

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

**FORM 10-K**

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

For the fiscal year ended December 31, 2011

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)

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

<u>Title of Each Class</u>	<u>Name of each exchange on which registered</u>
Common Stock \$.001 Par Value	NASDAQ Stock Market, LLC

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

<u>Title of Each Class</u>	<u>Name of each exchange on which registered</u>
Common Stock \$.001 Par Value	NASDAQ Stock Market, LLC

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes  No

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 has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer   
Non-accelerated filer  Smaller Reporting Company

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

The aggregate market value of the shares of voting common stock held by non-affiliates of the Registrant, computed by reference to the closing sales price of such shares on the Nasdaq Stock Market, LLC, as of the last business day of the Registrant's most recently completed second fiscal quarter was \$638,204,908.

As of February 24, 2012, there were 25,767,160 shares of common stock outstanding.

**PART I**  
**ITEM 1. BUSINESS**

**Overview**

Sun Hydraulics Corporation (“Sun,” the “Company” or “We”) was founded in 1970, in Sarasota, FL, USA, and for the past 41 years has provided global capitals goods industries with hydraulics components and systems used to transmit power and control force, speed and motion. Sun’s products typically add a fine degree of precision and safety to the machinery and equipment in which they are used.

On a component level, Sun designs and manufactures screw-in hydraulic cartridge valves, manifolds, and integrated fluid power packages and subsystems. The Company’s products provide an important control function within a hydraulic system, to control rates and direction of fluid flow and to regulate and control pressures.

Sun’s screw-in hydraulic cartridge valves use a fundamentally different design platform compared to most other competitive product offerings, which are often referred to as industry common products. The Company’s cartridge valves, from the first models in the early 1970s, were designed to be able to operate reliably at higher pressures, making them equally suitable for both industrial and mobile applications. Until recently, most other companies’ screw-in cartridge valves were only suitable for use in mobile applications. Sun’s brand has grown and become identified as a product able to withstand the rigors of industrial use, where operating cycles and pressures are higher and more frequent.

To complement the high pressure, high duty cycle nature of its cartridge valves, Sun offers the broadest array of standard manifolds of any cartridge valve manufacturer. These products, available in both aluminum and ductile iron, allow the Company’s cartridge valves to be easily and conveniently installed in machinery and equipment. Sun’s standard manifolds feature common interfaces, ports and industry standard patterns to make them applicable for use in any country.

All of Sun’s standard cartridge valves and manifolds are offered in multiple versions and size ranges. The product array features five different capacities (this represents flow rates or could conveniently be referenced as horsepower), with capacity doubling with each successive size. Each version offers a subtle variation of functionality. This allows machine designers to choose a product that is optimal to the operating conditions of the equipment they are designing. Sun is unique in the industry in approaching product development in this matrix manner, which yields a product line of extreme breadth and depth. Sun’s broad scope of product offering, coupled with the high performance characteristics of its cartridge valves, makes Sun a leader in its industry.

To fully leverage its cartridge product family, the Company routinely competes in the custom manifold and integrated package market. This activity entails designing custom manifolds which incorporate multiple standard cartridge valves to create a unique and machine specific solution for a particular customer. Because of the unique nature of Sun’s cartridge valve designs, manifolds may be designed and machined to make them significantly smaller, sometimes greater than 50% smaller, when compared to manifolds that use only industry common cartridge valves. The same design characteristics that allow manifolds to be smaller also allow them to operate more efficiently by incorporating angular drillings in the design. Integrated packages allow customers to order a single part number, reduce assembly and labor time on the factory floor, and easily locate a complete hydraulic control system anywhere on a machine.

In recent years, the Company has aggressively expanded its offering of electrically-actuated cartridge valves. Despite being a late entrant in the industry with these types of products, Sun’s design approach has allowed the Company to quickly offer a full range of electrically-actuated cartridge valves, helping to increase the competitiveness of the integrated package offerings. Because hydraulics systems are increasingly taking signals from on-board electronic control systems, it is necessary for hydraulic products to be capable of digital communication.

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To further augment its capabilities in the electronic area, the Company recently completed the acquisition of High Country Tek, Inc. (“HCT”), which designs and manufactures a range of standard and customizable electronic control modules used to interpret electronic signals. The addition of HCT’s capabilities with Sun’s legacy products and capabilities expands the scope of unique product solutions the Company can offer its customers.

Sun’s products are sold globally through a combination of wholly-owned companies, representative sales offices and independent and authorized distributors. Sun has operations in the United States, England, Germany, France, South Korea, China and India. Activities at these locations range from technical support, to inventory, to distributor management, to custom manifold design and manufacturing. Sun’s global distribution network includes representation in almost all industrialized markets. Distributors are the local experts in Sun’s products. They typically hold local inventory and transact all business with customers. This arrangement helps to keep selling, general and administrative costs to a minimum, with above industry average inventory turns and free cash flows.

In 2011, 47% of consolidated sales went to customers in the Americas, 32% to customers in Europe, the Middle East and Africa, and 21% to customers in the Asia/Pacific Region. In 2011, sales to any single customer or distributor did not exceed 7% of total net sales.

The Company has been profitable every year since 1972 and has paid a dividend every quarter since going public in January 1997. The Company’s executive offices are located at 1500 West University Parkway, Sarasota, Florida 34243, and its telephone number is (941) 362-1200. The Company’s website is [www.sunhydraulics.com](http://www.sunhydraulics.com).

### **Industry Background**

Sun is part of the fluid power industry, in which either air (pneumatics) or oil (hydraulics) is used to transmit power and provide motion control for many types of machinery, equipment and vehicles. The modern fluid power industry developed around World War II as both hydraulics and pneumatics were widely adopted as effective means of motion control. Hydraulics, because of its mechanical advantage, is typically used when significant work needs to be accomplished or heavy loads need to be moved. Hydraulics systems also provide precise positioning and movement of lighter loads. Examples where hydraulics are routinely used include steering and braking activities in construction, agricultural and marine equipment; raising work platforms and ladders in construction and fire and rescue equipment; holding and clamping parts or moving machine elements in machine tools; and measuring in laboratory test equipment; controlling the direction and pitch of blades in windmills - the list of uses of hydraulics is wide and varied and encompasses almost all industries.

Valves are major components of a hydraulic system, along with pumps and actuators. These devices are complemented by a wide range of ancillary and supporting products that includes, but is not limited to, hoses, fittings, accumulators, regulators, heat exchangers, sensors and lubricants. Valves provide the function of directing the flow of fluid, setting the rate of its flow and regulating pressures in the system.

Screw-in hydraulic cartridge valves, the type of product the Company manufactures, were initially developed in the late 1950s and early 1960s as an alternative to the then existing technology, which we refer to as conventional valves. Conventional valves were typically single purpose devices made with cumbersome iron casting that were limited in how they could be installed in machinery and equipment. In times of economic expansion, these types of products could become difficult to obtain due to the inability to easily source castings. Screw-in cartridge valves are made from easily obtainable commercial steels, which make supply more consistent. More importantly, multiple cartridge valves can be combined together in a single block of machined aluminum, ductile iron or steel, to create a hydraulic integrated circuit, which in almost all respects is analogous to an electronic integrated circuit. The hydraulic integrated circuit provides significant benefits to the machine designer, including ease of order and inventory control, ease of location in machinery and equipment, reduced labor and assembly time, proprietary control systems and a way to differentiate machinery and equipment.

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The hydraulics industry is comprised of companies that make all the types of components that are needed to create a hydraulic system, companies that make specific components of a system, such as Sun, and companies that make specialty components. The large companies that make all components are multi-national corporations. Specific component manufacturers increasingly have the ability to conduct business globally.

The hydraulics industry is increasingly being influenced by the electronic industry, as more machinery and equipment is equipped with on board electronic control systems. This affects purchasing decisions hydraulic components, design criteria, machine and vehicle performance, safety and many other attributes and characteristics. The line between electronics and hydraulics is blurring and the two technologies must be able to digitally communicate. The Company expects this trend will continue in the future.

### **Strategy**

Sun will continue to design, manufacture, market and support, on a worldwide basis, differentiated high-performance and high-quality products and systems. The Company believes this focus supports its business objectives of generating sustainable revenue growth that will consistently yield above-average returns on capital while achieving a high level of customer satisfaction. Key elements of the Company's strategy include the following:

*Deliver Value Through High-Quality, High-Performance Products.* The Company's products are designed with operating and performance characteristics that exceed those of many functionally similar products. The Company's products provide high value because they generally operate more reliably and at higher flow rates and pressures than competitive offerings of the same size.

*Achieve a High Level of Customer Satisfaction.* Sun schedules orders to the customer's request date. The Company believes that its long-term success is dependent upon its reputation in the marketplace, which in turn is a result of its ability to service its customers. The Company tests 100% of its screw-in cartridge valves to ensure the highest level of performance on a consistent basis. Through our products and services, Sun will seek to create value for its customers by helping them differentiate their own product and service offerings.

*Offer a Wide Variety of Standard Products.* Sun offers the most comprehensive range of screw-in cartridge valves and manifolds in the world. The Company's products contain a high degree of common content to minimize work in process and maximize manufacturing efficiency. Products are designed for use by a broad base of industries to minimize the risk of dependence on any single market segment or customer.

*Expand the Product Line.* New products are designed to complement existing products and this has a synergistic effect. Where possible, new products use existing parts and generally fit into existing cavities. The Company will continue to develop new non-electrical and electrically actuated cartridge valves, including solenoid and proportional valves. The Company believes its electrically-actuated cartridge valves help to increase sales of the Company's other cartridge valves and allow the Company to compete more effectively for integrated package business.

*Expand Electronics Capabilities.* Through acquisition and internal development, the Company has continued to expand its electronics capabilities. This is important because many machines and vehicles have central electronic control systems which direct all system activities, including those of the hydraulics system. The Company will continue to evolve its electronic controls capabilities to support creating superior solutions for its customers.

*Capitalize on Integrated Package Opportunities.* Sun designs and manufactures integrated packages which incorporate the Company's screw-in cartridge valves. To support this effort, the Company designs and manufactures manifolds at its operations in Sarasota, Florida, and Kansas City, Kansas, USA, Coventry, England, Erkelenz, Germany, and Incheon, Korea. Some of the Company's distributors also design and manufacture integrated packages which contain the Company's screw-in cartridge valves. Sun encourages competitive manifold manufacturers to utilize the Company's screw-in cartridge valves in their integrated package designs. The Company believes that customers in the future will increasingly require integrated packages more than isolated components.

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*Expand Global Presence.* Sun intends to continue to expand its global presence in the areas of distribution and international operations. The Company has strong distributor representation in most developed and developing markets, including North and South America, Western Europe, Asia, Australia, and South Africa. The Company will continue to expand its presence in key areas including, but not limited to, Eastern Europe, Russia, China and India. A strong local presence helps the Company compete for integrated package business, where proximity to its customers is beneficial.

*Maintain a Horizontal Organization with Entrepreneurial Spirit.* Sun believes that maintaining its horizontal management structure is critical to retaining key personnel and an important factor in attracting top talent. The Company believes this culture encourages communication, creativity, entrepreneurial spirit and individual responsibility among employees, and has a large impact on operating results.

*Leverage Manufacturing Capability and Know-how as Competitive Advantages.* Sun believes its process expertise is a competitive advantage. The Company's strong process capability is critical in achieving the high performance characteristics of its screw-in cartridge valves and integrated packages. The Company's in-house heat-treatment capability, somewhat unique in the industry, is critical to the durability and differentiation of the Company's cartridge valve products.

*Sell Through Distributors.* Due to the variety of potential customers and the Company's desire to avoid overhead costs, North America sales are made primarily through independent distributors. Sun's international locations sell both to direct customers and through independent distributors. Many of the Company's distributors sell products manufactured by other companies and act as system integrators by providing complete hydraulic systems to customers.

*Develop Closer Relations with Key Customers.* The Company maintains close relationships with some OEMs and end users of its products. These relationships help the Company understand and predict future marketplace needs and provide a venue to test and refine new product offerings. The Company recognizes it may sometimes be required to enter into direct transactional relationships to gain business with certain large OEMs. The Company intends to be selective in developing these relationships to avoid unnecessary bureaucracy and cost.

*Form Strategic Relationships/Acquisitions.* When management deems it to be of strategic benefit, Sun may enter into relationships with other hydraulics manufacturers including, but not limited to, marketing, brand labeling and other non-exclusive or exclusive agreements. In the future the Company expects to expand its internally developed products and capabilities through investments in outside firms. These investments could be full acquisitions, joint ventures, partial ownership investments or other agreements.

*Capture value for our stakeholders.* Through our culture and organizational structure, we prudently manage our resources and strive to balance operational efficiencies with developing innovative products and services. This allows us to provide superior value to our customers by delivering high quality, reliable products to the customer's schedule which, in turn, has resulted in sustained profits for the Company. In addition to quarterly cash dividends, Sun has developed a shared distribution which allows stakeholders, including shareholders and employees, to participate in the profits Sun earns.

## **Products**

### **Screw-in Hydraulic Cartridge Valves**

Sun's screw-in hydraulic cartridge valves are offered in five size ranges and include both electrically actuated and non-electrically actuated products. The floating construction pioneered by the Company results in a self alignment characteristic that provides performance and reliability advantages compared to most competitors' product offerings. This floating construction differentiates the Company's products from those of most of its competitors, who design and manufacture rigid screw-in cartridge valves that fit a common cavity. Some competitors manufacture certain products that fit the Company's cavity.

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### **Standard Manifolds**

A manifold is a solid block of metal, usually aluminum or ductile iron, which is machined to create threaded cavities and channels into which screw-in cartridge valves can be installed and through which the hydraulic fluid flows.

The variety of standard manifolds offered by Sun is unmatched by any screw-in cartridge valve or manifold competitor. These products allow customers to easily integrate the Company's screw-in cartridge valves into their machinery and equipment. Once designed, standard manifolds require minimal, if any, maintenance engineering over the life of the product and can be manufactured at each of the Company's manufacturing operations.

### **Integrated Packages (using custom designed manifolds)**

An integrated package consists of multiple cartridge valves assembled into a custom designed manifold for a specific customer to provide the specific operating characteristics of a customer's circuit.

The advantages of Sun screw-in cartridge valves translate to integrated packages designed by the Company and result in products that are smaller in size with enhanced operating performance. Due to the self-alignment characteristic, the Company's integrated packages do not routinely require testing once assembled, something often required when using competitive cartridge valves. Additionally, the Company has internally-developed proprietary expert system software that it uses to manufacture custom manifolds efficiently in low volumes. Integrated packages provide many benefits to end users and equipment manufacturers, including reduced assembly time, order simplification, reduced leakage points, aesthetics, potentially fewer hose and fitting connections, and more control functions in a single location.

### **Electronic Controllers**

Sun completed the acquisition of High Country Tek ("HCT") in 2011 (see Note 9 to Financial Statements). HCT designs and manufactures electronic controllers, which manage the function of electrically actuated valves. HCT's products range from simple one valve, manually adjusted controllers to fully integrated hydraulic control systems managing multiple hydraulic valves as well as other input and output products such as joysticks and displays. All controllers are potted and therefore impervious to outside influence making them ideal for mobile, industrial and marine applications.

HCT's products in combination with the Sun product line enable integration at the next level by optimizing manifold valves and electronic controllers into solutions for complete systems or as building blocks for our distributors and direct customers.

### **Engineering**

Sun's engineers play an important role in all aspects of the business, including design, manufacturing, sales, marketing and technical support. Engineers work within a disciplined set of design parameters that encourages the repeated incorporation of existing parts into new products. Engineers work closely with manufacturing personnel to define the processes required to manufacture products reliably and consistently.

### **Manufacturing**

The Company utilizes a process intensive manufacturing operation that makes extensive use of automated handling and assembly technology (including robotics) where possible to perform repetitive tasks, thus promoting manufacturing efficiencies and workplace safety. The Company is somewhat vertically integrated and has the capability to manufacture many of the parts that go into its products.

At its two Sarasota, Florida, manufacturing plants, the Company has extensive testing facilities that allow it to test fully all cartridge valve products. A metallurgist and complete metallurgical laboratory support the Company's design engineers and in-house heat treatment.

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The Company holds minimal finished goods inventory, typically at its overseas facilities, and relies on its distributors to purchase and maintain sufficient inventory to meet customers' demands. Most raw materials, including aluminum and steel, are delivered on a just-in-time basis. These and other raw materials are commercially available from multiple sources.

The Company controls most critical finishing processes in-house but relies on a small network of outside manufacturers to machine cartridge parts to varying degrees of completeness. Many high-volume machining operations are performed exclusively at outside suppliers. The Company is selective in establishing its supplier base and attempts to develop and maintain long-term relationships with suppliers.

The Company continually reviews all of its suppliers to improve the quality of incoming parts and to assess opportunities for better control of both price and quality. The Company's quality systems at the U.S. facilities are in compliance with ISO 9001:2008 for design and manufacture of steel cartridge valves and aluminum and ferrous manifolds for hydraulic systems. Those in the U.K. are certified to ISO 9001:2008 for the design and manufacture of aluminum and ferrous manifold bodies, hydraulic control valves and cartridge valves. Quality systems in Germany are certified to ISO 9001:2008 for the design, distribution and manufacturing of hydraulic components for mobile and industrial applications. Finally, quality systems in Korea are certified to ISO 9001:2008 and 14001:2004 for the design, development, production and servicing of hydraulic valves.

