2.25:1.0	2.00%	0.00%		0.150%

Notwithstanding the foregoing, from the date hereof through August 11, 2006, interest shall accrue on the Balance of the Loan at a rate equal to the 30-day LIBOR Rate plus one and one-half percent (1.50%).

(c) Provided no Event of Default (as hereafter defined) exists, Borrower shall have the option at any time after August 11, 2006, and upon not

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less than fifteen (15) days' prior written notice to Lender and payment of any applicable fees and costs, to convert the Balance Rate, applicable to all or a portion of the Balance of the Loan, in increments of \$1,000,000.00, to a fixed rate of interest (the "**Fixed Rate Option**") (to be determined at the time of such conversion in Lender's discretion based upon such factors, including but not limited to Bank's then current underwriting standards, as may then be applicable) under an interest rate swap agreement.

(d) "**Base Rate**" means the rate of interest most recently announced by Lender as its prime or base rate. A certificate made by an officer of Lender stating the Base Rate in effect on any given day, for the purposes hereof, shall be conclusive evidence of the Base Rate in effect on such day. The "Base Rate" is a base reference rate of interest adopted by Lender as a general benchmark from which Lender determines the floating interest rates chargeable on various loans to borrowers with varying degrees of creditworthiness and Borrower acknowledges and agrees that Lender has made no representations whatsoever that the "Base Rate" is the interest rate actually offered by Lender to borrowers of any particular creditworthiness. Changes in the rate of interest to be charged hereunder based on the Base Rate shall take effect immediately upon the occurrence of any change in the Base Rate.

(e) "**30-day LIBOR Rate**" means the variable rate of interest per annum equal to interest rate per annum published by The Wall Street Journal as "London Interbank Offered Rates" for U.S. Dollar deposits having a maturity of 30 days, as of the 11<sup>th</sup> day of August, 2005, and as of the first business day of each and every calendar month thereafter through the Maturity Date. Changes in the rate of interest to be charged hereunder based on the 30-day LIBOR Rate shall take effect immediately upon the occurrence of any change in the 30-day LIBOR Rate.

In the event that: (i) the Lender shall have determined (which determination shall be conclusive and binding upon the Borrower absent demonstrable error) that adequate and reasonable means do not exist for ascertaining the 30-day LIBOR Rate, or (ii) any law, regulation, treaty or directive or any change therein or the interpretation thereof shall make it unlawful for Lender to maintain the Loan at a rate based on the 30-day LIBOR Rate, and, in either situation, Lender is generally refusing to make loans bearing interest at rates based upon the 30-day LIBOR Rate as a result of such circumstances, Lender shall forthwith give written notice of such determination to Borrower and as long as the circumstances described in clauses (i) or (ii) shall continue, the Loan shall bear interest during such period at a rate equal to a rate of interest selected by Lender based on comparable information. Lender shall forthwith notify Borrower in writing when the circumstances described in clauses (i) or (ii), as applicable, shall cease.

2.2 Interest After Default. From and after the Maturity Date or upon the occurrence and during the continuance of an Event of Default, interest shall accrue on the

balance of principal remaining unpaid during any such period at an annual rate (“**Default Rate**”) equal to five percent (5%) plus the Base Rate; provided, however, in no event shall the Default Rate exceed the maximum rate permitted by law. The interest accruing under this paragraph shall be immediately due and payable by Borrower to the holder of this Note upon demand and shall be additional indebtedness evidenced by this Note.

2.3 Interest Calculation. Interest on this Note shall be calculated on the basis of a 360-day year and the actual number of days elapsed in any portion of a month in which interest is due.

### 3. **Payment Terms.**

3.1 Principal and Interest. Payments of principal and interest due under this Note, if not sooner declared to be due in accordance with the provisions hereof, shall be made as follows:

(a) Commencing on August 11, 2005, and on each Business Day thereafter through and including the Maturity Date, interest accrued on the Operating Account Advances shall be due and payable.

(b) Commencing on September 1, 2005 and on the first Business Day of each month thereafter through and including the month in which the Maturity Date occurs, interest accrued on the Balance of the Loan shall be due and payable.

(c) The unpaid principal balance of this Note, if not sooner paid or declared to be due in accordance with the terms hereof, together with all accrued and unpaid interest thereon and any other amounts due and payable hereunder or under any other Loan Document (as hereinafter defined), shall be due and payable in full on the Maturity Date.

(d) Provided no Event of Default exists, any portion of the principal balance of this Note which is repaid may be reborrowed by Borrower prior to the Maturity Date provided that in no event shall the outstanding principal balance of this Note at any time exceed Thirty-Five Million Dollars (\$35,000,000.00).

3.2 **Application of Payments.** Prior to the occurrence of an Event of Default, all payments and prepayments on account of the indebtedness evidenced by this Note shall be applied as follows: (a) first, to fees, expenses, costs and other similar amounts then due and payable to Lender, including, without limitation any prepayment premium, exit fee or late charges due hereunder, (b) second, to accrued and unpaid interest on the principal balance of this Note, (c) third, to the payment of principal due in the month in which the payment or prepayment is made, (d) fourth, to any escrows, impounds or other amounts which may then be due and payable under the Loan Documents (as hereinafter defined), (e) fifth, to any other amounts then due Lender hereunder or under any of the Loan Documents, and (f) last, to the unpaid principal balance of this Note in the inverse order of maturity. Any prepayment on account of the indebtedness evidenced by this Note shall not extend or postpone the due date or reduce the amount of any subsequent monthly payment of principal and interest due hereunder. After an Event of Default has

occurred and is continuing, payments may be applied by Lender to amounts owed hereunder and under the Loan Documents in such order as Lender shall determine, in its sole discretion.

**3.3 Method of Payments.** All payments of principal and interest hereunder shall be paid by automatic debit, wire transfer, check or in coin or currency which, at the time or times of payment, is the legal tender for public and private debts in the United States of America and shall be made at such place as Lender or the legal holder or holders of this Note may from time to time appoint in the payment invoice or otherwise in writing, and in the absence of such appointment, then at the offices of Lender at 4401 W. Kennedy Blvd., Suite 300, Tampa, Florida 33609. Payment made by check shall be deemed paid on the date Lender receives such check; provided, however, that if such check is subsequently returned to Lender unpaid due to insufficient funds or otherwise, the payment shall not be deemed to have been made and shall continue to bear interest until collected. Notwithstanding the foregoing, the final payment due under this Note must be made by wire transfer or other final funds. Interest, principal payments and any fees and expenses owed Lender from time to time will be deducted by Lender automatically on the due date from Borrower's account with Lender, as designated in writing by Borrower. Borrower will maintain sufficient funds in the account on the dates Lender enters debits authorized by this Note. If there are insufficient funds in the account on the date Lender enters any debit authorized by this Note, the debit will be reversed. Borrower may terminate this direct debt arrangement at any time by sending written notice to Lender at the address specified above.