### **Sales and Marketing**

Sun products are sold globally, primarily through independent fluid power distributors. Technical support is provided by each of the Company's operations (Florida, Kansas, England, Germany, France, Korea, India and China).

The Company currently has 86 distributors, 64 of which are located outside the United States and a majority of which have strong technical backgrounds or capabilities, which enable them to develop practical, efficient, and cost-effective fluid power systems for their customers. In 2011, sales to the Company's largest distributor represented less than 7% of net sales.

In addition to distributors, the Company sells directly to other companies within the hydraulics industry, including competitors, who incorporate the Company's products into their hydraulic products or systems. The Company believes that making it easy for other manufacturers to buy its products offers these manufacturers a better alternative to developing similar products themselves.

To a limited degree, the Company sells product directly to OEMs. Although the Company does not have any employee whose primary responsibility is direct sales, it may consider this in the future. The Company recognizes that, to gain access to certain large OEM accounts, it may have to deal directly with customers in the areas of sales and support.

The Company provides end users with technical information through its website and catalogues, including all information necessary to specify and obtain the Company's products. The Company believes this approach helps stimulate demand for the Company's products. The Company's website is comprehensive and easy to use with product information available 24 hours a day, seven days a week around the world, in multiple languages.

### **Customers**

Customers are broadly classified as mobile or industrial customers.

Mobile applications involve equipment that generally is not fixed in place and is often operated in an uncontrolled environment, such as construction, agricultural, mining, and fire and rescue and other utility equipment. Mobile customers historically account for approximately two-thirds of the Company's net sales.

Industrial applications involve equipment that generally is fixed in place in a controlled environment. Examples include automation machinery, presses, plastics machinery such as injection molding equipment, and machine tools. Industrial applications historically account for approximately one third of the Company's net sales.

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In recent years, new applications have emerged that blend requirements of the mobile and industrial markets and do not fit conveniently into either category. Some of these applications include animatronics, wind power, wave power, solar power and amusement park rides. The Company expects its products to continue to be applied in areas outside of traditional mobile or industrial markets.

The Company does not warrant its products for use in any of the following applications, (i) any product that comes under the Federal Highway Safety Act, such as steering or braking systems for passenger-carrying vehicles or on-highway trucks, (ii) aircraft or space vehicles, (iii) ordnance equipment, (iv) life support equipment, and (v) any product that, when sold, would be subject to the rules and regulations of the United States Nuclear Regulatory Commission. These "application limitations" have alleviated the need for the Company to maintain the internal bureaucracy necessary to conduct business in these market segments.

### **Competition**

The Company's competitors include full-line producers and niche suppliers similar to the Company. Most competitors market globally. Full-line producers have the ability to provide total hydraulic systems to their customers, including components functionally similar to those manufactured by Sun. The industry has experienced significant consolidation in recent years. Notably, large, full-line producers have acquired most of the independent screw-in hydraulic cartridge valve companies.

Most of the Company's competitors produce screw-in cartridge valves that fit an industry common cavity that sometimes allows their products to be interchangeable. The industry common cavity is not currently supported by any national or global standards organizations, although there is an ongoing effort to standardize a modified version of this cavity in the United States. The International Standards Organization (ISO) has a standard screw-in cartridge cavity that is different from the industry common cavity, but the Company is not aware of any major competitor that currently produces a full line of standard products conforming to the ISO standard. The Company does not manufacture a product that fits either the industry common or the ISO standard cavity. Some competitors manufacture selected screw-in cartridge valves that fit the Company's cavity. (See Risk Factors: The marketplace could adopt an industry standard cavity.)

A new class of competitors is emerging in low cost production areas such as Asia and Eastern Europe. These competitors will typically copy both the Company's products and like products designed by competitors to fit industry common cavities. One of the barriers to these offshore competitors gaining a foothold in established markets are suitable channels or route to market. The Company recognizes this new class of competitor exists and will continue to monitor its growth and impact.

The Company believes that it competes based upon the quality, reliability, price, value, speed of delivery and technological characteristics of its products and services.

### **Employees**

As of December 31, 2011, Sun had 717 full-time employees in the United States, 36 at HCT, 68 in England, 36 in Germany, two in France, 33 in Korea, two in India and three in China. Over 90% of its employees are engaged in manufacturing, distribution, and engineering functions. No employees are represented by a union in any of the Company's operating units, and management believes that relations with its employees are good. Employees are paid either hourly or with an annual salary at rates that are competitive with other companies in the industry and geographic areas in which they operate. Management believes that Sun's culture, competitive salaries and wages, above average health and retirement plans, and its safe and pleasant working environment discourage employee turnover and encourage efficient, high-quality production. Nevertheless, due to the nature of the Company's manufacturing business, it is sometimes difficult to attract skilled personnel. (See Risk Factors: We are dependent upon key employees and skilled personnel.)

### **Patents and Trademarks**

The Company believes that the growth of its business is dependent upon the quality and functional performance of its products and its relationship with the marketplace, rather than the extent of its patents and trademarks. The Company's principal trademark is registered internationally in the following countries: Argentina, Australia, Brazil, Canada, Chile, China, France, Germany, India, Italy, Japan, Korea, Mexico, Peru, Spain, Sweden, Switzerland, the United Kingdom, the United States and the European Union. While the Company believes that its patents have significant value, the loss of any single patent would not have a material adverse effect on the Company.



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### **Available Information**

The Company's annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports, as well as its proxy statements and other materials which are filed with or furnished to the Securities and Exchange Commission ("SEC") are made available, free of charge, on or through the Sun website under the heading "Investor Relations - Reports - SEC Filings," as soon as reasonably practicable after they are filed with, or furnished to, the SEC.

## **ITEM 1A. - RISK FACTORS**

**FACTORS INFLUENCING FUTURE RESULTS - FORWARD-LOOKING STATEMENTS** This Annual Report contains "forward-looking statements" (within the meaning of the Private Securities Litigation Reform Act of 1995) that are based on current expectations, estimates, forecasts, and projections, our beliefs, and assumptions made by us, including (i) our strategies regarding growth, including our intention to develop new products; (ii) our financing plans; (iii) trends affecting our financial condition or results of operations; (iv) our ability to continue to control costs and to meet our liquidity and other financing needs; (v) the declaration and payment of dividends; and (vi) our ability to respond to changes in customer demand domestically and internationally, including as a result of standardization. In addition, we may make other written or oral statements, which constitute forward-looking statements, from time to time. Words such as "may," "expects," "projects," "anticipates," "intends," "plans," "believes," "seeks," "estimates," variations of such words, and similar expressions are intended to identify such forward-looking statements. Similarly, statements that describe our future plans, objectives or goals also are forward-looking statements. These statements are not guarantees of future performance and are subject to a number of risks and uncertainties, including those discussed below and elsewhere in this report. Our actual results may differ materially from what is expressed or forecasted in such forward-looking statements, and undue reliance should not be placed on such statements. All forward-looking statements are made as of the date hereof, and we undertake no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

Factors that could cause actual results to differ materially from what is expressed or forecasted in such forward-looking statements include, but are not limited to: (i) conditions in the capital markets, including the interest rate environment and the availability of capital; (ii) changes in the competitive marketplace that could affect our 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; (iii) new product introductions, product sales mix and the geographic mix of sales nationally and internationally; and the following risk factors:

**Sales in our industry are subject to economic cycles.** The capital goods industry in general, and the hydraulics industry in particular, are subject to economic cycles, which directly affect customer orders, lead times and sales volume. Economic downturns generally have a material adverse effect on our business and results of operations, as they did in 2009. Cyclical economic expansions such as those of 2010 and 2011, provide a context where demand for capital goods is stimulated, creating increased demand for the products we produce. In the future, continued weakening or improvement in the economy will directly affect orders and influence results of operations.

**We are subject to intense competition.** The hydraulic valve industry is intensely competitive, and competition comes from a large number of companies, some of which are full-line producers and others that are niche suppliers like us. Full-line producers have the ability to provide total hydraulic systems to customers, including components functionally similar to those manufactured by us. We believe that we compete based upon quality, reliability, price, value, speed of delivery and technological characteristics. Many screw-in cartridge valve competitors are owned by corporations that are significantly larger and have greater financial resources than we have. We cannot assure that we will continue to be able to compete effectively with these companies.

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Most of Sun's competitors either manufacture manifolds or have sources that they use on a regular basis. In addition, there are many independent manifold suppliers that produce manifolds incorporating various manufacturers' screw-in cartridge valves, including those made by us. Finally, there are many small, independent machine shops that produce manifolds at very competitive prices. We believe that competition in the manifold and integrated package business is based upon quality, price, performance, proximity to the customer and speed of delivery. Many competitors have very low overhead structures and we cannot assure that we will be able to continue to compete effectively with these companies.

In addition, we compete in the sale of hydraulic valves, manifolds and integrated packages with certain of our customers, who also may be competitors. Generally, these customers purchase cartridge valves from us to meet a specific need in a system that cannot be filled by any valve they make themselves. To the extent that we introduce new products in the future that increase competition with such customers, it may have an adverse effect on our relationships with them.

**We are subject to risks relating to international sales.** In 2011, approximately 60% of our net sales were outside of the United States. International sales have continued to represent a greater proportion of our consolidated sales. We will continue to expand the scope of operations outside the United States, both through direct investment and distribution, and expect that international sales will continue to account for a substantial portion of net sales in future periods. International sales are subject to various risks, including unexpected changes in regulatory requirements and tariffs, longer payment cycles, difficulties in receivable collections, potentially adverse tax consequences, trade or currency restrictions, and, particularly in emerging economies, potential political and economic instability and regional conflicts.

Furthermore, our international operations generate sales in a number of foreign currencies, particularly British pounds, the Euro, and the Korean Won. Therefore, our financial condition and results of operations can be affected by fluctuations in exchange rates between the United States dollar and these currencies. Any or all of these factors could have a material adverse effect on our business, financial condition and results of operations.

**We are subject to various risks relating to our growth strategy.** In pursuing our growth strategy, we intend to expand our presence in existing markets and enter new markets. In addition, we may pursue acquisitions and joint ventures to complement our business. Many of the expenses arising from expansion efforts may have a negative effect on operating results until such time, if at all, that these expenses are offset by increased revenues. We cannot assure that we will be able to improve our market share or profitability, recover our expenditures, or successfully implement our growth strategy. See "Item 1. - Business - Strategy."

The expansion strategy also may require substantial capital investment for the construction of new facilities and their effective operation. We may finance the acquisition of additional assets using cash from operations, bank or institutional borrowings, or through the issuance of debt or equity securities. We cannot assure that we will be able to obtain financing from bank or institutional sources or through the equity or debt markets or that, if available, such financing will be on acceptable terms.

Our culture, by encouraging initiative, and both individual and collaborative responsibility, has substantially contributed to our success and operating results. Because our employees are able to readily shift their job functions to accommodate the demands of the business and changes in the market, we are a nimble, creative and innovative organization. As we increase the number of our employees and grow into new geographic markets, our culture will likely shift and evolve in new ways. Because our culture promotes the drivers of our success, our inability to protect and align our core values and culture with the evolving needs of the business could adversely affect our continued success.

**We are dependent upon key employees and skilled personnel.** Our success depends, to some extent, upon a number of key individuals. The loss of the services of one or more of these individuals could have a material adverse effect on our business. Future operating results depend to a significant degree upon the continued contribution of key management and technical personnel and the skilled labor force. As the Company continues to expand internationally, additional management and other key personnel will be needed. Competition for management and engineering personnel is intense and other employers may have greater financial and other resources to attract and retain these employees. We conduct a substantial part of our operations in Sarasota, Florida. Continued success is dependent on the Company's ability to attract and retain a skilled labor force at this location. There are no assurances that we will continue to be successful in attracting and retaining the personnel required to develop, manufacture and market our products and expand our operations. See "Item 1. - Business - Employees."

**We are subject to fluctuations in the prices of raw materials.** The primary raw materials used in the manufacture of our products are aluminum, ductile iron and steel. We cannot assure that prices for such materials will not increase or, if they do, that we will be able to increase the prices for our products to maintain our profit margins. If future price increases do not adequately cover material cost increases, our operating results may be adversely affected.

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**We are dependent upon our parts suppliers.** Our largest expense in cost of sales is the cost of purchasing cartridge valve parts. We cannot assure you that our manufacturing costs and output would not be materially and adversely affected by operational or financial difficulties experienced by one or more of our suppliers.

**We are subject to risks relating to our information technology systems.** We rely extensively on information technology systems to manage and operate our business. We cannot assure you that our results of operations and financial condition would not be materially and adversely affected if we experienced a significant business disruption due to the failure of these systems to function properly, or unauthorized access to our systems.

**Hurricanes could cause a disruption in our operations which could adversely affect our business, results of operations, and financial condition.** A significant portion of our operations are located in Florida, a region that is susceptible to hurricanes. Such weather events can cause disruption to our operations and could have a material adverse effect on our overall results of operations. While we have property insurance to partially reimburse us for wind losses resulting from a named storm, such insurance would not cover all possible losses.

**We are subject to risks relating to changes in our tax rates, unfavorable resolution of tax contingencies, or exposure to additional income tax liabilities.** We are subject to income taxes in the United States and various non-U.S. jurisdictions. Domestic and international tax liabilities are subject to the allocation of income among various tax jurisdictions. Our effective tax rate could be affected by changes in the mix among earnings in countries with differing statutory tax rates or changes in tax laws. We are subject to on-going tax audits in various jurisdictions. If these audits result in assessments different from amounts reserved, future financial results may include unfavorable adjustments to our tax liabilities, which could have a material adverse effect on our results of operations.

**The marketplace could adopt an industry standard cavity that would not accommodate our products.** Our screw-in cartridge valves fit into a unique cavity for which, to date, few other manufacturers have designed products. Accordingly, our screw-in cartridge valves are not interchangeable with those of other manufacturers. Most competitive manufacturers produce screw-in cartridge valves that fit into an industry common cavity. There is an ongoing effort in the United States to produce a standard for screw-in hydraulic cartridge valve cavities based on the industry common cavity. Additionally, the International Standards Organization (“ISO”) has an existing industry standard for screw-in hydraulic cartridge valve cavities, which is different from our cavity and the industry common cavity. In our view, the industry common cavity, as well as the suggested standardized form of this cavity, and the ISO standard cavity, fail to address critical functional requirements, which could result in performance and safety problems of significant magnitude for end users. To our knowledge, no major competitor has converted its standard product line to fit the ISO standard cavity. Any move by a substantial number of screw-in cartridge valve and manifold manufacturers toward the adoption of ISO standard or another standard, based on the existing industry common cavity, could have a material adverse effect on our business, financial condition and results of operation. See “Item 1. - Business - Competition.”

**We are subject to the cost of environmental compliance and the risk of failing to comply with environmental laws.** Our operations involve the handling and use of substances that are subject to federal, state and local environmental laws and regulations that impose limitations on the discharge of pollutants into the soil, air and water and establish standards for their storage and disposal. We believe that our current operations are in substantial compliance with applicable environmental laws and regulations, the violation of which could have a material adverse effect on our business, financial condition and results of operations. New laws and regulations, or stricter interpretations of existing laws or regulations, could have a material adverse effect on our business, financial condition and results of operations. We have not suffered any material adverse effects due to compliance with environmental laws and regulations in the past.

**We are subject to the risk of liability for defective products.** The application of many of our products entails an inherent risk of product liability. We cannot assure you that we will not face any material product liability claims in the future or that the product liability insurance we maintain at such time will be adequate to cover such claims.

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**We may decide to reduce or eliminate dividends.** Although we have paid a cash dividend each quarter since our common stock began publicly trading in 1997, we cannot assure that funds will be available for this purpose in the future. The declaration and payment of dividends is subject to the sole discretion of our board of directors and will depend upon our profitability, financial condition, capital needs, acquisition opportunities, future prospects and other factors deemed relevant by the board, and may be restricted by the terms of our credit facilities.

**Certain anti-takeover provisions may hinder or prevent a change in control.** Our Articles of Incorporation provide for a classified board of directors. In addition, the Articles give the board of directors the authority, without further action by the shareholders, to issue and fix the rights and preferences of a new class, or classes, of preferred stock. These and other provisions of the Articles and our Bylaws may deter or delay changes in control, including transactions in which shareholders might otherwise receive a premium for their shares over then current market prices. In addition, these provisions may limit the ability of shareholders to approve transactions that they may deem to be in their best interests.

**We are subject to control by certain shareholders and management.** Christine L. Koski, the daughter of the deceased founder of the Company, Robert E. Koski, is a member of the board of directors. She, along with other family members, own or control approximately 19% of the outstanding shares of our common stock. Accordingly, the members of the Koski family have the ability to influence significantly the election of our directors and the outcome of certain corporate actions requiring shareholder approval, and to influence our business. Such influence could preclude any acquisition of the Company and could adversely affect the price of our common stock. Our directors and executive officers as a group beneficially own or control approximately 18% of the outstanding shares of our common stock.

### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

### **ITEM 2. PROPERTIES**

The Company owns major facilities in the United States, United Kingdom, Germany, and Korea, as set forth below.

The Company owns a 69,000 square foot facility in Sarasota, Florida, which houses manufacturing, design, marketing and other administrative functions. The Sarasota facility is well suited for the design, testing and manufacture of the Company's products.

The Company also owns a 77,000 square foot manufacturing facility in Manatee County, Florida. The Manatee County facility, constructed in 1997, has a productive capacity similar to the Sarasota facility.

The close proximity of the Florida facilities allows us to quickly shift resources, including machinery and people, to effectively meet changing business requirements.

The Company also owns vacant land in Manatee County, Florida, adjacent to its existing facility for future expansion requirements. In total, the Company owns 27 acres of contiguous property.

In January 2012, the Company announced that it has applied for permitting to begin site preparation for a planned expansion property. The initial phase of the planned expansion, an infrastructure utility building that will serve both the existing Manatee County facility and the planned new facility, was completed in November 2011. The new facility, when completed, will have 60,000 square feet of manufacturing and 16,000 square feet of office space to create capacity for future growth. The total investment, including the completed infrastructure utility building and site work, is estimated to be approximately \$16 million. By completing site preparation work now, Sun will be in position to begin construction, when ready, without delay. However, no decision has been made regarding the timing of the start of the construction phase.

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The Company leases a 17,000 square foot manufacturing facility in Lenexa, Kansas, which is used to manufacture manifolds for the North American market.

The Company owns a 37,000 square foot facility in Coventry, England. This operation, while primarily acting as a distributor, is also involved in manifold design and manufacturing.

The Company owns a 45,000 square foot distribution and manufacturing facility in Erkelenz, Germany. This facility is well suited to house equipment used for manufacturing and testing of the Company's products. Currently, a small portion of the manufacturing area is utilized and the remainder is leased on an annual basis to an outside company.

The Company owns a 10,000 square foot distribution and manufacturing facility in Incheon, Korea.

There is no mortgage or other significant encumbrance on any of the Company's properties. The Company believes that its properties have been adequately maintained, are generally in good condition, and are suitable and adequate for its business as presently conducted. The extent of utilization of the Company's properties varies from time to time and among its facilities.

### **ITEM 3. LEGAL PROCEEDINGS**

The Company from time to time is involved in routine litigation incidental to the conduct of its business. The Company does not believe that any pending litigation will have a material adverse effect on its consolidated financial position or results of operations.

### **ITEM 4. MINE SAFETY DISCLOSURE**

Not applicable.

**PART II**

**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY,  
RELATED STOCKHOLDER MATTERS AND  
ISSUER PURCHASES OF EQUITY SECURITIES**

*Market Information*

The Common Stock of the Company has been trading publicly under the symbol SNHY on the Nasdaq Global Select Market since the Company's initial public offering on January 9, 1997. The following table sets forth the high and low closing sale prices of the Company's Common Stock as reported by the Nasdaq Global Select Market and the dividends declared for the periods indicated.

	High	Low	Dividends declared
<b>2011</b>			
First quarter	\$30.100	\$22.870	0.133
Second quarter	35.080	27.650	0.090
Third quarter	33.570	20.380	0.090
Fourth quarter	30.600	19.430	0.090
<b>2010</b>			
First quarter	\$19.687	\$13.907	0.060
Second quarter	21.067	15.267	0.060
Third quarter	19.300	14.867	0.060
Fourth quarter	25.600	18.373	0.393

*Holdings*

There were 137 shareholders of record of Common Stock on February 24, 2012. The number of record holders was determined from the records of the Company's transfer agent and does not include beneficial owners of Common Stock whose shares are held in the names of securities brokers, dealers, and registered clearing agencies. The Company believes that there are approximately 8,000 beneficial owners of Common Stock.

*Dividends*

Quarterly dividends were paid on the 15th day of each month following the date of declaration. Additionally, the Company declared a shared distribution cash dividend of \$0.07 per share that was paid on March 31, 2011, to shareholders of record as of March 15, 2011. In 2010, the Company declared a one-time special cash dividend of \$0.50 per share that was paid on November 30, 2010, to shareholders of record as of November 15, 2010. The Company's board of directors has also declared a shared distribution cash dividend of \$0.12 per share, payable on March 31, 2012, to shareholders of record as of March 22, 2012. Additionally, the Company's board of directors declared a first quarter 2012 cash dividend of \$0.09 per share payable on April 15, 2012, to shareholders of record as of March 31, 2012.

The Company's board of directors currently intends to continue to pay a quarterly dividend of \$0.09 per share during 2012. However, 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, acquisition opportunities, future prospects and other factors deemed pertinent by the board of directors.

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### *Stock Split*

On June 9, 2011, 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, 2011, payable on July 15, 2011. The Company issued approximately 8,500,000 shares of common stock as a result of the stock split.

On June 19, 2007, 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, 2007, which was paid on July 15, 2007. The Company issued approximately 5,500,000 shares of common stock as a result of the stock split.

The effect of these stock splits on outstanding shares, earnings per share and dividends per share has been retroactively applied to all periods presented.

### *Equity Compensation Plans*

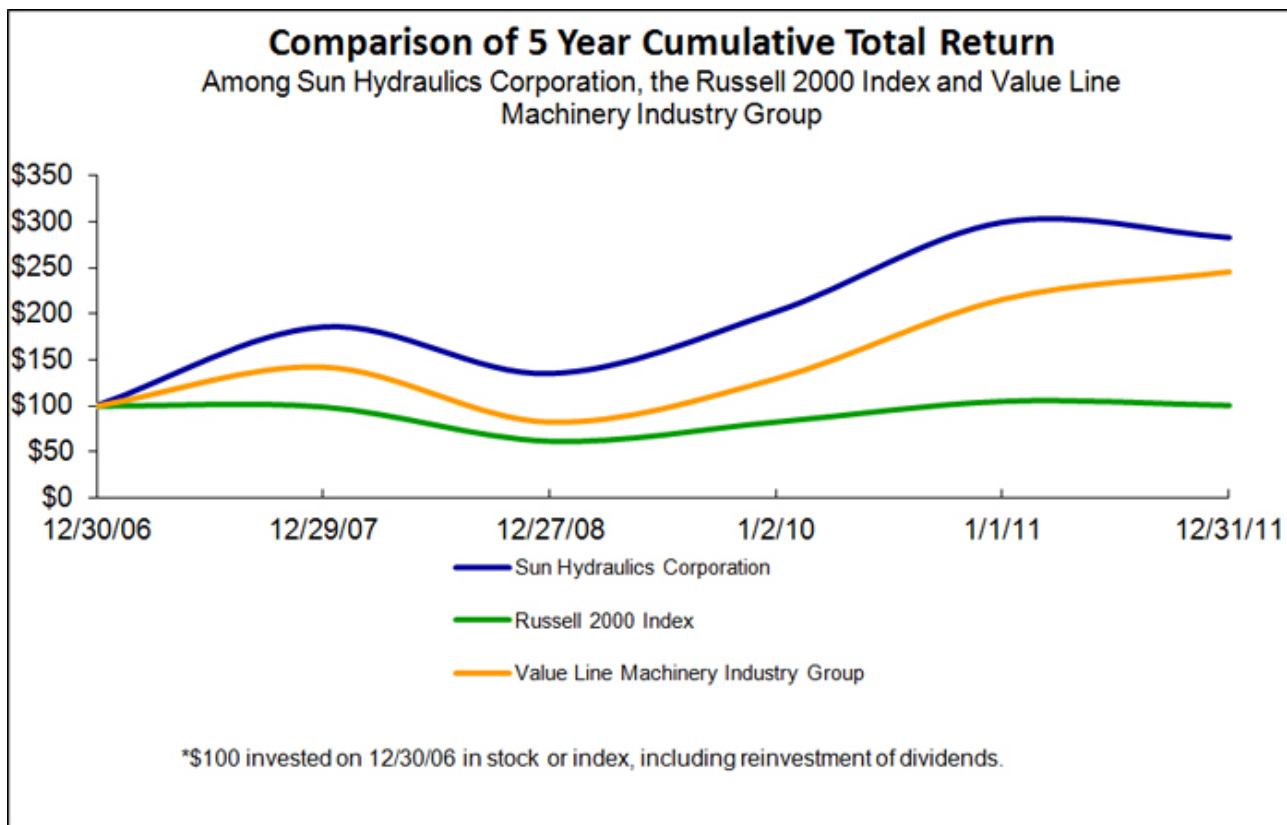
Information called for by Item 5 is provided in Note 15 of our 2011 Audited Financial Statements (Item 8 of this report).

### *Issuer Purchases of Equity Securities*

The Company did not repurchase any of its stock during the fourth quarter of 2011.

### *Five-Year Stock Performance Graph*

The following graph compares cumulative total return among Sun, the Russell 2000 Index and the Value Line Machinery Industry Group, from December 30, 2006, to December 31, 2011, assuming \$100 invested in each on December 30, 2006. Total return assumes reinvestment of any dividends for all companies considered within the comparison. The stock price performance shown in the graph is not necessarily indicative of future price performance.



	12/30/2006	12/29/2007	12/27/2008	1/2/2010	1/1/2011	12/31/2011
Sun Hydraulics Corporation	100.00	185.89	135.03	202.67	300.11	283.39
Russell 2000 Index	100.00	99.17	62.17	82.89	105.14	100.75
Value Line Machinery Industry Group	100.00	142.51	82.67	130.02	216.24	246.15

**ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA**

The following summary should be read in conjunction with the consolidated financial statements and related notes contained herein. See “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Item 1. Business.”

The Company reports on a fiscal year that ends on the Saturday closest to December 31st. Each quarter generally consists of thirteen weeks. As a result of the 2009 fiscal year ending January 2, 2010, the quarter ended January 2, 2010, consisted of fourteen weeks, resulting in a 53-week year.



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	Dec 31, 2011	Jan 1, 2011	Year Ended Jan 2, 2010	Dec 27, 2008	Dec 29, 2007
	(in thousands except per share data)				
<b>Statement of Operations:</b>					
Net sales	\$ 204,171	\$150,695	\$ 97,393	\$ 178,278	\$ 167,374
Gross profit	79,215	52,343	21,957	59,117	54,850
Operating income	55,269	31,039	2,143	36,377	33,635
Income before income taxes	57,586	31,643	2,017	37,729	34,371
Net income	\$ 37,677	\$ 21,400	\$ 1,856	\$ 25,735	\$ 22,131
Basic net income per common share	\$ 1.47	\$ 0.84	\$ 0.07	\$ 1.03	\$ 0.90
Diluted net income per common share	\$ 1.47	\$ 0.84	\$ 0.07	\$ 1.03	\$ 0.89
Dividends per common share	\$ 0.40	\$ 0.57	\$ 0.30	\$ 0.30	\$ 0.23
<b>Other Financial Data:</b>					
Depreciation and amortization	\$ 6,721	\$ 6,873	\$ 6,968	\$ 7,096	\$ 6,341
Capital expenditures	10,143	3,856	5,096	10,874	12,591
<b>Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 51,308	\$ 33,337	\$ 30,446	\$ 35,303	\$ 19,337
Working capital	89,744	66,150	53,454	50,217	36,198
Total assets	\$ 167,528	132,034	119,933	122,385	110,780
Total debt	—	—	—	272	701
Shareholders' equity	145,276	115,024	107,614	106,556	91,882

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

**OVERVIEW**

Sun 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 subsidiaries and independent distributors. Sales outside the United States for the year ended December 31, 2011, were approximately 60% of total net sales.

Approximately two-thirds 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 the mobile market include equipment used in off-road construction, agriculture, fire and rescue, utilities, oil fields, and mining.

The remaining one-third 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. Power units, 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 increased 24% and 42% in 2011 and 2010, respectively, after a decrease of 40% in 2009.

The Company's order trend has historically tracked closely to the United States Purchasing Managers Index (PMI). A PMI above 50 indicates economic expansion in the manufacturing sector and when below 50, it indicates economic contraction. The index decreased to 53.1 in December 2011, from 58.5 in December 2010. The index has remained above 50 since August 2009. The report in February 2012 indicates continuing growth in the manufacturing sector with an index at 52.4. Management believes the continuing growth in the manufacturing sector is a positive sign for the Company's business in 2012.

During this expansion phase of the business cycle, the Company has experienced significant demand for its products with revenues increasing over 100% from 2009 to 2011. The Company has been able to respond to this increasing demand and consistently ship product on-time to the customer's requested ship date. Providing the right products where and when the customer needs them, continues to strengthen Sun's position in the industry.

This increased demand, coupled with an agile workforce, experienced supply chain, and manufacturing processes that are operating smoothly have allowed Sun to operate at high margins. Gross margins in 2011 exceeded 39% for the first three-quarters of the year and were approximately 37% in the fourth quarter. At these sales levels, the Company was able to leverage its fixed cost base and resources, adding additional income to the bottom line. Net income was up 76% in 2011 compared to 2010.

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### **Results for the 2011 fiscal year**

(Dollars in millions except net income per share)

	December 31, 2011	January 1, 2011	Increase/Decrease
<b>Twelve Months Ended</b>			
Net Sales	\$ 204.2	\$ 150.7	35%
Net Income	\$ 37.7	\$ 21.4	76%
Net Income per share:			
Basic	\$ 1.47	\$ 0.84	75%
Diluted	\$ 1.47	\$ 0.84	75%
<b>Three Months Ended</b>			
Net Sales	\$ 45.7	\$ 41.8	9%
Net Income	\$ 6.1	\$ 6.3	-3%
Net Income per share:			
Basic	\$ 0.24	\$ 0.25	-4%
Diluted	\$ 0.24	\$ 0.25	-4%

Sun grew its top line by 36% in 2011, and the bottom line by 76%. Sales grew in all geographic markets with sales to North America increasing 40.1%, Europe 33.2%, and Asia/Pacific 30.2%.

In addition to strong operational results in 2011, the Company engaged in a number of activities that management believes positions it well to take advantage of future growth opportunities. Sun opened a sales office in China in January 2011, which helped increase sales 49% in this region. Despite an end of year slow down in the region, management expects China to regain its growth trajectory in the long term. Sun added capability and capacity in 2011, notably in the design and manufacturing engineering area. Management believes these additions will help Sun develop the products and processes that will contribute to the Company's growth. In September 2011, Sun completed its acquisition of 100% of the equity interest of High Country Tek (HCT). HCT products and capabilities integrate nicely with Sun's line of electrically-actuated hydraulic valves, creating new opportunities in the marketplace.

First quarter demand has rebounded and is forecast to be 5% above last year's level. Orders are strong in all major geographic regions. Orders coupled with positive PMI numbers indicate growth in 2012. Management believes the Company is positioned well for increasing demand and expects to deliver strong operating results.

Maintaining the Company's strong balance sheet and financial flexibility remains a key strategy. The Company ended 2011 with cash and marketable securities of \$73.1 million, up \$28.1 million from the previous year, an unused line of credit of \$15.0 million, with availability up to \$50.0 million and zero dollars of long-term debt. The Company continued to invest in its business in 2011 with capital expenditures for the year of approximately \$10.1 million.

### **Dividends**

The Company declared a quarterly dividend of \$0.06 per share for the first quarter of 2011 and quarterly dividends of \$0.09 per share for the remaining three quarters of 2011. These dividends were paid on the 15th day of the month following the date of declaration. The Company also declared a shared distribution cash dividend of \$0.07 per share that was paid on March 31, 2011, to shareholders of record as of March 15, 2011. Additionally, 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, 2011, which was paid on July 15, 2011.

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In March 2012, the Board elected to once again apportion a shared distribution for employees and shareholders based on the Company's 2011 results. The shared distribution consists of a 13.5% contribution of salaries to all eligible employees, most of which will be paid into retirement plans via Sun Hydraulics Stock, and a \$0.12 per share dividend to shareholders, totaling approximately \$7.7 million. The shared distribution concept was introduced in 2008 as a way to reward both shareholders and employees when Sun has a successful year.

The shared distribution dividend will be issued to shareholders of record on March 22, 2012, with payment on March 31, 2012. Additionally, the Company's board of directors declared a first quarter 2012 cash dividend of \$0.09 per share payable on April 15, 2012, to shareholders of record as of March 31, 2012.

### ***Outlook***

First quarter 2012 revenues are expected to be approximately \$53 million, up approximately 5% from the first quarter of 2011. Earnings per share are estimated to be \$0.37 to \$0.39 compared to \$0.38 in the same period a year ago.

### ***Results of Operations***

The following table sets forth, for the periods indicated, certain items in the Company's statements of operations as a percentage of net sales.