**3.4 Late Charge.** If any payment of interest or principal due hereunder is not made within five days after such payment is due in accordance with the terms hereof, then, in addition to the payment of the amount so due, Borrower shall pay to Lender a "late charge" of five cents for each whole dollar so overdue to defray part of the cost of collection and handling such late payment. Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment are extremely difficult and impractical to ascertain, and that the amount of five cents for each one dollar due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty.

**3.5 Prepayment.** The Operating Account Advances bearing interest at the Operating Account Rate may be prepaid, either in whole or in part, without penalty or premium, at any time and from time to time without prior notice to Lender. The portion of this Note bearing interest at the Balance Rate may be prepaid, either in whole or in part, without penalty or premium, at any time and from time to time upon two (2) business days' prior notice to Lender. The portion of this Note bearing interest at the Fixed Rate Option may be prepaid, either in whole or in part, provided that Borrower pays, in addition to payment of the outstanding principal balance, accrued interest and other sums due hereunder, all costs, including but not limited to yield maintenance premiums, required to "make whole" Lender, and provides not less than one (1) business day's prior notice to Lender.

**3.6 Loan Fees.** In consideration of Lender's agreement to make the loan, Borrower shall pay to Lender a non-refundable fee in the amount of Fifty-Two Thousand

Five Hundred and 00/100 Dollars (\$52,500.00), which shall be due and payable simultaneously with execution of this Note.

4. **Security.** This Note is secured by, among other things, a Renewed, Amended and Restated Mortgage and Security Agreement dated of even date herewith (the "**Mortgage**") made by Borrower to Lender creating a first mortgage lien on certain real property ("**Premises**") legally described in **Exhibit "A"** attached to the Mortgage, an Assignment of Lessor's Interest in Lease ("**Assignment**") dated of even date herewith from Borrower to Lender, an Environmental Indemnity Agreement ("**Indemnity Agreement**") dated of even date herewith from Borrower to Lender, and a Credit and Security Agreement dated of even date herewith from Borrower to Lender (the "**Loan Agreement**") (the Mortgage, the Assignment, the Indemnity Agreement, the Loan Agreement and any other document previously, currently or hereafter given to evidence or secure payment of this Note or delivered to induce Lender to disburse the proceeds of the Loan, as such documents may hereafter be amended, restated or replaced from time to time, are hereinafter collectively referred to as the "**Loan Documents**"). Reference is hereby made to the Loan Documents (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

5. **Events of Default.** The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under this Note:

5.1 the failure by Borrower to pay (i) any installment of principal or interest payable pursuant to this Note on the date when due, or (ii) any other amount payable to Lender under this Note, the Mortgage or any of the other Loan Documents within five (5) days after the date when any such payment is due in accordance with the terms hereof or thereof; or

5.2 the occurrence of any "Event of Default" under the Mortgage or any of the other Loan Documents.

6. **Remedies.** At the election of the holder hereof, and without notice, the principal balance remaining unpaid under this Note, and all unpaid interest accrued thereon and any other amounts due hereunder, shall be and become immediately due and payable in full upon the occurrence of any Event of Default. Failure to exercise this option shall not constitute a waiver of the right to exercise same in the event of any subsequent Event of Default. No holder hereof shall, by any act of omission or commission, be deemed to waive any of its rights, remedies or powers hereunder or otherwise unless such waiver is in writing and signed by the holder hereof, and then only to the extent specifically set forth therein. The rights, remedies and powers of the holder hereof, as provided in this Note, the Mortgage and in all of the other Loan Documents are cumulative and concurrent, and may be pursued singly, successively or together against Borrower, the Guarantors hereof, the Premises and any other security given at any time to secure the repayment hereof, all at the sole discretion of the holder hereof. If any suit or action is instituted or attorneys are employed to collect this Note or any part hereof, Borrower promises and agrees to pay all costs of collection, including reasonable attorneys' fees and court costs.

7. **Covenants and Waivers.** Borrower and all others who now or may at any time become liable for all or any part of the obligations evidenced hereby, expressly agree hereby to be jointly and severally bound, and jointly and severally: (i) waive and renounce any and all homestead, redemption and exemption rights and the benefit of all valuation and appraisement privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof; (ii) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (iii) except as expressly provided in the Loan Documents, waive any and all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (iv) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (v) agree that the liability of each Borrower, guarantor, endorser or obligor shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by Lender to any of them with respect hereto; (vi) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (vii) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such makers, endorsers, guarantors or other obligors, or security shall not affect the liability of Borrower, any guarantor and all others now liable for all or any part of the obligations evidenced hereby. This provision is a material inducement for Lender making the Loan to Borrower.

8. **Other General Agreements.**

8.1 Time is of the essence hereof.

8.2 This Note is governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the statutes, laws and decisions of the State of Florida. This Note may not be changed or amended orally but only by an instrument in writing signed by the party against whom enforcement of the change or amendment is sought.

8.3 Lender shall not be construed for any purpose to be a partner, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of its business, and by the execution of this Note, Borrower agrees to indemnify, defend, and hold Lender harmless from and against any and all damages, costs, expenses and liability that may be incurred by Lender as a result of a claim that Lender is such partner, joint venturer, agent or associate.

8.4 This Note has been made and delivered at Tampa, Florida and all funds disbursed to or for the benefit of Borrower will be disbursed in Tampa, Florida.

8.5 If this Note is executed by more than one party, the obligations and liabilities of each Borrower under this Note shall be joint and several and shall be binding upon and enforceable against each Borrower and their respective successors and assigns.

This Note shall inure to the benefit of and may be enforced by Lender and its successors and assigns.

8.6 If any provision of this Note is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

8.7 If the interest provisions herein or in any of the Loan Documents shall result, at any time during the Loan, in an effective rate of interest which, for any month, exceeds the limit of usury or other laws applicable to the Loan, all sums in excess of those lawfully collectible as interest of the period in question shall, without further agreement or notice between or by any party hereto, be applied upon principal immediately upon receipt of such monies by Lender, with the same force and effect as though the payer has specifically designated such extra sums to be so applied to principal and Lender had agreed to accept such extra payment(s) as a premium-free prepayment. Notwithstanding the foregoing, however, Lender may at any time and from time to time elect by notice in writing to Borrower to reduce or limit the collection to such sums which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirements of the preceding sentence. In no event shall any agreed to or actual exaction as consideration for this Loan transcend the limits imposed or provided by the law applicable to this transaction or the makers hereof in the jurisdiction in which the Premises are located for the use or detention of money or for forbearance in seeking its collection.