	<b>For the Year Ended</b>				
	<b>Dec 31, 2011</b>	<b>Jan 1, 2011</b>	<b>Jan 2, 2010</b>	<b>Dec 27, 2008</b>	<b>Dec 29, 2007</b>
Net sales	100.0%	100.0%	100.0%	100.0%	100.0%
Gross profit	38.8%	34.7%	22.5%	33.2%	32.8%
Operating income	27.1%	20.6%	2.2%	20.4%	20.1%
Income before income taxes	28.2%	21.0%	2.1%	21.2%	20.5%

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	United States	Korea	Germany	United Kingdom	Elimination	Consolidated
<b>2011</b>						
Sales to unaffiliated customers	\$131,714	\$20,566	\$27,997	\$23,894	\$ —	\$ 204,171
Intercompany sales	33,711	—	201	1,536	(35,448)	—
Operating income	41,847	2,492	6,715	4,167	48	55,269
Total assets	116,496	11,996	19,016	20,747	(727)	167,528
Depreciation and amortization	5,308	114	357	942		6,721
Capital expenditures	9,324	274	63	482		10,143
<b>2010</b>						
Sales to unaffiliated customers	\$ 94,067	\$16,284	\$19,770	\$20,574	\$ —	\$ 150,695
Intercompany sales	26,022	—	160	1,225	(27,407)	—
Operating income	22,040	2,246	4,024	2,822	(93)	31,039
Total assets	89,977	10,535	14,705	17,605	(788)	132,034
Depreciation and amortization	5,388	89	429	967		6,873
Capital expenditures	3,400	217	27	212		3,856
<b>2009</b>						
Sales to unaffiliated customers	\$ 59,278	\$ 9,978	\$14,654	\$13,483	\$ —	\$ 97,393
Intercompany sales	15,545	—	139	1,101	(16,785)	—
Operating income (loss)	(2,110)	616	2,475	884	278	2,143
Total assets	85,338	8,191	12,447	15,923	(1,966)	119,933
Depreciation and amortization	5,335	104	502	1,027		6,968
Capital expenditures	4,758	41	30	267		5,096

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### ***Comparison of Years Ended December 31, 2011 and January 1, 2011***

#### ***Net Sales***

Net sales were \$204.2 million, an increase of \$53.5 million, or 35.5%, compared to \$150.7 million in 2010. The increase in net sales was primarily driven by increased demand in our end markets, which primarily include capital goods equipment. Price increases, effective July 1, 2010, and 2011, contributed approximately 3% to sales. The effect of exchange rates added approximately \$2.6 million to sales. New product sales (defined as products introduced within the last five years) generally made up 10-12% of total sales in 2011.

North American sales increased 40.1% or \$27.0 million, to \$94.2 million in 2011, Asian sales increased 29.3% or \$8.8 million, to \$38.8 million in 2011, and European sales increased 33.2% or \$15.8 million, to \$63.4 million in 2011.

The U.S. reporting segment had sales of \$131.7 million during 2011, up \$37.6 million or 40.0%, compared to sales of \$94.1 million during 2010. The increase was driven by demand in our end markets and the general upturn in the global economy. International sales out of the U.S. were \$49.8 million during 2011, up 42.3% or \$14.8 million, compared to \$34.9 million during 2010. International sales out of the US include sales to Europe, Africa and the Asia/Pacific region. Significant increases in sales were noted in almost all geographic regions.

The Korean reporting segment had sales of \$20.6 million during 2011, up \$4.3 million or 26.3%, compared to sales of \$16.3 million during 2010. The increase was related to demand in almost all market segments. Currency effect increased 2011 sales by approximately \$0.9 million, the majority of which occurred in the second and third quarters of the year.

The German reporting segment had sales of \$28.0 million during 2011, up \$8.2 million or 41.6%, compared to sales of \$19.8 million during 2010. The increases in sales were primarily related to an increased demand for our products within Germany. Currency effect increased 2011 sales by approximately \$1.4 million, the majority of which occurred in the second and third quarters of the year.

The U.K. reporting segment had sales of \$23.9 million during 2011, up \$3.3 million or 16.1%, compared to sales of \$20.6 million during 2010. The increase was primarily related to sales within the U.K., and to Norway. Currency effect increased 2011 sales by approximately \$0.3 million.

#### ***Gross Profit***

Gross profit increased \$26.9 million or 51.3% to \$79.2 million in 2011, compared to \$52.3 million in 2010. Gross profit as a percentage of net sales increased to 38.8% in 2011, compared to 34.7% in 2010. As sales increased across all segments, the Company achieved productivity improvements and was able to leverage its overhead costs to generate higher gross profit.

Higher sales volume in 2011 contributed \$16.3 million of the increase. The remaining increase in gross profit was attributed to productivity improvements of approximately \$0.8 million, decreases in overhead expenses as a percentage of sales of approximately \$5.1 million, both of which occurred primarily in the U.S., and price increases in July 2010 and 2011, of approximately \$6.8 million. The increase in gross profit was partially offset by higher material costs as a percentage of sales of approximately \$2.0 million.

Current year overhead expense includes approximately \$1.4 million more expense relating to the shared distribution as compared to the prior year.

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

Selling, engineering and administrative expenses in 2011 were \$23.9 million, a \$2.6 million, or 12.4%, increase, compared to \$21.3 million in 2010. The change was related to additional retirement benefits of approximately \$0.5 million, primarily related to the shared distribution, compensation, totaling \$0.8 million, marketing expenses of approximately \$0.4 million, and outside services of approximately \$0.2 million.

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### ***Operating Income***

Operating income increased \$24.2 million or 78.1% to \$55.3 million in 2011, compared to \$31.0 million in 2010, with operating margins of 27.1% and 20.6% for 2011 and 2010, respectively. The increase in sales during 2011 has improved operating margins across almost all segments. The Company has been able to respond to the increasing demand in 2011. As sales increased across all segments, the Company achieved productivity improvements and was able to leverage its overhead costs to generate higher operating income.

The U.S. reporting segment contributed \$41.8 million to our consolidated operating income during 2011 compared to \$22.0 million during 2010, an increase of \$19.8 million.

The increase in the U.S. operating segments was primarily related to leverage of its overhead costs. The decrease in variable and fixed overhead costs, as a percent of sales, added \$5.8 million to operating income. Absorption of selling, engineering, and administrative expenses added \$4.0 million of additional operating income. Productivity gains contributed \$1.0 million. The remaining increase was primarily from increased sales volume, which added \$8.8 million of additional operating income.

The Korean reporting segment contributed \$2.5 million to our consolidated operating income during 2011 compared to \$2.2 million during 2010, an increase of \$0.2 million. The increase in operating income was primarily related to increased sales volume, which was partially offset by lower margins.

The German reporting segment contributed \$6.7 million to our consolidated operating income during 2011 compared to \$4.0 million during 2010, an increase of \$2.7 million. The increase was primarily related to increased sales volume, which contributed \$1.7 million of additional operating income. The remaining increase was related to the absorption of fixed overhead costs.

The U.K. reporting segment contributed \$4.2 million to our consolidated operating income during 2011 compared to \$2.8 million during 2010, an increase of \$1.3 million. The increase was primarily related to decreased material costs of \$0.5 million, productivity improvements of \$0.2 million and decreased variable and fixed costs as a percent of sales of \$0.2 million. The increase in sales volume resulted in \$0.5 million of additional operating income.

### ***Interest Income, Net***

Net Interest income for 2011 was \$0.8 million compared to net interest income of \$0.7 million for 2010. Total average cash and marketable securities for 2011, was \$59.0 million compared to total average cash and marketable securities of \$41.6 million for 2010. Although total cash and marketable securities increased in 2011, interest rates were at an all-time low. Interest is primarily derived from investments in corporate and municipal bonds, mutual funds, certificates of deposit, and money market funds.

### ***Foreign Currency Transaction (Gain) Loss, Net***

Net foreign currency transaction gain was \$0.2 million in 2011 compared to a loss of \$0.1 million in 2010. The U.S. Dollar weakened against the Euro, the Korean Won and the British Pound at times during 2011, resulting in foreign currency transaction gains at each of our international locations.

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

Miscellaneous income was \$1.4 million in 2011 compared to \$0.1 million in 2010. The current period amount includes a gain of \$1.2 million as a result of remeasuring to fair value its 38% equity interest in HCT held before the business combination. The remaining 2011 income was related to the gain on the sale of the Chinese joint venture company.

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### ***Income Taxes***

The provision for income taxes for the year ended December 31, 2011, was 34.6% of pretax income compared to a provision of 32.4% for the year ended January 1, 2011. The change was primarily due to the relative levels of income and different tax rates in effect among the countries in which the Company sells its products. The current year provision was affected by discrete items related to a reserve for uncertain tax positions from previous years. Excluding these discrete items, the effective rate would have been approximately 33.8%.

### ***Comparison of Years Ended January 1, 2011, and January 2, 2010***

#### ***Net Sales***

Net sales were \$150.7 million, an increase of \$53.3 million, or 54.7%, compared to \$97.4 million in 2009. Net sales increased 54.8% excluding the effect of exchange rates. The increase in net sales was primarily driven by increased demand in our end markets, which primarily include capital goods equipment. Price increases instituted in July 2010 accounted for approximately 1.5% of total sales. New product sales (defined as products introduced within the last five years) generally made up 10-15% of total sales in 2010.

North American sales increased 51.3% or \$22.8 million, to \$67.3 million in 2010, Asian sales increased 74.2% or \$12.8 million, to \$30.1 million in 2010, and European sales increased 46.9% or \$15.2 million, to \$47.7 million in 2010.

The U.S. reporting segment had sales of \$94.1 million during 2010, up \$34.8 million or 58.7%, compared to sales of \$59.3 million during 2009. The increase was driven by demand in our end markets and the general upturn in the global economy. International sales out of the U.S. were \$34.9 million during 2010, up 83.7% or \$15.9 million, compared to \$19.0 million during 2009. International sales out of the US include sales to Europe, Africa and the Asia/Pacific region. Significant increases in sales were noted in almost all geographic regions.

The Korean reporting segment had sales of \$16.3 million during 2010, up \$6.3 million or 63.2%, compared to sales of \$10.0 million during 2009. Currency effect increased 2010 sales by approximately \$1.4 million, the majority of which occurred in the first half of the year. The remaining increase was the result of efforts to expand and diversify the customer base, in addition to increased demand from existing customers.

The German reporting segment had sales of \$19.8 million during 2010, up \$5.1 million or 34.9%, compared to sales of \$14.7 million during 2009. The increase in sales was primarily related to demand within Germany. However increased sales were noted throughout most of Europe. These increases were partially offset by currency effect, which reduced 2010 sales by approximately \$1.0 million, most of which occurred in the second half of the year.

The U.K. reporting segment had sales of \$20.6 million during 2010, up \$7.1 million or 52.6%, compared to sales of \$13.5 million during 2009. The increase was primarily related to sales within the U.K., and to Sweden. Currency effect reduced 2010 sales by approximately \$0.4 million.

#### ***Gross Profit***

Gross profit increased \$30.4 million or 138.4% to \$ 52.3 million in 2010, compared to \$22.0 million in 2009. Gross profit as a percentage of net sales increased to 34.7% in 2010, compared to 22.5% in 2009.

During the downturn of the prior year, the Company maintained its workforce and labor and variable overhead costs became essentially fixed. By maintaining its workforce, the Company has been able to respond to the increasing demand in 2010. As sales increased across all segments, the Company has experienced productivity improvements and was able to leverage its overhead costs to generate higher gross profit.

Higher sales volume in 2010 contributed \$11.4 million of the gross profit increase. The remaining increase in gross profit was attributed to productivity improvements of approximately \$4.5 million, and decreases in overhead expenses as a percentage of sales of approximately \$13.3 million, both of which occurred primarily in the U.S. A price increase in July 2010 added approximately \$2.6 million to gross profit. The



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increase in gross profit was partially offset by higher material costs as a percentage of sales of \$1.4 million. Additionally, 2010 amounts include higher benefit costs of approximately \$1.9 million relating to the shared distribution, most of which will be paid into retirement plans.

In June 2009, the Company initiated rolling furloughs for the production workforce and a 3% salary reduction for non-production personnel. Production employees were brought back throughout the first quarter of 2010 as demand increased. In April 2010, the Company ended its employee furlough program and restored the 3% salary decrease for all U.S. employees. There was minimal impact during 2010 relating to the furloughs and salary reductions, however, there were cost savings of approximately \$1.3 million in the prior year.

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

Selling, engineering and administrative expenses in 2010 were \$21.3 million, a \$1.5 million, or 7.5%, increase, compared to \$19.8 million in 2009. The increase is primarily related to marketing efforts in Asia of approximately \$0.4 million, and additional benefits related to the shared distribution of approximately \$0.8 million, most of which will be paid into retirement plans. In the prior year, the cost savings of approximately \$0.9 million resulted from furlough and salary reductions.

### ***Operating Income***

Operating income increased \$28.9 million or 1348.4% to \$31.0 million in 2010, compared to \$2.1 million in 2009, with operating margins of 20.6% and 2.2% for 2010 and 2009, respectively. Based on the Company's structure and decisions during the downturn, the increase in sales during 2010 has improved operating margins across all segments. During the downturn of the prior year, the Company maintained its workforce and labor and variable overhead costs became essentially fixed. By maintaining its workforce, the Company has been able to respond to the increasing demand. As sales increase across all segments, the Company is experiencing productivity improvements and is able to leverage its overhead costs to generate higher operating income.

The U.S. reporting segment contributed \$22.0 million to our consolidated operating income during 2010 compared to an operating loss of \$2.1 million during 2009, an increase of \$24.2 million. The increase in the U.S. operating segment is primarily related to productivity gains and leverage of its overhead costs. Productivity gains contributed \$4.5 million and decreases in variable and fixed overhead costs as a percent of sales added \$13.8 million to operating income. The remaining increases in operating income were primarily from absorption of selling, engineering, and administrative expenses.

The Korean reporting segment contributed \$2.2 million to our consolidated operating income during 2010 compared to \$0.6 million during 2009, an increase of \$1.6 million. The increase in operating income was primarily related to material costs due to the strength of the Korean Won against the U.S. Dollar for material purchases made in U.S. Dollars, and productivity improvements totaling \$1.0 million. The increase in sales volume resulted in \$0.4 million of additional operating income.

The German reporting segment contributed \$4.0 million to our consolidated operating income during 2010 compared to \$2.5 million during 2009, an increase of \$1.5 million. The increase was primarily due to the absorption of selling, engineering, and administrative expenses which remained flat in whole dollars. The increase in sales volume resulted in \$0.9 million of additional operating income. These amounts were offset by material costs, due to the weakening of the Euro against the U.S. Dollar for material purchases made in U.S. Dollars of \$0.6 million.

The U.K. reporting segment contributed \$2.8 million to our consolidated operating income during 2010 compared to \$0.9 million during 2009, an increase of \$1.9 million. The increase was primarily related to productivity improvements of \$0.8 million and decreased variable and fixed costs as a percent of sales of \$1.7 million. The increase in sales volume resulted in \$0.5 million of additional operating income. These amounts were partially offset by increased material costs of \$1.6 million, primarily related to product mix.

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### ***Interest Income, Net***

Net Interest income for 2010 was \$0.7 million compared to net interest income of \$0.6 million for 2009. Total average cash and marketable securities for 2010, was \$41.6 million compared to total average cash and marketable securities of \$36.8 million for 2009. Although total cash and marketable securities increased in 2010, interest rates were at an all time low. Interest is primarily derived from investments in corporate and municipal bonds, mutual funds, certificates of deposit, and money market funds.

### ***Foreign Currency Transaction Loss, Net***

Net foreign currency transaction loss was \$0.1 million in 2010 compared to \$0.3 million in 2009. The U.S. Dollar strengthened against the Euro, the Korean Won and the British Pound at times during 2010 resulting in minimal foreign currency transaction losses at each of our international locations.

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

Miscellaneous income was \$0.1 million in 2010 compared to expense of \$0.4 million in 2009. The increase is primarily related to equity method investment earnings.

### ***Income Taxes***

The provision for income taxes for the year ended January 1, 2011, was 32.4% of pretax income compared to a provision of 8.0% for the year ended January 2, 2010. The change was primarily due to the relative levels of income and different tax rates in effect among the countries in which the Company sells its products. The prior year provision includes a tax benefit for losses recognized in the U.S.

### ***Liquidity and Capital Resources***

Historically, the Company's primary source of capital has been cash generated from operations, although short-term fluctuations in working capital requirements have been met through borrowings under revolving lines of credit as needed. The Company's principal uses of cash have been paying operating expenses, paying dividends to shareholders, making capital expenditures, and servicing debt.

Net cash flow from operations in 2011 was \$49.5 million, compared to \$25.1 million in 2010 and \$13.7 million in 2009. The \$24.5 million increase in the Company's net cash flow from operations was due primarily to the increase in net income of \$16.3 million, and changes in working capital relating to accounts receivable, inventories, accounts payable and accrued expenses. Increases in inventory, accounts payable and accrued expenses are primarily related to the improved general business conditions during the period. The decrease in accounts receivable for the year is a result of the Company improving in its days sales outstanding. Days sales outstanding decreased to 29 in 2011 from 32 in 2010 and inventory turns remained constant at 10.6. Cash on hand increased \$18.0 million from \$33.3 million in 2010 to \$51.3 million in 2011. Investments in marketable securities increased \$10.2 million from \$11.6 million in 2010 to \$21.8 million in 2011. The \$11.4 million increase in the Company's net cash flow from operations in 2010 was due primarily to the increase in net income of \$19.5 million.

Capital expenditures, consisting primarily of purchases of machinery and equipment, were \$6.1 million in 2011, compared to \$3.9 million in 2010 and \$3.4 million in 2009. Also included in capital expenditures for the year ended December 31, 2011 was a building expansion of \$1.0 million and an infrastructure utility building of \$3.0 million. Included in capital expenditures for the year ended January 2, 2010 was a land purchase equal to \$1.7 million.

The Company continues to be watchful of both its capability and capacity, and recognizes that additional capacity may be required as the expansion of this business cycle and its market share gains continue. In January 2012, the Company applied for permitting to begin site preparation for a planned expansion on property the Company currently owns. By completing site preparation work now, Sun will be in position to begin construction, when ready and without delay. However, no decision has been made regarding the timing of the start of the construction phase.

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The new facility, when completed, will have 60,000 square feet of manufacturing and 16,000 square feet of office space. The total investment, including the completed infrastructure utility building and site work, is estimated to be approximately \$16.0 million.

At this time, capital expenditures for 2012 are estimated to be \$10 million, which include approximately \$3 for site preparation, and \$2 million for an expansion and update of our UK facility. The remaining expenditures consist of purchases of machinery and equipment.

Effective August 1, 2011, the company completed a credit and security agreement in the U.S. with Fifth Third Bank (the "Bank"). The new agreement provides for three separate credit facilities totaling \$50 million.

Facility A is a \$15 million unsecured revolving line of credit and requires monthly payments of interest. Facility A has a floating interest rate of 1.45% over the 30-day LIBOR Rate (as defined).

Facility B is an accordion feature to increase the revolving line of credit to a \$35 million secured revolving line of credit. Facility B will be secured by the Company's U.S. assets, including its manufacturing facilities, and requires monthly payments of interest. Facility B will bear interest at the 30-day LIBOR Rate or the Bank's Base Rate (as defined), at the Company's discretion, plus a margin based on the Borrower's Funded Debt to EBITDA Leverage Ratio (as defined). The LIBOR Margin ranges from 1.45% to 2.25% and the Bank's Base Rate ranges from -0.25% to 0.00%.

Facility C is a \$15 million construction and term loan. Facility C requires monthly payments of interest for the first 24 months and monthly payments of principal plus accrued interest for 60 months based upon a 15 year amortization schedule. The Construction Loan bears interest at the 30-day LIBOR Rate or the Bank's Base Rate, at the Company's discretion, plus a margin based on the Borrower's Funded Debt to EBITDA Leverage Ratio. The LIBOR Margin ranges from 1.65% to 2.45% and the Bank's Base Rate ranges from -0.05% to 0.20%.

Facility A or Facility B (if activated) is payable in full on August 1, 2016. Facility C is payable seven years after the closing of the facility. 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.

Facility A is subject to debt covenants (capitalized terms are defined therein) including: 1) Minimum Tangible Net Worth of not less than \$92 million, increased annually by 50% of Net Income, and 2) Minimum EBITDA of not less than \$5 million; and requires the Company to maintain its primary domestic deposit accounts with the bank.

If Facility B or Facility C is activated, covenant 2 above will automatically terminate and two additional covenants will be required: 1) Funded Debt to EBITDA ratio equal to or less than 3.0:1.0, and 2) EBIT to Interest Expense ratio of not less than 2.5:1.0.

As a result of the acquisition of HCT on September 27, 2011, the Company acquired a line of credit equal to \$100,000. Interest on the line of credit is equal to Prime plus 5%. The Company cancelled this line of credit in the fourth quarter.

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The Company declared the following regular quarterly dividends to shareholders of record on the last calendar day of the respective quarter:

	<u>2011</u>	<u>2010</u>	<u>2009</u>
First quarter	\$0.060	\$0.060	\$0.060
Second quarter	0.090	0.060	0.060
Third quarter	0.090	0.060	0.060
Fourth quarter	0.090	0.060	0.060

These dividends were paid on the 15<sup>th</sup> day of each month following the date of declaration.

In addition to the regular quarterly dividends, the Company declared shared distribution cash dividends in 2011 and 2009, equal to \$0.07 and \$0.06, respectively. The 2011 dividend was paid on March 31, 2011 to shareholders of record as of March 15, 2011, and the 2009 dividend was paid on March 31, 2009, to shareholders of record as of March 15, 2009.

In 2010, the Company also declared a one-time special cash dividend of \$0.33 per share, paid on November 30, 2010, to shareholders of record as of November 15, 2010.

The Board of Directors has declared a shared distribution cash dividend of \$0.12 per share, payable on March 31, 2012, to shareholders of record as of March 22, 2012. The shared distribution was introduced in 2008 as a way to reward both shareholders and employees when the Company has a successful year. Additionally, the Company's board of directors declared a first quarter 2012 cash dividend of \$0.09 per share payable on April 15, 2012, to shareholders of record as of March 31, 2012.

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, acquisition opportunities, future prospects and other factors deemed pertinent by the board of directors.

The Company believes that cash generated from operations and its borrowing availability under the 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.

OTHER MATERIAL COMMITMENTS. Our contractual obligations and debt obligations as of December 31, 2011, are summarized in the table below (in thousands):

CONTRACTUAL OBLIGATIONS	Payments due by Period				
	<u>TOTAL</u>	<u>LESS THAN 1 YEAR</u>	<u>1-3 YEARS</u>	<u>3-5 YEARS</u>	<u>MORE THAN 5 YEARS</u>
Operating leases	\$ 36	36	—	—	—
Other long term liabilities (1)	<u>1,149</u>	<u>—</u>	<u>1,149</u>	<u>—</u>	<u>—</u>
<b>Total contractual obligations</b>	<b><u>\$1,185</u></b>	<b><u>\$ 36</u></b>	<b><u>\$1,149</u></b>	<b><u>\$ —</u></b>	<b><u>\$ —</u></b>

- (1) Other long term liabilities consist of deferred compensation of \$1,149. Deferred compensation relates to Director compensation for attendance at Board meetings. Amounts will be paid upon an individual ceasing to be a Director of the Company or earlier dates selected by the Director as provided in the deferred compensation plan.

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### ***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, inventory, goodwill, accruals, and income taxes. 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 related to product liabilities is provided for when they become known. The Company has not experienced any material product liabilities in the past.

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

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 impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the asset exceeds its fair value.

#### *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 to the Financial Statements for inventory reserve amounts.

#### *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 using a discounted cash flow method was performed at December 31, 2011, and January 1, 2011. It was determined that the value of the goodwill was not impaired. Goodwill arising from the acquisition of HCT on September 27, 2011, consisting of the value of the workforce, synergies and competitive advantages obtained as a result of the acquisition is reflected on the Consolidated Balance Sheet. There have been no events or changes in circumstances that would indicate impairment since the valuation at the time of purchase. There is no assurance that the value of these acquired companies will not decrease in the future due to changing business conditions. See Note 7 to the Financial Statements for goodwill amounts.

#### *Accruals*

The Company makes estimates related to certain employee benefits and miscellaneous accruals. Estimates for employee benefit accruals are based on management's assessment 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.

The Company accrues for health care benefit costs under a self-funded plan. The Company purchases re-insurance for both specific and aggregate stop losses on claims that exceed \$115 thousand on an individual basis and approximately \$7.6 million on an aggregate basis.

#### *Income Taxes*

The Company's income tax policy provides for a liability approach under which deferred income taxes are provided for based upon enacted tax laws and rates applicable to the periods in which the taxes become payable. These differences result from items reported differently for financial reporting and income tax purposes, primarily depreciation, accrued expenses and reserves.

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The Company reports a liability for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. The Company recognizes potential interest and penalties related to its unrecognized tax benefits in income tax expense. The Company files U.S. federal income tax returns as well as income tax returns in various states and foreign jurisdictions. The Company is no longer subject to income tax examinations by tax authorities for years prior to 2004 for the majority of tax jurisdictions.

The Company's federal returns are currently under examination by the Internal Revenue Service (IRS) in the United States for the periods 2004 through 2009. Audit outcomes and the timing of audit settlements are subject to significant uncertainty. It is reasonably possible that within the next twelve months the Company will resolve some or all of the matters presently under consideration for 2004 through 2009 with the IRS and that there could be significant increases or decreases to unrecognized tax benefits. See Note 14 to the Financial Statements for income tax amounts, including reserves.

### ***New Accounting Pronouncements***

In May 2011, the Financial Accounting Standards Board ("FASB") issued guidance amending certain fair value measurement and disclosure requirements in U.S. GAAP and IFRS. The amendments change the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. The amendments are intended to create comparability of fair value measurements presented and disclosed in financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles and International Financial Reporting Standards. This guidance is effective for interim and annual periods beginning after December 15, 2011. The Company does not expect material financial statement implications relating to the adoption of this guidance.

In June 2011, the FASB issued guidance amending the presentation of comprehensive income. This amends existing guidance by allowing only two options for presenting the components of net income and other comprehensive income: (1) in a single continuous financial statement, statement of comprehensive income or (2) in two separate but consecutive financial statements, consisting of an income statement followed by a separate statement of other comprehensive income. Also, items that are reclassified from other comprehensive income to net income must be presented on the face of the financial statements. The guidance requires retrospective application, and it is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. We believe the adoption of this update will change the order in which certain financial statements are presented and provide additional detail on those financial statements when applicable, but will not have any other material impact on our consolidated financial statements. In December 2011, the FASB issued another amendment to defer certain requirements from the June 2011 guidance that relate to the presentation of reclassification adjustments. The amendments will allow the FASB time to redeliberate whether to present on the face of the financial statements the effects of reclassifications out of accumulated other comprehensive income on the components of net income and other comprehensive income for all periods presented. We are in the process of evaluating the disclosure impact of this guidance.

In September 2011, the FASB amended the guidance on the annual testing of goodwill for impairment. The amended guidance will allow companies to assess qualitative factors to determine if it is more-likely-than-not that goodwill might be impaired and whether it is necessary to perform the two-step goodwill impairment test required under current accounting standards. This guidance will be effective for the Company's fiscal year ending December 30, 2012, with early adoption permitted. The Company has determined that this new guidance will not have a material impact on its consolidated financial statements.

### **Off Balance Sheet Arrangements**

The Company does not engage in any off balance sheet financing arrangements. In particular, the Company does not have any material interest in variable interest entities, which include special purpose entities and structured finance entities.

The Company uses the equity method of accounting to account for its investment in WhiteOak. The Company does not have a majority ownership in or exercise control over the entity. This investment was not material to the financial statements of the Company at December 31, 2011.

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***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. However, due to the economic conditions of the past two years, this pattern was not evident in 2010 and 2009.

***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.

**ITEM 7A. 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's interest rate on its debt financing remains variable based upon the Company's leverage ratio. The Company had no variable-rate debt outstanding at December 31, 2011, and January 1, 2011.

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.

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**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and  
Stockholders of Sun Hydraulics Corporation

We have audited the accompanying consolidated balance sheets of Sun Hydraulics Corporation (a Florida corporation) and subsidiaries (collectively, the Company) as of December 31, 2011 and January 1, 2011, and the related consolidated statements of operations, stockholders' equity and comprehensive income, and cash flows for each of the years in the two year period ended December 31, 2011. We also have audited Sun Hydraulics Corporation and subsidiaries' internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on these consolidated financial statements and an opinion on the company's internal control over financial reporting based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the consolidated financial statements included examining, on a test basis, evidence supporting the amounts and disclosures of the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall consolidated financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. The Company's management has not conducted an assessment of internal control over financial reporting for High Country Tek ("HCT"), which was acquired in September 2011. As such, our audit of internal control over financial reporting did not include this acquisition. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of consolidated financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the consolidated financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Sun Hydraulics Corporation and subsidiaries as of December 31, 2011 and January 1, 2011, and the results of its operations and its cash flows for each of the years in the two year period ended December 31, 2011, in conformity with accounting principles generally accepted in the United

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States of America. Also in our opinion, Sun Hydraulics Corporation and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

/s/ Mayer Hoffman McCann P.C.

March 12, 2012  
Clearwater, Florida

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**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and  
Stockholders of Sun Hydraulics Corporation

We have audited the accompanying consolidated financial statements of operations, shareholders' equity and comprehensive income, and cash flows of Sun Hydraulics Corporation (a Florida Corporation) and subsidiaries for the year ended January 2, 2010. The Company's management is responsible for these consolidated financial statements. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

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

In our opinion, the consolidated financial statements of operations, stockholders' equity and comprehensive income, and cash flows referred to above present fairly, in all material respects, the results of operations of Sun Hydraulics Corporation and subsidiaries for the year ended January 2, 2010 in conformity with accounting principles generally accepted in the United States of America.

/s/ Kirkland, Russ, Murphy, & Tapp, P.A.

March 12, 2010  
Clearwater, Florida

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[Table of Contents](#)**Sun Hydraulics Corporation**  
**Consolidated Balance Sheets**  
**(in thousands, except for share information)**

	December 31, 2011	January 1, 2011
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 51,262	\$ 33,206
Restricted cash	46	131
Accounts receivable, net of allowance for doubtful accounts of \$83 and \$82	16,227	16,399
Inventories	12,829	10,773
Income taxes receivable	120	1,154
Deferred income taxes	260	446
Marketable securities	21,832	11,614
Other current assets	<u>1,354</u>	<u>2,556</u>
Total current assets	103,930	76,279
Property, plant and equipment, net	56,959	53,127
Other assets	<u>6,639</u>	<u>2,628</u>
<b>Total assets</b>	<b><u>\$ 167,528</u></b>	<b><u>\$ 132,034</u></b>
<b>Liabilities and shareholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 4,402	\$ 3,348
Accrued expenses and other liabilities	7,466	5,250
Dividends payable	<u>2,318</u>	<u>1,531</u>
Total current liabilities	14,186	10,129
Deferred income taxes	6,917	5,684
Other noncurrent liabilities	<u>1,149</u>	<u>1,197</u>
Total liabilities	22,252	17,010
Commitments and contingencies (Note 19)	—	—
Shareholders' equity:		
Preferred stock, 2,000,000 shares authorized, par value \$0.001, no shares outstanding	—	—
Common stock, 40,000,000 shares authorized, par value \$0.001, 25,756,442 and 25,522,568 shares outstanding	26	26
Capital in excess of par value	48,944	44,001
Retained earnings	98,426	71,132
Accumulated other comprehensive income (loss)	<u>(2,120)</u>	<u>(135)</u>
Total shareholders' equity	<u>145,276</u>	<u>115,024</u>
<b>Total liabilities and shareholders' equity</b>	<b><u>\$ 167,528</u></b>	<b><u>\$ 132,034</u></b>

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

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

	For the year ended		
	December 31, 2011	January 1, 2011	January 2, 2010
<b>Net sales</b>	<b>\$ 204,171</b>	<b>\$ 150,695</b>	<b>\$ 97,393</b>
Cost of sales	<u>124,956</u>	<u>98,352</u>	<u>75,436</u>
<b>Gross profit</b>	<b>79,215</b>	<b>52,343</b>	<b>21,957</b>
Selling, engineering and administrative expenses	<u>23,946</u>	<u>21,304</u>	<u>19,814</u>
<b>Operating income</b>	<b>55,269</b>	<b>31,039</b>	<b>2,143</b>
Interest income, net	(775)	(653)	(562)
Foreign currency transaction (gain) loss, net	(161)	106	265
Miscellaneous (income) expense, net	<u>(1,381)</u>	<u>(57)</u>	<u>423</u>
<b>Income before income taxes</b>	<b>57,586</b>	<b>31,643</b>	<b>2,017</b>
Income tax provision	<u>19,909</u>	<u>10,243</u>	<u>161</u>
<b>Net income</b>	<b>\$ 37,677</b>	<b>\$ 21,400</b>	<b>\$ 1,856</b>
<b>Basic net income per common share</b>	<b>\$ 1.47</b>	<b>\$ 0.84</b>	<b>\$ 0.07</b>
<b>Weighted average basic shares outstanding</b>	<b>25,642</b>	<b>25,428</b>	<b>25,256</b>
<b>Diluted net income per common share</b>	<b>\$ 1.47</b>	<b>\$ 0.84</b>	<b>\$ 0.07</b>
<b>Weighted average diluted shares outstanding</b>	<b>25,684</b>	<b>25,478</b>	<b>25,305</b>
<b>Dividends declared per share</b>	<b>\$ 0.403</b>	<b>\$ 0.573</b>	<b>\$ 0.300</b>