8.8 Lender may at any time assign its rights in this Note and the Loan Documents, or any part thereof and transfer its rights in any or all of the collateral, and Lender thereafter shall be relieved from all liability with respect to such collateral. In addition, Lender may at any time sell one or more participations in the Note. Borrower may not assign its interest in this Note, or any other agreement with Lender or any portion thereof, either voluntarily or by operation of law, without the prior written consent of Lender.

9. **Notices.** All notices required under this Note will be in writing and will be transmitted in the manner and to the addresses or facsimile numbers required by the Mortgage, or to such other addresses or facsimile numbers as Lender and Borrower may specify from time to time in writing.

10. **Patriot Act.** Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "**Act**"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall



be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act (“BSA”) laws and regulations, as amended.

**11. Consent to Jurisdiction. TO INDUCE LENDER TO ACCEPT THIS NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO LENDER’S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS NOTE WILL BE LITIGATED IN COURTS HAVING SITUS IN HILLSBOROUGH COUNTY, FLORIDA. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN HILLSBOROUGH COUNTY, FLORIDA, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED IN THE MORTGAGE AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.**

**12. Waiver of Jury Trial. BORROWER AND LENDER (BY ACCEPTANCE OF THIS NOTE), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS NOTE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS NOTE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS NOTE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

13. THIS RENEWAL AND FUTURE ADVANCE REVOLVING LINE OF CREDIT PROMISSORY NOTE (THIS “NOTE”) RENEWS (I) THE CURRENT OUTSTANDING PRINCIPAL BALANCE OF \$9,899,273.38 DUE UNDER THAT CERTAIN TERM NOTE (THE “ORIGINAL TERM NOTE”) DATED JULY 23, 2003, IN THE ORIGINAL PRINCIPAL AMOUNT OF \$11,000,000.00 MADE BY SUN HYDRAULICS CORPORATION, A FLORIDA CORPORATION (“BORROWER”), SUN HYDRAULIK HOLDINGS LIMITED, AND SUN HYDRAULICS LIMITED, IN FAVOR OF SOUTHTRUST BANK (“ORIGINAL LENDER”), AS AMENDED AND RESTATED BY THAT CERTAIN AMENDED AND RESTATED TERM NOTE (THE “AMENDED TERM NOTE”) DATED AS OF JULY 23, 2003, IN THE ORIGINAL PRINCIPAL AMOUNT OF \$11,000,000.00 MADE BY BORROWER IN FAVOR OF ORIGINAL LENDER, AND (II) THE CURRENT OUTSTANDING PRINCIPAL BALANCE OF \$0.00 DUE UNDER THAT CERTAIN REVOLVING NOTE (THE “ORIGINAL REVOLVING NOTE”) DATED JULY 23, 2003, IN THE ORIGINAL PRINCIPAL AMOUNT OF \$12,000,000.00 MADE BY BORROWER, SUN HYDRAULIK HOLDINGS LIMITED, AND SUN HYDRAULICS LIMITED, IN FAVOR OF

ORIGINAL LENDER, AS AMENDED AND RESTED BY THAT CERTAIN AMENDED AND RESTATED REVOLVING NOTE (THE "AMENDED REVOLVING NOTE") DATED AS OF JULY 23, 2003, IN THE ORIGINAL PRINCIPAL AMOUNT OF \$12,000,000.00 MADE BY BORROWER IN FAVOR OF ORIGINAL LENDER. THE ORIGINALS OF THE ORIGINAL TERM NOTE, AMENDED TERM NOTE, ORIGINAL REVOLVING NOTE, AND AMENDED REVOLVING NOTE ARE ATTACHED HERETO. THIS NOTE ALSO EVIDENCES A FUTURE ADVANCE OF \$13,100,726.62 TO BORROWER. ALL DOCUMENTARY STAMP TAX AND NON-RECURRING INTANGIBLE TAX DUE ON THE ORIGINAL TERM NOTE AND AMENDED TERM NOTE WERE PAID UPON RECORDATION OF THAT CERTAIN MORTGAGE DATED JULY 23, 2003, RECORDED IN OR BOOK 1849, PAGE 741, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, AND IN OR INSTRUMENT NO. 2003148401, OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA (THE "PUBLIC RECORDS"). DOCUMENTARY STAMP TAX IN THE AMOUNT OF \$14,352.80 AND NON-RECURRING INTANGIBLE TAX IN THE AMOUNT OF \$8,201.45 ARE DUE IN CONNECTION WITH A PORTION OF THE FUTURE ADVANCE MADE HEREUNDER AND ARE BEING PAID UPON RECORDATION OF THAT CERTAIN RENEWED, AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT, DATED ON OR ABOUT EVEN DATE HERewith, SECURING A MAXIMUM PRINCIPAL INDEBTEDNESS OF \$14,000,000, TO BE RECORDED IN THE PUBLIC RECORDS. THERE ARE NO NEW OBLIGORS.

(Remainder of page intentionally left blank)

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Note as of the day and year first written above.

**BORROWER:**

**SUN HYDRAULICS CORPORATION,**  
a Florida corporation

By: /s/ Tricia Fulton

Name: Tricia Fulton

Title: Corp. Finance

PREPARED BY AND RETURN TO:

DLA Piper Rudnick Gray Cary US LLP  
101 E. Kennedy Boulevard, Suite 2000  
Tampa, Florida 33602  
Attention: Scott P. Andrew, Esquire

**RENEWED, AMENDED AND RESTATED  
MORTGAGE AND SECURITY AGREEMENT**

**THIS RENEWED, AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT** ("Mortgage"), is executed and delivered as of August 11, 2005, by and between **SUN HYDRAULICS CORPORATION**, a Florida corporation, having an address at 1500 West University Parkway, Sarasota, Florida 34243 ("Mortgagor"), and **FIFTH THIRD BANK**, a Michigan banking corporation, having an office at 4401 W. Kennedy Boulevard, Suite 300, Tampa, Florida 33609 ("Mortgagee").

**W I T N E S S E T H:**

NOTICE TO CLERK: NOTWITHSTANDING THE AMOUNT OF THE LOAN, THE TOTAL PRINCIPAL AMOUNT OF OBLIGATIONS SECURED BY FLORIDA PROPERTY UNDER THIS MORTGAGE IS \$14,000,000.00.

NOTICE TO CLERK: THIS RENEWED, AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT ENCUMBERS REAL PROPERTY LOCATED IN MANATEE COUNTY, FLORIDA AND, TOGETHER WITH A RENEWED, AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT RECORDED IN SARASOTA COUNTY, FLORIDA, IS SECURITY FOR A LOAN IN THE AMOUNT OF \$35,000,000.00, (THE "LOAN") EVIDENCED BY THAT CERTAIN RENEWAL AND FUTURE ADVANCE REVOLVING LINE OF CREDIT PROMISSORY NOTE OF EVEN DATE HERewith. THIS RENEWAL AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT RENEWS, RESTATES AND AMENDS IN ITS ENTIRETY THAT CERTAIN MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES (THE "PRIOR MORTGAGE") DATED JULY 23, 2003, RECORDED IN OFFICIAL RECORDS BOOK 1849, PAGE 741, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA (THE "MANATEE PUBLIC RECORDS"), AND RECORDED IN OFFICIAL INSTRUMENT NO. 2003148402, OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA. THE PRIOR MORTGAGE SECURED TOTAL PRINCIPAL OBLIGATIONS OF \$11,000,000.00. FLORIDA DOCUMENTARY STAMP TAX AND NON-RECURRING INTANGIBLE TAX WERE PAID ON THE OBLIGATIONS SECURED BY THE PRIOR MORTGAGE UPON RECORDATION OF SUCH PRIOR MORTGAGE IN THE MANATEE PUBLIC RECORDS. FLORIDA DOCUMENTARY STAMP TAX IN THE AMOUNT OF \$14,352.80 AND NON-RECURRING INTANGIBLE TAX IN THE AMOUNT OF \$8,201.45 IN CONNECTION WITH THE LOAN, ARE BEING PAID ON THE ADDITIONAL OBLIGATIONS SECURED HEREBY UPON RECORDATION OF THIS MORTGAGE IN THE MANATEE PUBLIC RECORDS.

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That in consideration of the premises and in order to secure the payment of both the principal of and interest, and any other sums payable, on the Note (as hereinafter defined), and this Mortgage and the performance and observance of all of the provisions hereof and of said Note, Mortgagor hereby grants, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages and sets over and confirms unto Mortgagee, all of Mortgagor's estate, right, title and interest in, to and under all that certain real property (the "Property") situated in Manatee County, Florida and Sarasota County, Florida, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein.

TOGETHER WITH all improvements now or hereafter located on said Property and all fixtures, appliances, apparatus, equipment, heating and air conditioning equipment, machinery and articles of personal property and replacements thereof (other than those owned by any lessees of said Property) now or hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, occupancy, or operation of said Property, all licenses and permits used or required in connection with the use of said Property, all leases of said Property now or hereafter entered into and all right, title and interest of Mortgagor thereunder, including without limitation, cash or securities deposited thereunder pursuant to said leases, and all rents, issues, proceeds, and profits accruing from said Property and together with all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including without limitation, proceeds of insurance and condemnation awards (the foregoing said Property, tangible and intangible personal property hereinafter referred to as the "Mortgaged Property"). Mortgagor hereby grants to Mortgagee a security interest in the foregoing described tangible and intangible personal property.

TO HAVE AND TO HOLD the Mortgaged Property, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions thereof and all the estate, right, title, interest, homestead, dower and right of dower, separate estate, possession, claim and demand whatsoever, in law and in equity, of Mortgagor and unto the same, and every part thereof, with the appurtenances of Mortgagor in and to the same, and every part and parcel thereof unto Mortgagee.

Mortgagor warrants that Mortgagor has a good and marketable title to an indefeasible fee estate in the Mortgaged Property subject to no lien, charge or encumbrance except such as Mortgagee has agreed to accept in writing and Mortgagor covenants that this Mortgage is and will remain a valid and enforceable first mortgage on the Mortgaged Property subject only to the exceptions herein provided. Mortgagor has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended to be done or intended hereafter to be done. Mortgagor will preserve such title and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to

time require in order to preserve the priority of the lien of this Mortgage or to facilitate the performance of the terms hereof.

PROVIDED, HOWEVER, that if Mortgagor shall pay to Mortgagee and satisfy: (i) the indebtedness in the principal sum of \$35,000,000.00 as evidenced by that certain Renewal and Future Advance Revolving Line of Credit Promissory Note of even date herewith, or any renewal or replacement thereof (the "Note"), executed by Mortgagor and payable to the order of Mortgagee, with interest and upon the terms as provided therein; and (ii) all other sums advanced by Mortgagee to or on behalf of Mortgagor pursuant to the Note or this Mortgage, which Note contains provisions for payment of costs of collection including attorneys' fees, in the Event of Default, as described herein, waives presentment for payment, notice of nonpayment, protest and notice of protest, and consents to the extension from time to time of the time of payment without notice, and all of the terms of which Note are hereby incorporated by reference and made a part hereof, and of any renewal, extension or modification, thereof and of this Mortgage, then this Mortgage and the estate hereby created shall cease and terminate.

Mortgagor further covenants and agrees with Mortgagee as follows:

1. To pay all sums, including interest secured hereby when due, as provided for in the Note and any renewal, extension or modification thereof and in this Mortgage, all such sums to be payable in lawful money of the United States of America at Mortgagee's aforesaid office, or at such other place as Mortgagee may designate in writing.

2. To pay when due, and without requiring any notice from Mortgagee, all taxes, assessments of any type or nature and other charges levied or assessed against the Mortgaged Property or this Mortgage and produce receipts therefor upon demand. To immediately pay and discharge any claim, lien or encumbrance against the Mortgaged Property which may be or become superior to this Mortgage and to permit no Event of Default or delinquency on any other lien, encumbrance or charge against the Mortgaged Property.

3. If required by Mortgagee, to also make monthly deposits with Mortgagee, in a non-interest bearing account, together with and in addition to interest and principal, of a sum equal to one-twelfth of the yearly taxes and assessments which may be levied against the Mortgaged Property, and (if so required) one-twelfth of the yearly premiums for insurance thereon. The amount of such taxes, assessments and premiums, when unknown, shall be estimated by Mortgagee. Such deposits shall be used by Mortgagee to pay such taxes, assessments and premiums when due. Any insufficiency of such account to pay such charges when due shall be paid by Mortgagor to Mortgagee on demand. If, by reason of any default by Mortgagor under any provision of this Mortgage, Mortgagee declares all sums secured hereby to be due and payable, Mortgagee may then apply any funds in said account against the entire indebtedness secured hereby. The enforceability of the covenants, relating to taxes, assessments and insurance premiums herein otherwise provided shall not be affected except insofar as those obligations have been met by compliance with this paragraph. Mortgagee may from time to time at its option waive, and after any such waiver reinstate, any of all provisions hereof requiring such deposits, by notice to Mortgagor in writing. While any such waiver is in effect, Mortgagor shall pay taxes, assessments and insurance premiums as herein elsewhere provided.