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

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

	Preferred Shares	Preferred Stock	Common Shares	Common stock	Capital in excess of par value	Retained earnings	Accumulated other comprehensive income (loss)	Total
Balance, December 27, 2008	—	\$ —	24,986	\$ 26	\$38,042	\$ 70,090	\$ (1,602)	\$106,556
Shares issued, Restricted Stock			60					—
Shares issued, Other Comp			6					—
Shares issued, Stock Options			5		11			11
Shares issued, ESPP			43		392			392
Shares issued, ESOP			299		2,796			2,796
Stock-based compensation					960			960
Tax benefit of stock-based compensation					9			9
Dividends issued						(7,572)		(7,572)
Comprehensive income (loss):								
Net income						1,856		1,856
Unrealized gain on available for sale securities							116	116
Foreign currency translation adjustments							2,490	2,490
Comprehensive income (loss):								4,462
Balance, January 2, 2010	—	\$ —	25,399	\$ 26	\$42,210	\$ 64,374	\$ 1,004	\$107,614
Shares issued, Restricted Stock			69					—
Shares issued, Other Comp			8					—
Shares issued, Stock Options			15		44			44
Shares issued, ESPP			32		423			423
Stock-based compensation					1,149			1,149
Tax benefit of stock-based compensation					175			175
Dividends issued						(14,642)		(14,642)
Comprehensive income (loss):								—
Net income						21,400		21,400
Unrealized gain on available for sale securities							(59)	(59)
Foreign currency translation adjustments							(1,080)	(1,080)
Comprehensive income (loss):								20,261
Balance, January 1, 2011	—	\$ —	25,523	\$ 26	\$44,001	\$ 71,132	\$ (135)	\$115,024
Shares issued, Restricted Stock			88					—
Shares issued, Other Comp			14					—
Shares issued, Stock Options			9		61			61
Shares issued, ESPP			29		574			574
Shares issued, shared distribution			93		2,412			2,412
Stock-based compensation					1,752			1,752
Tax benefit of stock-based compensation					144			144
Dividends issued						(10,383)		(10,383)
Comprehensive income (loss):								—
Net income						37,677		37,677
Unrealized loss on available for sale securities							(549)	(549)
Foreign currency translation adjustments							(1,436)	(1,436)
Comprehensive income (loss):								35,692
Balance, December 31, 2011	—	\$ —	25,756	\$ 26	\$48,944	\$ 98,426	\$ (2,120)	\$145,276

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

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**Sun Hydraulics Corporation**  
**Consolidated Statements of Cash Flows**  
**(in thousands)**

	For the year ended		
	December 31, 2011	January 1, 2011	January 2, 2010
<b>Cash flows from operating activities:</b>			
Net income	\$ 37,677	\$ 21,400	\$ 1,856
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	6,721	6,873	6,968
(Gain) loss on disposal of assets	(32)	(43)	30
Gain on Investment in HCT	(1,244)	—	—
Stock-based compensation expense	1,752	1,149	960
Deferred director and phantom stock unit expense (income)	(22)	557	398
Stock compensation income tax benefit	(144)	(175)	(9)
Allowance for doubtful accounts	1	(8)	(2)
Provision for slow moving inventory	(19)	(159)	(41)
Provision for deferred income taxes	1,419	622	4
(Increase) decrease in:			
Accounts receivable	741	(6,442)	2,555
Inventories	(1,593)	(2,815)	2,202
Income tax receivable	1,178	506	(123)
Other current assets	(662)	(759)	(507)
Other assets, net	(1,081)	750	560
Increase (decrease) in:			
Accounts payable	499	861	(816)
Accrued expenses and other liabilities	4,390	2,775	(672)
Other noncurrent liabilities	(37)	(2)	304
Net cash from operating activities	49,544	25,090	13,667
<b>Cash flows from investing activities:</b>			
Sale of China joint venture	1,451	—	—
Investment in HCT	(1,776)	—	—
Capital expenditures	(10,143)	(3,856)	(5,096)
Proceeds from dispositions of equipment	35	175	—
Purchases of marketable securities	(18,405)	(14,175)	(10,600)
Proceeds from sale of marketable securities	7,517	10,230	2,863
Net cash used in investing activities	(21,321)	(7,626)	(12,833)
<b>Cash flows from financing activities:</b>			
Repayment of debt	(100)	—	(261)
Proceeds from exercise of stock options	61	44	11
Stock compensation income tax benefit	144	175	9
Proceeds from stock issued	574	423	392
Dividends to shareholders	(9,596)	(14,635)	(7,547)
Net cash used in financing activities	(8,917)	(13,993)	(7,396)
Effect of exchange rate changes on cash and cash equivalents	(1,335)	(580)	1,705
Net increase (decrease) in restricted cash	(85)	(1)	5
Net increase (decrease) in cash and cash equivalents	18,056	2,892	(4,862)
Cash and cash equivalents and restricted cash, beginning of period	33,337	30,446	35,303
Cash and cash equivalents and restricted cash, end of period	\$ 51,308	\$ 33,337	\$ 30,446
Supplemental disclosure of cash flow information:			
Cash paid:			
Interest	\$ —	\$ —	\$ 9
Income taxes	\$ 17,456	\$ 9,290	\$ 289
Supplemental disclosure of noncash transactions:			
Common stock issued to ESOP through accrued expenses and other liabilities	\$ 2,412	\$ —	\$ 2,796
Unrealized gain (loss) on available for sale securities	\$ (549)	\$ (59)	\$ 116

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

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

#### **1. 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 Incheon, South Korea, operates a manufacturing and distribution facility. Sun Hydraulics, SARL (“Sun France”), a wholly-owned subsidiary of Sun Hydraulics, located in Bordeaux, France, was dissolved in November 2011. Concurrently, Sun Hydraulics opened a liaison office in France to service this market. Sun Hydraulics established Sun Hydraulics China Co. Ltd, a representative office in Shanghai in January 2011, to develop new business opportunities in the Chinese market. Sun Hydraulics (India) a liaison office in Bangalore, India is used to develop new business opportunities in the Indian market. WhiteOak Controls, Inc. (“WhiteOak”), a 40% equity method investment, located in Mediapolis, Iowa, designs and produces complementary electronic control products. On September 27, 2011, Sun Hydraulics purchased the outstanding shares of High Country Tek, Inc. (“HCT”) it did not already own. HCT is located in Nevada City, California, and designs and manufacturers ruggedized electronic/hydraulic control solutions for mobile equipment markets (see Note 9).

#### **2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### *Principles of Consolidation*

The consolidated financial statements include the accounts and operations of Sun Hydraulics and its direct and indirect subsidiaries. All significant intercompany accounts and transactions are eliminated in consolidation. The Company uses the equity method of accounting for its investment in WhiteOak. The Company does not have a majority ownership in or exercise control over this entity.

##### *Critical Accounting Policies and Use of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates are used in the determination of impairment of long-lived assets, inventory, goodwill, accruals, and income taxes.

##### *Cash and Cash Equivalents*

The Company considers all short-term highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

##### *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 the consolidated balance sheets for allowance amounts.

##### *Inventory*

Inventories are valued at the lower of cost or market, with cost determined on a first-in, first-out basis. 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



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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 to the Financial Statements for inventory reserve amounts.

### *Property, Plant and Equipment*

Property, plant and equipment is stated at cost. Expenditures for repairs and improvements that significantly add to the productive capacity or extend the useful life of an asset are capitalized. Repairs and maintenance are expensed as incurred. Depreciation is computed using the straight line method over the following useful lives:

	<u>Years</u>
Computer equipment	3 - 5
Machinery and equipment	4 - 12
Furniture and fixtures	4 - 10
Leasehold and land improvements	5 - 15
Buildings	40

Gains or losses on the retirement, sale, or disposition of property, plant, and equipment are reflected in the Consolidated Statement of Operations in the period in which the assets are taken out of service.

### *Goodwill*

Goodwill, which represents the excess of the purchase price of acquisition over the fair value of the net assets acquired and other acquisition costs, is carried at cost. Goodwill is not amortized by the Company. Instead, goodwill is reviewed for impairment on an annual basis, or more frequently if events or circumstances indicate possible impairment.

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 using a discounted cash flow method was performed at December 31, 2011 and January 1, 2011. It was determined that the value of the goodwill was not impaired. Goodwill arising from the acquisition of HCT on September 27, 2011, consisting of the value of the workforce, synergies and competitive advantages obtained as a result of the acquisition is reflected on the consolidated balance sheet. There have been no events or changes in circumstances that would indicate impairment since the valuation of HCT at the time of purchase. There is no assurance that the value of the acquired company will not decrease in the future due to changing business conditions. See Note 7 to the Financial Statements for goodwill amounts.

### *Impairment of Long-Lived Assets*

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 impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the asset exceeds its fair market value.

### *Accruals*

The Company makes estimates related to certain employee benefits and miscellaneous accruals. Estimates for employee benefit accruals are based on management's assessment 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.

The Company accrues for health care benefit costs under a self-funded plan. The Company purchases re-insurance for both specific and aggregate stop losses on claims that exceed \$115 on an individual basis and approximately \$7,600 on an aggregate basis.

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### *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. The Company has not experienced any material product liabilities in the past.

### *Shipping and Handling Costs*

Shipping and handling costs billed to distributors and customers are recorded in revenue. Shipping costs incurred by the Company are recorded in cost of goods sold.

### *Foreign Currency Translation and Transactions*

The Pound Sterling is the functional currency of Sun Ltd. The Euro is the functional currency of Sun GmbH. The South Korean Won is the functional currency of Sun Korea. The U.S. Dollar is the functional currency for Sun Hydraulics and the reporting currency for the consolidated group. The assets and liabilities of Sun Ltd., Sun GmbH, and Sun Korea are translated at the exchange rate in effect at the balance sheet date, and income and expense items are translated at the average annual rate of exchange for the period. The resulting unrealized translation gains and losses are included as a component of shareholders' equity designated as "accumulated other comprehensive income (loss)." Realized gains and losses from foreign currency transactions are included in the Consolidated Statement of Operations.

### *Income Taxes*

The Company's income tax policy provides for a liability approach under which deferred income taxes are provided for based upon enacted tax laws and rates applicable to the periods in which the taxes become payable. These differences result from items reported differently for financial reporting and income tax purposes, primarily depreciation, accrued expenses and reserves.

The Company reports a liability for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. The Company recognizes potential interest and penalties related to its unrecognized tax benefits in income tax expense.

### *Stock-Based Compensation*

All share-based compensation cost is measured at the grant date, based on the fair value of the award, and is recognized as an expense in earnings over the requisite service period. Benefits of tax deductions in excess of recognized compensation costs are reported as a financing cash inflow.

### *52-53 Week Fiscal Year*

The Company reports on a fiscal year that ends on the Saturday closest to December 31st. Each quarter generally consists of thirteen weeks. As a result of the 2009 fiscal year ending January 2, 2010, the quarter ended January 2, 2010, consisted of fourteen weeks, resulting in a 53-week year.

### *Reclassification*

Certain amounts shown in the 2010 and 2009 notes to the consolidated financial statements have been reclassified to conform to the current presentation.

## **3. FAIR VALUE OF FINANCIAL INSTRUMENTS**

The Company uses the three-tier fair value hierarchy which prioritizes the inputs used in measuring fair value as follows:

*Level 1.* Observable inputs such as quoted prices in active markets;

*Level 2.* Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and

*Level 3.* Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

At December 31, 2011, and January 1, 2011, the Company held available-for-sale securities with an aggregate fair value of \$21,832 and \$11,614, respectively. The Company, on a recurring basis, measures available-for-sale securities at fair value using quoted prices in active markets. Unrealized gains and losses

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arising from the revaluation of available-for-sale securities are included in equity within accumulated other comprehensive income (loss) in the Consolidated Balance Sheets. Realized gains and losses on sales of marketable securities are generally determined using the specific identification method, and are included in miscellaneous (income) expense in the Consolidated Statements of Operations. The net unrealized holding loss on available for sale securities amounted to \$492 at December 31, 2011, and \$59 at January 1, 2011. Realized gains for the year ended December 31, 2011 were \$37, compared to \$70 for the year ended January 1, 2011. In addition, the Company reports deferred director stock units and phantom stock units as a liability. These liabilities, on a recurring basis, are measured at fair value using quoted prices in the active market. The Company recognized income relating to those liabilities of \$22 for the year ended December 31, 2011, and an expense related to those liabilities of \$557 for the year ended January 1, 2011, respectively.

The Company did not have any fair value adjustments for assets and liabilities measured at fair value on a nonrecurring basis during the period ended December 31, 2011 and January 1, 2011.

Assets measured at fair value on a recurring basis include the following as of December 31, 2011:

Description	December 31, 2011	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Available-for-sale securities	\$ 21,832	\$ 21,832	\$ —	\$ —

Assets measured at fair value on a recurring basis include the following as of January 1, 2011:

Description	January 1, 2011	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Available-for-sale securities	\$ 11,614	\$ 11,614	\$ —	\$ —

Liabilities measured at fair value on a recurring basis include the following as of December 31, 2011:

Description	December 31, 2011	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Deferred director stock units	\$ 1,149	\$ 1,149	\$ —	\$ —
Phantom stock units	33	33	—	—
Total	\$ 1,182	\$ 1,182	\$ —	\$ —

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Liabilities measured at fair value on a recurring basis include the following as of January 1, 2011:

Description	January 1, 2011	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Deferred director stock units	\$ 1,197	\$ 1,197	\$ —	\$ —
Phantom stock units	34	34	—	—
Total	<u>\$ 1,231</u>	<u>\$ 1,231</u>	<u>\$ —</u>	<u>\$ —</u>

The carrying amounts of cash and cash equivalents, restricted cash, accounts receivable, other current assets, accounts payable, accrued expenses and other liabilities approximate fair value based on their short-term status.

#### 4. RESTRICTED CASH

On December 31, 2011 and January 1, 2011, the Company had restricted cash of \$46 and \$131, respectively. \$46 and \$47 of the 2011 and 2010 restricted cash balance, respectively, consisted of reserves 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 was held with Lloyd's TSB in the U.K. The remaining 2010 amount relates to a guarantee of VAT in our France operation. The guarantee was held with Crédit Agricole Bank in France.

#### 5. INVENTORIES

	<u>December 31, 2011</u>	<u>January 1, 2011</u>
Raw materials	\$ 5,624	\$ 4,315
Work in process	3,912	3,628
Finished goods	3,861	3,379
Provision for slow moving inventory	<u>(568)</u>	<u>(549)</u>
Total	<u>\$ 12,829</u>	<u>\$ 10,773</u>

#### 6. PROPERTY, PLANT, AND EQUIPMENT

	<u>December 31, 2011</u>	<u>January 1, 2011</u>
Machinery and equipment	\$ 78,428	\$ 75,728
Office furniture and equipment	10,151	9,047
Buildings	28,074	25,257
Leasehold and land improvements	2,774	2,754
Land	<u>7,002</u>	<u>7,022</u>
	\$ 126,429	\$ 119,808
Less: Accumulated depreciation	<u>(73,755)</u>	<u>(68,648)</u>
Construction in progress	<u>4,285</u>	<u>1,967</u>
Total	<u>\$ 56,959</u>	<u>\$ 53,127</u>

Depreciation expense for the years ended December 31, 2011, January 1, 2011, and January 2, 2010 totaled \$6,524, \$6,730, and \$6,932, respectively.

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### 7. GOODWILL AND INTANGIBLE ASSETS

The Company had \$2,691 and \$715 of goodwill at December 31, 2011, and January 1, 2011, respectively. Included in both balances is goodwill equal to \$715 related to its acquisition of Sun Korea. The Company recognized goodwill arising from the acquisition of HCT on September 27, 2011, equal to \$1,976 consisting of the value of the workforce, synergies and competitive advantages obtained as a result of the acquisition. There have been no events or changes in circumstances that would indicate impairment since the valuation at the time of purchase. Valuation models reflecting the expected future cash flow projections were used to value Sun Korea at December 31, 2011 and January 1, 2011. The analysis indicated that there was no impairment of the carrying value of the goodwill. Goodwill is held in other assets on the balance sheet.

The Company recognized \$2,658 in identifiable intangible assets as a result of the acquisition of HCT on September 27, 2011. Intangible assets are held in other assets on the balance sheet. At December 31, 2011, intangible assets consisted of the following:

	Useful life (years)	Gross carrying amount	Accumulated amortization	Net carrying amount
<b>Definite-lived intangibles:</b>				
Trade Name	10	\$ 756	\$ (19)	\$ 737
Technology	10	697	(187)	510
Customer Relationships	20	1,475	(18)	1,457
		<u>\$ 2,928</u>	<u>\$ (224)</u>	<u>\$ 2,704</u>

Total estimated amortization expense for the years 2012 through 2016 is presented below.

Year:	
2012	219
2013	219
2014	219
2015	206
2016	192
Total	<u>\$1,055</u>

### 8. INVESTMENTS

On January 5, 2011, Sun Hydraulics completed the sale of its Chinese joint venture company, Sun Hydraulics Systems (Shanghai) Co, Ltd., to the joint venture partner, Links Lin, for the amount of \$1,451, and recognized a gain on the sale of \$366. The former joint venture company has become Sun's first authorized distributor in China. Concurrently, Sun established Sun Hydraulics China Co. Ltd, a representative office in Shanghai which now is the Company's primary operation in the country.