4. To promptly pay all taxes and assessments assessed or levied under and by virtue of any state, federal, or municipal law or regulation hereafter passed, against Mortgagee upon this Mortgage or the debt hereby secured, or upon its interest under this Mortgage, provided however, that the total amount so paid for any such taxes pursuant to this paragraph together with the interest payable on said indebtedness shall not exceed the highest lawful rate of interest in Florida and provided further that in the event of the passage of any such law or regulation imposing a tax or assessment against Mortgagee upon this Mortgage or the debt secured hereby, that the entire indebtedness secured by this Mortgage shall thereupon become immediately due and payable at the option of Mortgagee.

5. To keep the Mortgaged Property insured against loss or damage by fire, and all perils insured against by an extended coverage endorsement, and such other risks and perils as Mortgagee in its reasonable discretion may require. The policy or policies of such insurance shall be in the form in general use from time to time in the locality in which the Mortgaged Property is situated, shall be in such amount as Mortgagee may reasonably require, shall be issued by a company or companies approved by Mortgagee, and shall contain a standard mortgagee clause with loss payable to Mortgagee. Whenever required by Mortgagee, such policies shall be delivered immediately to and held by Mortgagee. Upon exercise of the power of sale given in this Mortgage or other acquisition of the Mortgaged Property or any part thereof by Mortgagee, such policies shall become the absolute property of Mortgagee.

6. To first obtain the written consent of Mortgagee, such consent not to be unreasonably withheld, before (a) removing or demolishing any building now or hereafter erected on the premises, (b) altering the arrangement, design or structural character thereof, (c) making any repairs which involve the removal of structural parts or the exposure of the interior of such building to the elements, (d) cutting or removing or permitting the cutting and removal of any trees or timber on the Mortgaged Property, if such cutting or removal requires a permit or license under applicable laws, regulations or ordinances, (e) removing or exchanging any tangible personal property which is part of the Mortgaged Property except in the ordinary course of business, or (f) entering into or modifying any leases of the Mortgaged Property, except in the ordinary course of business, or (g) encumbering, selling or otherwise disposing of the Mortgaged Property or any substantial part thereof.

7. To maintain the Mortgaged Property in good condition and repair, including but not limited to the making of such repairs as Mortgagee may from time to time determine to be necessary for the preservation of the Mortgaged Property and to not commit or permit any material waste thereof, and Mortgagee shall have the right to inspect the Mortgaged Property on reasonable notice to Mortgagor.

8. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Mortgaged Property, and not to suffer or permit any violation thereof.

9. If Mortgagor fails to pay or discharge any claim, lien or encumbrance which is superior to this Mortgage, or when due, any tax or assessment or insurance premium, or to keep the Mortgaged Property in repair, or shall commit or permit material waste, or if there be commenced any action or proceeding affecting the Mortgaged Property or the title thereto, or the interest of Mortgagee therein, including, but not limited to, eminent domain and bankruptcy or

reorganization proceedings, then Mortgagee, at its option, may pay said claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may make such repairs and take such steps as it deems advisable to prevent or cure such material waste, and may appear in any such action or proceeding and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any of such purposes Mortgagee may advance such sums of money, including all costs, reasonable attorneys' fees and other items of expense as it deems necessary. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, tax, assessment and premium and of the amount necessary to be paid in satisfaction thereof. Mortgagee shall not be held accountable for any delay in making any such payment, which delay may result in any additional interest, costs, charges, expenses or otherwise. All sums which may be advanced by Mortgagee pursuant to this paragraph shall be secured by the lien of this Mortgage and shall bear interest at the rate provided herein.

10. Mortgagor will pay to Mortgagee, immediately and without demand, all sums of money advanced by Mortgagee to protect the security hereof pursuant to this Mortgage, including all costs, reasonable attorney's fees and other items of expense, together with interest on each such advancement at the default rate of interest set forth in the Note, and all such sums and interest thereon shall be secured hereby.

11. If an Event of Default shall occur in payment of any installment of principal or interest of the Note or any part thereof when due, subject to any applicable grace period, or in payment, when due, or any other sum secured hereby, or in performance of any of Mortgagor's obligations, covenants or agreements hereunder, subject to any applicable grace period, all of the indebtedness secured hereby shall become and be immediately due and payable at the option of Mortgagee, without notice or demand which are hereby expressly waived, in which event Mortgagee may avail itself of all rights and remedies, at law or in equity, and this Mortgage may be foreclosed with all rights and remedies afforded by the laws of Florida and Mortgagor shall pay all costs, charges and expenses thereof, including a reasonable attorney's fee, including all such costs, expenses and attorney's fees for any retrial, rehearing or appeals. The indebtedness secured hereby shall bear interest at the default rate set forth in the Note from and after the date of any such Event of Default of Mortgagor. If the Note provides for installment payments, the Mortgagee may, at its option, collect a late charge as may be provided for in the Note, to reimburse the Mortgagee for expenses in collecting and servicing such installment payments.

12. If an Event of Default shall occur in payment, when due, of any indebtedness secured hereby, or in performance of any of Mortgagor's obligations, covenants or agreement hereunder and provided that no law is broken and subject to the right of the tenant under the Lease:

(a) Mortgagee is authorized at any time, without notice, in its sole discretion to enter upon and take possession of the Mortgaged Property or any part thereof, to perform any acts Mortgagee deems necessary or proper to conserve the security and to collect and receive all rents, issues and profits thereof, including those past due as well as those accruing thereafter; and

(b) Mortgagee shall be entitled, as a matter of strict right, without notice and ex parte, and without regard to the value or occupancy of the security, or the solvency of Mortgagor, or the adequacy of the Mortgaged Property as security for the Note, to have a



receiver appointed to enter upon and take possession of the Mortgaged Property, collect the rents and profits therefrom and apply the same as the court may direct, such receiver to have all the rights and powers permitted under the laws of Florida.

In either such case, Mortgagee or the receiver may also take possession of, and for these purposes use, any and all personal property which is a part of the Mortgaged Property and used by Mortgagor in the rental or leasing thereof or any part thereof. The expense (including receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Mortgagee shall (after payment of all costs and expenses incurred) apply such rents, issues and profits received by it on the indebtedness secured hereby in such order as Mortgagee determines. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee.

13. If the indebtedness secured hereby is now or hereafter further secured by chattel mortgages, security interests, financing statements, pledges, contracts of guaranty, assignments of leases, or other securities, or if the Mortgaged Property hereby encumbered consists of more than one parcel of real property, Mortgagee may at its option exhaust any one or more of said securities and security hereunder, or such parcels of the security hereunder, either concurrently or independently, and in such order as it may determine.

14. This Mortgage shall secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, but such secured indebtedness shall not exceed at any time the maximum principal amount of two times the amount of the Note, plus interest, and any disbursements made for the payment of taxes, levies or insurance, on the Mortgaged Property, with interest on such disbursements. Any such future advances, whether obligatory or to be made at the option of the Mortgagee, or otherwise, may be made either prior to or after the due date of the Note or any other notes secured by this Mortgage. This Mortgage is given for the specific purpose of securing any and all indebtedness by the Mortgagor to Mortgagee (but in no event shall the secured indebtedness exceed at any time the maximum principal amount set forth in this paragraph) in whatever manner this indebtedness may be evidenced or represented, until this Mortgage is satisfied of record. All covenants and agreements contained in this Mortgage shall be applicable to all further advances made by Mortgagee to Mortgagor under this future advance clause.

15. No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any Event of Default hereunder. No waiver by Mortgagee of any Event of Default shall constitute a waiver of or consent to subsequent Events of Defaults. No failure of Mortgagee to exercise any option herein given to accelerate maturity of the debt hereby secured, no forbearance by Mortgagee before or after the exercise of such option and no withdrawal or

abandonment of foreclosure proceedings by Mortgagee shall be taken or construed as a waiver of its right to exercise such option or to accelerate the maturity of the debt hereby secured by reason of any past, present or future Event of Default on the part of Mortgagor; and, in like manner, the procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be taken or construed as a waiver of its right to accelerate the maturity of the debt hereby secured.

16. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of said note, and without notice or consent:

(a) Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation.

(b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof.

(c) Exercise or refrain from exercising or waive any right Mortgagee may have.

(d) Accept additional security of any kind.

(e) Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the Mortgaged Property.

17. Any agreement herewith made by Mortgagor and Mortgagee pursuant to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

18. If the Mortgaged Property or any material part thereof is damaged or destroyed by fire, by condemnation, or any other cause, Mortgagor will give immediate written notice of the same to Mortgagee. In the event that any portion or portions of the Mortgaged Property are damaged or destroyed by fire or by any other casualty or are taken through any condemnation proceeding, and such damage, destruction or taking results in the need for repair, rebuilding, or restoration work to be performed on the Mortgaged Property (such repair, rebuilding, or restoration is referred to herein as the "Work"), Mortgagee shall allow Mortgagor to use the amount by which the proceeds of all insurance policies or condemnation awards collected with respect to such damage or destruction (except such amounts as are attributable to a loss of rents) exceed the cost, if any, to Mortgagee for the recovery of such proceeds (said net amount is defined herein as the "Reconstruction Funds"), to perform the Work, so long as the following conditions have been met:

(a) No default exists hereunder, under the Note, or under the documents given as security for the Note (the "Loan Documents") which remains uncured after the expiration of any applicable grace periods;

(b) Mortgagor shall have delivered evidence satisfactory to Mortgagee that the improvements may be reconstructed in accordance with all applicable zoning and building codes, and all rules, regulations, and ordinances of all applicable governmental authorities and that, upon completion of the Work, the condition of the improvements will be at least equal in value and general utility to that which existed immediately prior to such casualty or condemnation;

(c) Mortgagor shall have delivered evidence satisfactory to Mortgagee that sufficient funds, including the Reconstruction Funds, are available to perform the Work and that the Work is capable of completion prior to the then effective maturity date of the Note;

(d) Mortgagor shall have delivered evidence satisfactory to Mortgagee that business interruption or income insurance proceeds payable to Mortgagor as a result of the damage or destruction or income from the Mortgaged Property, or that sources other than the Reconstruction Funds are sufficient to cover payments of debt service, costs, and expenses on the Note during the period the Work is to be performed; and

(e) Mortgagee shall be satisfied that it will not incur any liability to Mortgagor as a result of such use or release of insurance proceeds.

In the event that the conditions set forth above are satisfied, Mortgagee shall make the Reconstruction Funds available to Mortgagor for the Work only under the following procedures, terms, and conditions:

(a) Mortgagor shall execute and deliver to Mortgagee a copy of a contract with a licensed contractor acceptable to Mortgagee setting forth a fixed price for the Work and a completion date acceptable to Mortgagee.

(b) Mortgagor shall demonstrate to Mortgagee that the Reconstruction Funds are at least equal to the fixed price of the Work as set forth in said contract or shall deposit with Mortgagee funds in the amount by which such fixed price exceeds the Reconstruction Funds;

(c) The Work shall be supervised by an architect or engineer and performed in accordance with plans and specifications prepared by such architect or engineer and approved by Mortgagee.

(d) The Reconstruction Funds, plus any additional funds deposited by Mortgagor, shall be received and held by Mortgagee and disbursed in accordance with terms and conditions used by Bank in connection with the Mortgagee's customary practice in disbursing construction loan proceeds, and Mortgagor shall reimburse Mortgagee for costs and expenses incurred in connection with such disbursements;

(e) Upon completion of and final payment for the Work, any remaining Reconstruction Funds shall, at the option of Mortgagee, be applied to the Note in such order as Mortgagee shall elect or paid over to Mortgagor; provided, however, that in either event any remaining additional funds deposited by Mortgagor for excess costs shall be refunded to Mortgagor; and

(f) Mortgagor shall otherwise comply with the terms and conditions of this Mortgage and the Loan Documents.

In the event any one or more of the conditions set forth above are not satisfied, Mortgagee may elect, in its sole discretion, to apply the Reconstruction Funds against the balance of the Note, whether or not due, in such manner as Mortgagee shall elect.

If a default shall occur hereunder which is not cured within any applicable cure period, or if Mortgagor shall fail diligently to pursue and complete the Work, Mortgagee may, in its sole discretion, apply any undisbursed Reconstruction Funds against the balance due under the Note, whether or not due, in such manner as Mortgagor shall elect. Any Reconstruction Funds applied to reduce the principal balance on the Note shall not be considered a prepayment entitling Mortgagee to prepayment compensation.

19. In the event of any condemnation proceedings related to any of the Mortgaged Property, Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the sale in the amount in which the same shall be paid. In any such condemnation proceedings, Mortgagee may be represented by counsel selected by Mortgagee.