### 9. ACQUISITIONS

On November 30, 2007, Sun Hydraulics acquired shares of preferred and common stock of HCT, which represented 48% of the outstanding shares at the time of purchase. On September 27, 2011, Sun purchased the remaining preferred and common shares of HCT. HCT designs and produces encapsulated, modular, highly ruggedized digital and analog electronic controller products for the global fluid power and motion control industry. HCT's products complement Sun's electro-hydraulic line of valves providing reliable, easy, simple and accurate control of individual valves, or seamless management of systems and sub-systems.

Goodwill arising from the acquisition was \$1,976 consisting of the value of the workforce, synergies and competitive advantages obtained as a result of the acquisition. Identifiable intangible assets arising from the acquisition consist of the HCT Trade Name, Patented Technology, Unpatented Technology, and Customer Relationships. These identifiable intangibles totaled \$2,658, and are amortized over ten years with the exception of Customer Relationships, which are amortized over twenty years. These amounts are recorded as other assets on the consolidated balance sheet.

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The following table summarizes the consideration paid for HCT and the amounts of the assets acquired and liabilities assumed, recognized at the acquisition date.

<b>At September 27, 2011</b>	
<b>Consideration</b>	
Cash	\$ 1,894
Stock	12
Fair value of total consideration transferred	<u>\$ 1,906</u>
<b>Fair value of Sun's equity interest in HCT held before the business combination</b>	
	<u>1,472</u>
<b>Total</b>	<b>\$ 3,378</b>
<b>Acquisition-related costs</b> (included in Selling, engineering, and administrative expenses)	40
<b>Recognized amounts of identifiable assets acquired and liabilities assumed</b>	
Cash	\$ 130
Accounts receivable	570
Inventory	444
Property, plant, and equipment	317
Identifiable intangible assets	2,658
Other assets	210
Accounts payable and accrued expenses	(748)
Notes payable	(2,123)
Other liabilities	<u>(56)</u>
Total identifiable net assets	<u>\$ 1,402</u>
Goodwill	<u>1,976</u>
<b>Total</b>	<b>\$ 3,378</b>

Approximately half of the acquisition related costs above were incurred in the third quarter with the remainder incurred in the Company's fourth quarter. The amount of notes payable above is primarily made up of amounts due to Sun Hydraulics and eliminate upon consolidation.

Sun Hydraulics' fair value of the equity interest in HCT held before the business combination was \$1,472. The fair value of the previously held equity interest was determined based on the current purchase price per the purchase agreement before the deduction for option and warrant proceeds. Sun Hydraulics recognized a gain of \$1,244 as a result of remeasuring to fair value, based on the current purchase price, its 38% equity interest in HCT held before the business combination. The equity interest was diluted from the original investment as a result of warrant and option exercises. This gain is included in net miscellaneous income on the Consolidated Statement of Operations for the year ending December 31, 2011.

For the period ending October 1, 2011, the Company accounted for HCT under the equity method. The revenue and earnings for HCT included in Sun's Consolidated Statement of Operations for the year ended December 31, 2011, and the revenue and earnings of the combined entity had the acquisition date been January 2, 2011, or January 3, 2010, are:

	Revenue	Earnings
Actual from 10/02/2011 - 12/31/2011	\$ 1,270	\$ (58)
	Revenue (unaudited)	Earnings (unaudited)
Supplemental <i>pro forma</i> from 1/02/2011 to 12/31/2011	\$ 206,968	\$ 37,534
Supplemental <i>pro forma</i> from 1/03/2010 to 01/01/2011	\$ 153,742	\$ 21,075

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**10. OTHER ASSETS**

	<u>December 31, 2011</u>	<u>January 1, 2011</u>
Goodwill	\$ 2,691	\$ 715
Definite-lived intangibles net of amortization of \$224 and \$148	2,704	122
Equity investment in joint venture		
Sun China	—	1,016
WhiteOak Controls, Inc.	66	40
High Country Tek, Inc.	—	495
Loan acquisition costs, net of amortization of \$7 and \$151	79	19
Deposits with suppliers	33	110
Notes Receivable	988	—
Other	78	111
Total	<u>\$ 6,639</u>	<u>\$ 2,628</u>

**11. ACCRUED EXPENSES AND OTHER LIABILITIES**

	<u>December 31, 2011</u>	<u>January 1, 2011</u>
Compensation and benefits	\$ 6,360	\$ 4,349
Self insurance liability	256	236
Other	850	665
Total	<u>\$ 7,466</u>	<u>\$ 5,250</u>

**12. LONG-TERM DEBT**

Effective August 1, 2011, the company completed a credit and security agreement in the U.S. with Fifth Third Bank (the “Bank”). The new agreement provides for three separate credit facilities totaling \$50,000.

Facility A is a \$15,000 unsecured revolving line of credit and requires monthly payments of interest. Facility A has a floating interest rate of 1.45% over the 30-day LIBOR Rate (as defined).

Facility B is an accordion feature to increase the revolving line of credit to a \$35,000 secured revolving line of credit. Facility B will be secured by the Company’s U.S. assets, including its manufacturing facilities, and requires monthly payments of interest. Facility B will bear interest at the 30-day LIBOR Rate or the Bank’s Base Rate (as defined), at the Company’s discretion, plus a margin based on the Borrower’s Funded Debt to EBITDA Leverage Ratio (as defined). The LIBOR Margin ranges from 1.45% to 2.25% and the Bank’s Base Rate ranges from -0.25% to 0.00%.

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Facility C is a \$15,000 construction and term loan. Facility C requires monthly payments of interest for the first 24 months and monthly payments of principal plus accrued interest for 60 months based upon a 15 year amortization schedule. The Construction Loan bears interest at the 30-day LIBOR Rate or the Bank's Base Rate, at the Company's discretion, plus a margin based on the Borrower's Funded Debt to EBITDA Leverage Ratio. The LIBOR Margin ranges from 1.65% to 2.45% and the Bank's Base Rate ranges from -0.05% to 0.20%.

Facility A or Facility B (if activated) is payable in full on August 1, 2016. Facility C is payable seven years after the closing of the facility. 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.

Facility A is subject to debt covenants (capitalized terms are defined therein) including: 1) Minimum Tangible Net Worth of not less than \$92,000, increased annually by 50% of Net Income, and 2) Minimum EBITDA of not less than \$5,000; and requires the Company to maintain its primary domestic deposit accounts with the bank.

If Facility B or Facility C are activated, covenant 2 above will automatically terminate and two additional covenants will be required: 1) Funded Debt to EBITDA ratio equal to or less than 3.0:1.0, and 2) EBIT to Interest Expense ratio of not less than 2.5:1.0.

As a result of the acquisition of HCT on September 27, 2011, the Company acquired a line of credit equal to \$100. Interest on the line of credit is equal to Prime plus 5%. The Company cancelled this line of credit during the fourth quarter of 2011.

### **13. DIVIDENDS TO SHAREHOLDERS**

The Company declared dividends of \$10,383, \$14,642, and \$7,572 to shareholders in 2011, 2010, and 2009, respectively.

The Company declared the following regular quarterly dividends to shareholders of record on the last day of the respective quarter:

	<u>2011</u>	<u>2010</u>	<u>2009</u>
First quarter	\$0.060	\$0.060	\$0.060
Second quarter	0.090	0.060	0.060
Third quarter	0.090	0.060	0.060
Fourth quarter	0.090	0.060	0.060

These dividends were paid on the 15<sup>th</sup> day of each month following the date of declaration.

In addition to the regular quarterly dividends, the Company declared shared distribution cash dividends in 2011 and 2009, equal to \$0.07 and \$0.06, respectively. The 2011 dividend was paid on March 31, 2011 to shareholders of record as of March 15, 2011, and the 2009 dividend was paid on March 31, 2009, to shareholders of record as of March 15, 2009.

In 2010, the Company also declared a one-time special cash dividend of \$0.33 per share, paid on November 30, 2010, to shareholders of record as of November 15, 2010.

The Board of Directors has declared a shared distribution cash dividend of \$0.12 per share, payable on March 31, 2012, to shareholders of record as of March 22, 2012. The shared distribution was introduced in 2008 as a way to reward both shareholders and employees when the Company has a successful year. Additionally, the Company's board of directors declared a first quarter 2012 cash dividend of \$0.09 per share payable on April 15, 2012, to shareholders of record as of March 31, 2012.



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#### 14. INCOME TAXES

Deferred income tax assets and liabilities are provided to reflect the future tax consequences of differences between the tax basis of assets and liabilities and their reported amounts in the financial statements.

For financial reporting purposes, income before income taxes includes the following components:

	For the year ended		
	December 31, 2011	January 1, 2011	January 2, 2010
United States	\$ 43,513	\$22,344	\$(1,934)
Foreign	<u>14,073</u>	<u>9,299</u>	<u>3,951</u>
Total	<u>\$ 57,586</u>	<u>\$31,643</u>	<u>\$ 2,017</u>

The components of the income tax provision (benefit) are as follows:

	For the year ended		
	December 31, 2011	January 1, 2011	January 2, 2010
Current tax expense (benefit):			
United States	\$ 14,034	\$ 7,985	\$ (773)
State and local	436	202	(46)
Foreign	<u>3,972</u>	<u>1,434</u>	<u>976</u>
Total current	<u>18,442</u>	<u>9,621</u>	<u>157</u>
Deferred tax expense (benefit):			
United States	1,095	469	14
State and local	471	263	6
Foreign	<u>(99)</u>	<u>(110)</u>	<u>(16)</u>
Total deferred	<u>1,467</u>	<u>622</u>	<u>4</u>
Total income tax provision	<u>\$ 19,909</u>	<u>\$10,243</u>	<u>\$ 161</u>

The reconciliation between the effective income tax rate and the U.S. federal statutory rate is as follows:

	For the year ended		
	December 31, 2011	January 1, 2011	January 2, 2010
U.S. federal taxes at statutory rate	\$ 20,155	\$11,075	\$ 706
Increase (decrease)			
Foreign tax credit	(1,026)	(227)	—
Domestic production activity deduction	(1,075)	(519)	—
Research and Development Tax Credit - Current Year	(150)	(150)	(200)
Foreign income taxed at lower rate	(1,052)	(584)	(424)
Nondeductible items	1,049	40	67
State and local taxes, net	907	465	(40)
Change in reserve	440	9	124
Other	<u>661</u>	<u>134</u>	<u>(72)</u>
Income tax provision	<u>\$ 19,909</u>	<u>\$10,243</u>	<u>\$ 161</u>

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Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income taxes. The temporary differences that give rise to significant portions of the deferred tax assets and liabilities as of December 31, 2011 and January 1, 2011 are presented below:

	December 31, 2011	January 1, 2011
<b>Deferred tax assets:</b>		
<b>Current:</b>		
Accrued expenses and other	<u>\$ 260</u>	<u>\$ 446</u>
Total current deferred tax assets	<u>260</u>	<u>446</u>
<b>Noncurrent:</b>		
Accrued expenses and other	<u>2,028</u>	<u>1,008</u>
Total noncurrent deferred tax assets	<u>2,028</u>	<u>1,008</u>
<b>Deferred tax liabilities:</b>		
<b>Noncurrent:</b>		
Depreciation	(8,484)	(6,692)
Other	<u>(461)</u>	<u>—</u>
Total noncurrent deferred tax liabilities	<u>(8,945)</u>	<u>(6,692)</u>
<b>Net noncurrent deferred tax liability</b>	<u>\$ (6,917)</u>	<u>\$ (5,684)</u>

A valuation allowance to reduce the deferred tax assets reported is required if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. For the fiscal years ended 2011 and 2010, management has determined that a valuation allowance is not required.

The Company intends and has the ability to indefinitely reinvest the earnings of its non-U.S. subsidiaries, which reflect full provision for non-U.S. income taxes, to expand its international operations. These earnings relate to ongoing operations and, at December 31, 2011, cumulative earnings were approximately \$45 million. Accordingly, no provision has been made for U.S. income taxes that might be payable upon repatriation of such earnings. In the event any earnings of non-U.S. subsidiaries are repatriated, the Company will provide U.S. income taxes upon repatriation of such earnings, which will be offset by applicable foreign tax credits, subject to certain limitations.

The Company prescribes a recognition threshold and measurement attribute for an uncertain tax position taken or expected to be taken in a tax return.

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The following is a roll-forward of the Company's unrecognized tax benefits:

Unrecognized tax benefits - December 27, 2008	\$ 36
Increases from positions taken during prior periods	124
Lapse of statute of limitations	—
Unrecognized tax benefits - January 2, 2010	\$160
Increases from positions taken during prior periods	47
Lapse of statute of limitations	(38)
Unrecognized tax benefits - January 1, 2011	\$169
Increases from positions taken during prior periods	440
Lapse of statute of limitations	—
Unrecognized tax benefits - December 31, 2011	\$609

At December 31, 2011, the Company had an unrecognized tax benefit of \$609 including accrued interest. If recognized, the unrecognized tax benefit would have a favorable effect on the effective tax rate in future periods. The Company recognizes interest and penalties related to income tax matters in income tax expense. Interest related to the unrecognized tax benefit has been recognized and included in income tax expense. Interest accrued as of December 31, 2011, is not considered material to the Company's Consolidated Financial Statements.

The Company files U.S. federal income tax returns as well as income tax returns in various states and foreign jurisdictions. The Company is no longer subject to income tax examinations by tax authorities for years prior to 2004 for the majority of tax jurisdictions.

The Company's federal returns are currently under examination by the Internal Revenue Service (IRS) in the United States for the periods 2004 through 2009. The additional reserve during the current period in the table above is primarily related to an IRS proposal from Appeals regarding the Company's research and development tax credit position. To date, there have not been any other significant proposed adjustments that have not been accounted for in the Company's financial statements.

Audit outcomes and the timing of audit settlements are subject to significant uncertainty. It is reasonably possible that within the next twelve months the Company will resolve some or all of the matters presently under consideration for 2004 through 2009 with the IRS and that there could be significant increases or decreases to unrecognized tax benefits.

## **15. STOCK OPTION PLANS**

During 1996, the Company adopted the 1996 Stock Option Plan (the "Stock Option Plan"), which provides for the grant of incentive stock options and nonqualified stock options for the purchase of up to an aggregate of 3,375,000 shares of the Company's common stock by officers, employees and directors of the Company. Under the terms of the plan, incentive stock options may be granted to employees at an exercise price per share of not less than the fair value per common share on the date of the grant (not less than 110% of the fair value in the case of holders of more than 10% of the Company's voting stock). Nonqualified stock options may be granted at the discretion of the Company's Board of Directors. The maximum term of an option may not exceed 10 years, and options become exercisable at such times and in such installments as determined by the Board of Directors.

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A summary of the Company's stock option plan for the years ended December 31, 2011, January 1, 2011, and January 2, 2010 is summarized as follows:

	Number of shares	Exercise price range (share amounts are in thousands)	Weighted average exercise price
Under option, December 27, 2008 (29 shares exercisable)	29	\$ 2.00 - 8.18	\$ 3.97
Granted	—	\$ — - —	\$ —
Exercised	(5)	\$ 2.00 - 3.66	\$ 2.44
Forfeitures	—	\$ — - —	\$ —
Under option, January 2, 2010 (24 shares exercisable)	24	\$ 2.00 - 8.18	\$ 4.26
Granted	—	\$ — - —	\$ —
Exercised	(15)	\$ 2.00 - 3.66	\$ 2.80
Forfeitures	—	\$ — - —	\$ —
Under option, January 1, 2011 (9 shares exercisable)	9	\$ 3.66 - 8.18	\$ 6.67
Granted	—	\$ — - —	\$ —
Exercised	(9)	\$ 2.00 - 8.18	\$ 6.67
Forfeitures	—	\$ — - —	\$ —
Under option, December 31, 2011 (0 shares exercisable)	—	\$ — - —	\$ —

As of December 31, 2011, all options under the 1996 Plan have been exercised and the Plan is no longer active.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model using weighted average assumptions. Stock option compensation expense for the periods ended December 31, 2011, and January 1, 2011, were \$0 and \$6, respectively.

There were no stock options granted during 2011, 2010 and 2009.

In September 2006, the Company adopted the 2006 Stock Option Plan ("2006 Plan"), which provides for the grant of incentive stock options and nonqualified stock options for the purchase of up to an aggregate of 1,125,000 shares of the Company's common stock by officers, employees and directors of the Company. The Company adopted the 2006 Plan due to the expiration of the Company's 1996 Stock Option Plan in 2006. Under the terms of the plan, incentive stock options may be granted to employees at an exercise price per share of not less than the fair value per common share on the date of the grant (not less than 110% of the fair value in the case of holders of more than 10% of the Company's voting stock). Nonqualified stock options may be granted at the discretion of the Company's Board of Directors. The maximum term of an option may not exceed 10 years, and options become exercisable at such times and in such installments as determined by the Board of Directors. No awards have been granted under the 2006 Plan.

During 2001, the Company adopted the 2001 Restricted Stock Plan, which provides for the grant of restricted stock of up to an aggregate of 928,125 shares of the Company's common stock to officers, employees, consultants and directors of the Company. Under the terms of the plan, the minimum period before any shares become non-forfeitable may not be less than six months. Compensation cost has been measured at the date of the grant and is recognized in earnings over the period in which the shares vest. Restricted stock expense for the years ended December 31, 2011, January 1, 2011, and January 2, 2010, totaled \$1,193, \$880, and \$794, respectively.