20. Mortgagor represents and warrants that if a corporation, it is duly organized and validly existing, in good standing under the laws of the state of its incorporation, has stock outstanding which has been duly and validly issued, and is qualified to do business and is in good standing in the State of Florida, with full power and authority to consummate the loan contemplated hereby; and, if a partnership, it is formed and validly existing, and is fully qualified to do business in the State of Florida; with full power and authority to consummate the loan contemplated hereby.

21. In the event any one or more of the provisions contained in this Mortgage or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provisions of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The total interest payable pursuant to the Note or this Mortgage shall not in any one year exceed the highest lawful rate of interest provided by law.

22. The covenants and agreements herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any

gender shall be applicable to all genders. All covenants, agreements and undertakings shall be joint and several.

23. The loan represented by this Mortgage and the Note is personal to the Mortgagor and the Mortgagee made the loan to the Mortgagor based upon the credit of the Mortgagor and the Mortgagee's judgment of the ability of the Mortgagor to repay all sums due under this Mortgage, and therefore this Mortgage may not be assumed by any subsequent holder of an interest in the Mortgaged Property. If all or any part of the Property or any legal or equitable interest therein is sold, transferred or conveyed other than leases in normal course of business, by Mortgagor without the Mortgagee's prior written consent, all sums secured by this Mortgage shall be immediately due and payable and Mortgagee may exercise all of the rights and remedies provided in this Mortgage and the Note secured hereby. The sale, transfer or conveyance of any part of the Property or any legal or equitable interest therein shall be conclusively and irrefutably presumed to jeopardize the security and collateral of Mortgagee and as consideration for the making of the loan secured by this Mortgage, Mortgagor agrees that in any court proceeding brought to enforce the provisions of this paragraph Mortgagor shall waive any legal or equitable defenses that would preclude enforcement of this paragraph, including but without limitation, that the transfer of the Property has not resulted in an impairment to Mortgagee's security or that this paragraph constitutes an unreasonable restraint or alienation.

24. The Mortgagor agrees to have no second mortgage or secondary or supplementary financing and no other lien, charge, or security interest upon or affecting any of the Mortgaged Property (real or personal, tangible or intangible) in which Mortgagee has a security interest.

25. It is agreed that if any of the Property herein mortgaged is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a Security Agreement and Mortgagor agrees to join with the Mortgagee in the execution of any financing statements and to execute any other instruments that may be required for the perfection or renewal of such security interest under the Uniform Commercial Code.

26. Mortgagor represents and warrants to Mortgagee, and Mortgagee specifically relies on such representations and warranties as follows:

(a) Environmental condition of Property; Indemnification. Mortgagor warrants and represents to the best of its knowledge to Mortgagee after appropriate inquiry and investigation that: i) while the Mortgagee has any interest in or lien on the Property, the Property described herein is and at all times hereafter will continue to be in compliance, in all material respects, with all federal, state and local environmental laws and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 et seq., and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, 100 Stat. 1613, and ii) (1) as of the date hereof there are no hazardous materials, substances, wastes or other environmentally regulated substances (including without limitation, any materials containing asbestos) located on, in or under the Property or used in connection therewith, or (2) Mortgagor has fully disclosed to Mortgagee in writing, in the Material Disclosure Safety Sheets previously provided to Mortgagee, the existence, extent and nature of any such hazardous

materials, substances, wastes or other environmentally regulated substances, which Mortgagor is legally authorized and empowered to maintain on, in or under the Property or use in connection therewith, and Mortgagor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals. Mortgagor further warrants and represents that it will promptly notify Mortgagee of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Property or used in connection therewith, and will transmit to Mortgagee copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Property.

Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys' fees, consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against Mortgagee as a direct or indirect result of any warranty or representation made by Mortgagor in the preceding paragraph being false or untrue in any material respect or any requirement under any law, regulation or ordinance, local, state or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances.

Mortgagor's obligations hereunder shall not be limited to any extent by the term of the Note secured hereby, and, as to any act or occurrence prior to payment in full and satisfaction of said Note which gives rise to liability hereunder, shall continue, survive and remain in full force and effect notwithstanding payment in full and satisfaction of said Note and this Mortgage or foreclosure under this Mortgage, or delivery of a deed in lieu of foreclosure.

(b) Mortgagor has duly executed and delivered this Mortgage and each other document required to be delivered by it pursuant hereto and this Mortgage and each such other document constitutes a valid and binding obligation of Mortgagor enforceable in accordance with its terms.

(c) There is no action, suit, proceeding or investigation pending or, to its knowledge, threatened against or affecting Mortgagor at law or in equity or before or by any governmental department, commission, board or agency which might have any materially adverse effect on its ability to carry on its operations as presently conducted or to perform its obligations under this Mortgage, any of the other documents required to be delivered hereunder, any Agreement to which it is a party or by which it is bound.

(d) Mortgagor is not a party to any agreement or instrument or subject to any corporate restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially and adversely affects or in the future may materially and adversely affect its business, operations, prospects, properties or assets or condition, financial or otherwise, or its ability to perform its obligations under this Mortgage or any other document required to be delivered in connection herewith or any agreement to which it is a party or by which it is bound.

(e) No consent, waiver or authorization of or filing with any person is required to be obtained or made by it in connection with the execution, delivery and performance of this Mortgage or any other document required to be delivered in connection herewith. Neither the execution nor the delivery of this Mortgage or such documents nor the consummation of the transactions herein and therein contemplated nor compliance with the terms, conditions and provisions hereof and thereof will conflict with or result in a breach of or constitute an Event of Default under any of the terms, conditions or provisions of its charter documents or bylaws or of any agreement or instrument to which it is a party or by which it is bound or result in the creation or imposition of any mortgage lien, charge or encumbrance of any nature whatsoever upon its undertaking, property or assets.

(f) No representation or warranty made by Mortgagor in this Mortgage or any other document furnished to the Mortgagee from time to time in connection herewith contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements herein or therein in light of the circumstances under which they are made not misleading. Except as previously disclosed in writing to the Mortgagee, there is no fact known to Mortgagor on the date of this Mortgage which materially adversely affects or which has any reasonable likelihood of materially adversely affecting the ability of Mortgagor to carry on its obligations as presently conducted or to perform its obligations under this Mortgage or any documents required to be delivered by it hereunder.

27. In this Mortgage, an Event of Default means:

- (a) If Mortgagor fails to pay when due after any applicable grace period any amount of principal or interest due hereunder or under the Note.
- (b) If Mortgagor fails to pay when due after any applicable grace period any other amount payable under the Note or Mortgage.
- (c) If any Event of Default occurs under the Note or the Mortgage.

28. In addition to and without limiting any other rights or remedies of the Mortgagee under the Note and the Mortgage, the Mortgagee may, from time to time, when an Event of Default has occurred or an event has occurred and is continued which after notice or lapse of time or both would become an Event of Default, refuse to grant any further advances or accommodation to Mortgagor under the indebtedness. Any Event of Default under this Mortgage shall constitute an Event of Default under the Note and this Mortgage, and entitle Mortgagee to immediately enforce all rights and remedies thereunder. Upon the occurrence of any one or more Events of Default, all indebtedness of Mortgagor shall at the option of the Mortgagee immediately become due and payable without presentation, demand, protest or other notice of any kind, all of which are expressly waived; all collateral and securities shall become enforceable by the Mortgagee or its duly authorized agent; and the Mortgagee may appropriate any monies received by it from any person in or towards payment of such of the respective indebtedness and liability of Mortgagor to the Mortgagee as the Mortgagee may see fit and no Mortgagor shall have any right to require any inconsistent appropriation. The rights and remedies of the Mortgagee under this Mortgage and the Note, and in connection herewith and therewith are cumulative, may be exercised as often as the Mortgagee considers appropriate and are in addition to its rights and remedies under the general law.

29. This Mortgage shall inure to the benefit of the Mortgagee and its successors and assigns but, except as specifically provided herein, neither this Mortgage nor the benefit hereof may be assigned by Mortgagor. The rights of the Mortgagee under or in respect of this Mortgage may be assigned by the Mortgagee from time to time in whole or in part to one or more persons with notice to Mortgagor but without the consent of, Mortgagor or any other person.

30. All agreements, representations, warranties and covenants made by or on behalf of Mortgagor herein and in the Note, and in any transactions contemplated hereby or thereby are material, shall be considered to have been relied upon by the Mortgagee notwithstanding any investigation made at any time by or on behalf of the Mortgagee and shall survive execution and delivery of this Mortgage and the granting of accommodation hereunder and shall expire when the indebtedness and all amounts outstanding under this Mortgage have been repaid in full.

31. Mortgagor will do, execute and deliver, or will cause to be done, executed and delivered all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the Mortgagee may reasonably request for the purpose of giving effect to this Mortgage or for the purpose of establishing compliance with the representations, warranties and conditions of this Mortgage.

32. The taking of a judgment or judgments for any other action or dealing whatsoever by the Mortgagee in respect of any security given by any person or entity to the Mortgagee shall not operate as a merger of any indebtedness or any liability of the Mortgagor to the Mortgagee or in any way suspend payment or affect or prejudice the rights, remedies and powers legal or equitable which the Mortgagee may have in connection with such indebtedness or liability or the foreclosure, surrender, cancellation or any other dealing with any security for such indebtedness or liability shall not release or affect the liability of the Mortgagor or any security held by the Mortgagee.



33. The Mortgagor hereby affirms, warrants and represents that all of the warranties and representations made in the above described Note and this Mortgage, and in any other documents or instruments executed with respect thereto directly or indirectly, are true and correct as of the date hereto, and that Mortgagor is not aware of any Event of Default as to any of the foregoing, and that Mortgagor has no defense or right of off set with respect to any indebtedness to Mortgagee. Mortgagor jointly and severally hereby release Mortgagee from any cause of action against it existing as of the date of execution hereof.

34. A default in the terms and conditions of any obligations of the Mortgagor or any guarantor to the Mortgagee of whatever nature or kind, including but not exclusive of this obligation, shall constitute a default in the terms and conditions of the Note. Likewise, any default in the terms and conditions of the Note shall be and constitute a default under the terms and conditions of any other obligations owed by the Mortgagor or any guarantor to the Mortgagee. Upon such default any of the Mortgagor's checking and savings monies deposited with the Mortgagee shall be immediately and irrevocably assigned to the Mortgagee to apply to the obligations in any manner the Mortgagee deems necessary.

35. Any notice shall be given by mailing such notice by certified mail, return receipt requested, addressed as follows:

As to Mortgagor:

**SUN HYDRAULICS CORPORATION**  
1500 West University Parkway  
Sarasota, Florida 34243

As to Mortgagee:

**FIFTH THIRD BANK**  
4401 W. Kennedy Boulevard  
Suite 300  
Tampa, Florida 33609

or at such other address as Mortgagor or Mortgagee may have designated by notice to the other.

36. WAIVER OF JURY TRIAL. MORTGAGEE AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY AGREEMENTS CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE'S ACCEPTANCE OF THIS AGREEMENT FROM MORTGAGOR.

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage as of the date first above written.

Signed, Sealed and Delivered  
in the Presence of:

WITNESSES:

/s/ Lisa R. Cook  
(Witness 1 — Signature)

Lisa R. Cook  
(Witness 1 — Printed Name)

/s/ Gregory C. Yadley  
(Witness 2 — Signature)

Gregory C. Yadley  
(Witness 2 — Printed Name)

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me on August 11, 2005, by Tricia Fulton, as Corp. finance of **SUN HYDRAULICS CORPORATION**, a Florida corporation, on behalf of the corporation, \_\_\_ who is personally known to me or x who has provided a driver's license as identification (check one).

**SUN HYDRAULICS CORPORATION**  
a Florida corporation

By: /s/ Tricia Fulton  
Name: Tricia Fulton  
Its: Corp Finance

/s/ Marilyn D. Holmes  
(Signature)

Marilyn D. Holmes  
(Type or Print Name)

My Commission Expires:

My Commission Number is:

## CERTIFICATION

I, Allen J. Carlson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended October 1, 2005, of Sun Hydraulics Corporation;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this 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 officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2005

/s/Allen J. Carlson

Allen J. Carlson  
President, Chief Executive Officer

## CERTIFICATION

I, Richard J. Dobbyn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended October 1, 2005, of Sun Hydraulics Corporation;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this 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 officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2005

/s/Richard J. Dobbyn

Richard J. Dobbyn  
Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. § 1350**

I, Allen Carlson, the Chief Executive Officer of Sun Hydraulics Corporation (the "Company"), certify that (i) the Quarterly Report on Form 10-Q for the Company for the quarter ended October 1, 2005 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Allen Carlson

Chief Executive Officer

November 14, 2005

**CERTIFICATION PURSUANT TO 18 U.S.C. § 1350**

I, Richard J. Dobbyn, the Chief Financial Officer of Sun Hydraulics Corporation (the "Company"), certify that (i) the Quarterly Report on Form 10-Q for the Company for the quarter ended October 1, 2005 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Richard J. Dobbyn

Chief Financial Officer

November 14, 2005