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A summary of the Company's restricted stock plan for the years ended December 31, 2011, January 1, 2011, and January 2, 2010, is summarized as follows:

	<u>Number of shares</u>	<u>Weighted average grant-date fair value</u>
Nonvested balance at December 27, 2008	110	\$ 14.30
Granted	61	13.98
Vested	(56)	15.24
Forfeitures	(2)	15.21
Nonvested balance at January 2, 2010	113	\$ 14.52
Granted	69	20.74
Vested	(53)	15.60
Forfeitures	—	—
Nonvested balance at January 1, 2011	129	\$ 17.41
Granted	88	28.41
Vested	(63)	16.04
Forfeitures	—	—
Nonvested balance at December 31, 2011	<u>154</u>	<u>\$ 24.25</u>

The 2001 Restricted Stock Plan expired in 2011 and was replaced in September 2011 with the 2011 Equity Incentive Plan. This plan provides for the grant of up to an aggregate of 1,000,000 shares of restricted stock, restricted share units, stock appreciation rights, dividend or dividend equivalent rights, stock awards and other awards valued in whole or in part by reference to or otherwise based on the Company's common stock to officers, employees and directors of the Company. The Plan will be submitted to the Company's shareholders for approval at the 2012 Annual Meeting. The Company issued 88,238 shares under the new plan during the quarter ended December 31, 2011.

The Company has \$3,213 of total unrecognized compensation cost related to restricted stock awards granted under the Plan as of December 31, 2011. That cost is expected to be recognized over a weighted average period of 1.74 years.

The Company maintains an Employee Stock Purchase Plan ("ESPP"), in which most employees are eligible to participate. Employees in the United States who choose to participate are granted an opportunity to purchase common stock at 85 percent of market value on the first or last day of the quarterly purchase period, whichever is lower. Employees in the United Kingdom are granted an opportunity to purchase common stock at market value, on the first or last day of the quarterly purchase period, whichever is lower, with the Company issuing one additional free share of common stock for each six shares purchased by the employee under the ESPP. The ESPP authorizes the issuance, and the purchase by employees, of up to 1,096,875 shares of common stock through payroll deductions. No U.S. employee is allowed to buy more than \$25 of common stock in any year, based on the market value of the common stock at the beginning of the purchase period, and no U.K. employee is allowed to buy more than the lesser of £1.5 or 10% of their annual salary in any year. Employees purchased 29,056 shares at a weighted average price of \$19.76, and 31,956 shares at a weighted average price of \$13.24, under the ESPP during 2011 and 2010, respectively. The Company recognized \$164 and \$126 of compensation expense during 2011 and 2010, respectively. At December 31, 2011, 748,548 shares remained available to be issued through the ESPP.

The Company has a Nonemployee Director Equity and Deferred Compensation Plan (the "Plan"), which originally was adopted by the Board of Directors and approved by the shareholders in 2004. The Plan was amended on March 1, 2008 and was approved by the shareholders at the 2008 Annual Meeting. Under the Plan, Directors who are not officers of the Company are paid 375 shares of Company common stock and \$3 in fees for attendance at each meeting of the Board of Directors, as well as each meeting of each Board Committee on which they serve when the committee meeting is not held within one day of a meeting of the Board of Directors. Additionally, the Board of Directors has the authority to increase from time to time, as it deems desirable or appropriate, the number of shares of stock awarded to all or any one or more of the Nonemployee Directors. No more than 25,000 shares of stock, in the aggregate, may be issued under the Plan during any single calendar year. Committee Chairmen currently receive additional fees equal to 25% of normal compensation and the Chairman of the Board is paid twice the amount of normal compensation, with such additional compensation payable in Company common stock.

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Directors may elect under the Plan to receive all or part of their cash fees in Company stock and to defer receipt of their fees until a subsequent year. The Plan authorizes the issuance of up to 270,000 shares of common stock.

Directors were granted 14,936 and 16,342 shares during 2011 and 2010, respectively. At December 31, 2011, there were 49,032 deferred stock units outstanding. Deferred stock units are treated as liabilities. The Company recognized director stock compensation expense of \$264 and \$630, for 2011 and 2010, respectively. At December 31, 2011, 183,300 shares remained available to be issued through the Plan.

### 16. EARNINGS PER SHARE

The following table represents the computation of basic and diluted net income per common share (in thousands, except per share data):

	December 31, 2011	January 1, 2011	January 2, 2010
<b>Net income</b>	<b>\$ 37,677</b>	<b>\$ 21,400</b>	<b>\$ 1,856</b>
Basic weighted average number of common shares outstanding	25,642	25,428	25,256
<b>Basic net income per common share</b>	<b>\$ 1.47</b>	<b>\$ 0.84</b>	<b>\$ 0.07</b>
Effect of dilutive stock options and deferred director stock units	42	50	49
Diluted weighted average number of common shares outstanding	25,684	25,478	25,305
<b>Diluted net income per common share</b>	<b>\$ 1.47</b>	<b>\$ 0.84</b>	<b>\$ 0.07</b>

### 17. EMPLOYEE BENEFITS

The Company has a defined contribution retirement plan covering substantially all of its eligible United States employees. Employer contributions under the retirement plan amounted to approximately \$5,026, \$3,304, and \$880 during 2011, 2010, and 2009, respectively.

The Company provides supplemental pension benefits to its employees of foreign operations in addition to mandatory benefits included in local country payroll tax statutes. These supplemental pension benefits amounted to approximately \$336, \$353, and \$280 during 2011, 2010, and 2009, respectively.

The Company uses an Employee Stock Ownership Plan ("ESOP") as the discretionary match portion of its 401(k) retirement plan. The Company contributes to the ESOP for all eligible United States employees. Under the ESOP, which is 100% company funded, the Company allocates common stock to each participants account. The allocation is generally a percentage of a participant's compensation as determined by the Board of Directors on an annual basis.

In May 2008, the Board introduced the concept of a shared distribution dividend. The shared distribution dividend rewards the majority of employees through a contribution into their retirement accounts and concurrently rewards shareholders with a special cash dividend. As a result of the shared distribution, the Company contributed 84,974 and 265,241 shares into the ESOP in March 2011 and March 2009, respectively. In 2011, the Company accrued an amount equal to 13.5% of eligible wages in accordance with the shared distribution dividend announced in March 2012.

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The Company incurred retirement benefit expense under the ESOP of approximately \$3,849, \$2,255, and zero during 2011, 2010 and 2009, respectively. These amounts are included in the total employer contributions to the retirement plan noted above.

There are no restrictions on the shares contributed to the ESOP. This allows participants to sell their shares to enable diversification within their individual 401(k) accounts. The Company does not have any repurchase obligations under the ESOP.

During 2008, the Company developed plans for international employees to participate in the shared distributions. The Company's foreign operations recognized total expense of approximately \$795, \$483, and zero in 2011, 2010, and 2009, respectively, relating to shared distributions. The Company's U.K. employees received 8,061 and 34,869 shares in March 2011 and March 2009, respectively, into a share incentive plan, while employees in the remaining locations received their shared distribution in the form of cash. In Korea the cash was deposited into a Company retirement plan. In Germany, 50% of the shared distribution was paid in cash and the remaining 50% is expected to be paid in Company stock in 2012.

The Company awards deferred cash bonuses to key employees of its foreign operations. The deferred cash bonuses are similar to phantom stock units, in that such bonuses are tied to the value of the Company's common stock. Awards are recognized over the deferral period as variable plan awards. The Company recognized approximately \$45, \$45 and \$54 of compensation expense in 2011, 2010 and 2009, respectively, related to the awards.

### **18. 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. France operated as a subsidiary of the Company until its dissolution in November 2011, at which time it became a liaison office. 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.

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Total 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>2011</b>						
Sales to unaffiliated customers	\$131,714	\$20,566	\$27,997	\$23,894	\$ —	\$ 204,171
Intercompany sales	33,711	—	201	1,536	(35,448)	—
Operating income	41,847	2,492	6,715	4,167	48	55,269
Total assets	116,496	11,996	19,016	20,747	(727)	167,528
Depreciation and amortization	5,308	114	357	942		6,721
Capital expenditures	9,324	274	63	482		10,143
<b>2010</b>						
Sales to unaffiliated customers	\$ 94,067	\$16,284	\$19,770	\$20,574	\$ —	\$ 150,695
Intercompany sales	26,022	—	160	1,225	(27,407)	—
Operating income	22,040	2,246	4,024	2,822	(93)	31,039
Total assets	89,977	10,535	14,705	17,605	(788)	132,034
Depreciation and amortization	5,388	89	429	967		6,873
Capital expenditures	3,400	217	27	212		3,856
<b>2009</b>						
Sales to unaffiliated customers	\$ 59,278	\$ 9,978	\$14,654	\$13,483	\$ —	\$ 97,393
Intercompany sales	15,545	—	139	1,101	(16,785)	—
Operating income (loss)	(2,110)	616	2,475	884	278	2,143
Total assets	85,338	8,191	12,447	15,923	(1,966)	119,933
Depreciation and amortization	5,335	104	502	1,027		6,968
Capital expenditures	4,758	41	30	267		5,096

Sales to unaffiliated customers represent sales from each of the individual subsidiaries. For information on sales to geographic locations, see the Comparisons of the Years Ended December 31, 2011, and January 1, 2011, in Management's Discussion and Analysis of Financial Condition and Results of Operations. Operating income is total sales and other operating income less operating expenses. Segment operating income does not include interest income/expense, foreign currency transaction gain/loss, and net miscellaneous income/expense.

Included in U.S. sales to unaffiliated customers were export sales of \$49,753, \$34,955, and \$19,031, during 2011, 2010, and 2009, respectively. Export sales to Canada and Asia/Pacific totaling, \$34,506, \$24,705, and \$12,918, during 2011, 2010, and 2009, respectively, make up the majority of these export sales. Additionally, export sales to Europe were \$12,474, \$8,066 and \$4,916 during 2011, 2010, and 2009, respectively.

## **19. 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.

**OPERATING LEASES** - The Company leases a manufacturing facility in Lenexa, Kansas and production support facilities in Sarasota, Florida under operating leases having initial terms expiring in 2010. The lease for the manufacturing facility in Kansas is currently on a month to month basis, and represents approximately 17,000 square feet of space. The lease for the production support facilities in Florida is expiring in April, 2012, and represents approximately 10,000 square feet. Total rental expense for the years ended 2011, 2010 and 2009 was approximately \$294, \$229 and \$221, respectively.



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Future minimum lease payments on operating leases are as follows:

2012	<u>36</u>
Total minimum lease payments	<u>\$36</u>

INSURANCE - The Company accrues for health care benefit costs under a self-funded plan. The Company purchases re-insurance for both specific and aggregate stop losses on claims that exceed \$115 on an individual basis and approximately \$7,600 on an aggregate basis. The Company records a liability for all unresolved claims at the anticipated cost to the Company at the end of the period based on management's assessment. The Company believes it has adequate reserves for all self-insurance claims.

## 20. UNAUDITED QUARTERLY FINANCIAL INFORMATION

### Quarterly Results of Operations (In thousands, except per share data)

	For the Quarter Ended			
	Dec 31, 2011	Oct 1, 2011	Jul 2, 2011	Apr 2, 2011
Net sales	\$45,657	\$53,041	\$54,770	\$50,703
Gross profit	16,848	20,748	21,674	19,942
Operating income	10,472	15,499	15,384	13,911
Income before income taxes	10,614	16,982	15,571	14,417
Net income	<u>\$ 6,074</u>	<u>\$ 11,394</u>	<u>\$ 10,437</u>	<u>\$ 9,770</u>
Basic net income per common share	\$ 0.24	\$ 0.44	\$ 0.41	\$ 0.38
Diluted net income per common share	\$ 0.24	\$ 0.44	\$ 0.41	\$ 0.38

	For the Quarter Ended			
	Jan 1, 2011	Oct 2, 2010	Jul 3, 2010	Apr 3, 2010
Net sales	\$41,772	\$38,073	\$39,246	\$31,605
Gross profit	14,689	13,550	13,984	10,120
Operating income	8,754	8,182	9,139	4,964
Income before income taxes	8,762	8,409	9,323	5,148
Net income	<u>\$ 6,267</u>	<u>\$ 5,709</u>	<u>\$ 6,113</u>	<u>\$ 3,311</u>
Basic net income per common share	\$ 0.25	\$ 0.23	\$ 0.24	\$ 0.13
Diluted net income per common share	\$ 0.25	\$ 0.23	\$ 0.24	\$ 0.13

## 21. NEW ACCOUNTING PRONOUNCEMENTS

In May 2011, the Financial Accounting Standards Board ("FASB") issued guidance amending certain fair value measurement and disclosure requirements in U.S. GAAP and IFRS. The amendments change the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. The amendments are intended to create comparability of fair value measurements presented and disclosed in financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles and International Financial Reporting Standards. This guidance is effective for interim and annual periods beginning after December 15, 2011. The Company does not expect material financial statement implications relating to the adoption of this guidance.

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In June 2011, the FASB issued guidance amending the presentation of comprehensive income. This amends existing guidance by allowing only two options for presenting the components of net income and other comprehensive income: (1) in a single continuous financial statement, statement of comprehensive income or (2) in two separate but consecutive financial statements, consisting of an income statement followed by a separate statement of other comprehensive income. Also, items that are reclassified from other comprehensive income to net income must be presented on the face of the financial statements. The guidance requires retrospective application, and it is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. We believe the adoption of this update will change the order in which certain financial statements are presented and provide additional detail on those financial statements when applicable, but will not have any other material impact on our consolidated financial statements. In December 2011, the FASB issued another amendment to defer certain requirements from the June 2011 guidance that relate to the presentation of reclassification adjustments. The amendments will allow the FASB time to redeliberate whether to present on the face of the financial statements the effects of reclassifications out of accumulated other comprehensive income on the components of net income and other comprehensive income for all periods presented. We are in the process of evaluating the disclosure impact of this guidance.

In September 2011, the FASB amended the guidance on the annual testing of goodwill for impairment. The amended guidance will allow companies to assess qualitative factors to determine if it is more-likely-than-not that goodwill might be impaired and whether it is necessary to perform the two-step goodwill impairment test required under current accounting standards. This guidance will be effective for the Company's fiscal year ending December 30, 2012, with early adoption permitted. The Company has determined that this new guidance will not have a material impact on its consolidated financial statements.

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

None.

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

#### **Disclosure Controls and Procedures**

The Company's management, with the participation of the Chief Executive Officer and Chief Financial Officer, after evaluating the effectiveness of the Company's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this report, have concluded that our disclosure controls and procedures are effective and are designed to ensure that the information we are required to disclose is recorded, processed, summarized and reported within the necessary time periods. Our disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in reports that we file or submit pursuant to the Securities Exchange Act of 1934, as amended, is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

#### **Management's Report on Internal Control over Financial Reporting**

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). The Company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;

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- provide reasonable assurance that transactions are recorded, as necessary, to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Management, with the participation of the Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the Company's internal control over financial reporting based on the criteria set forth in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation under the Internal Control - Integrated Framework, management, with the participation of the Chief Executive Officer and Chief Financial Officer, concluded that the internal control over financial reporting was effective as of December 31, 2011.

The SEC's general guidance permits the exclusion of an assessment of the effectiveness of a registrant's controls and procedures as they relate to its internal control over financial reporting for an acquired business during the first year following such acquisition if, among other circumstances and factors, there is not an adequate amount of time between the acquisition date and the date of assessment. As previously disclosed in this Form 10-K, during the third quarter of 2011, we completed our acquisition of HCT. In accordance with the SEC guidance, the scope of our evaluation of internal controls over financial reporting as of December 31, 2011 did not include the internal control over financial reporting of these acquired operations. Assets acquired from HCT represent approximately 4% of our total consolidated assets at December 31, 2011 and net revenue generated by HCT subsequent to the date of acquisition represents less than 1% of our consolidated net revenue for the year ended December 31, 2011. As part of our acquisition of HCT, we continue to evaluate HCT's internal controls over financial reporting. From the acquisition date to December 31, 2011, the processes and systems of HCT's acquired operations did not significantly impact our internal control over financial reporting.

### **Changes in Internal Control Over Financial Reporting**

There were no changes in the Company's internal control over financial reporting during the quarter ended December 31, 2011, that materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

### **Attestation Report of Independent Registered Public Accounting Firm**

Mayer Hoffman McCann P.C., our independent registered public accounting firm, has issued an attestation report on our internal control over financial reporting. This report appears on page 32.

## **ITEM 9B. OTHER INFORMATION**

None.

**PART III.**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS OF THE REGISTRANT AND CORPORATE GOVERNANCE MATTERS**

**Executive Officers**

The information required by this item with respect to our executive officers is set forth in our 2012 Proxy Statement under the caption “Governance of the Company” and is incorporated herein by reference.

**Directors**

The information required by this item with respect to our board of directors and committees thereof is set forth in our 2012 Proxy Statement under the caption “Governance of the Company” and is incorporated herein by reference.

**Section 16(a) Beneficial Ownership Reporting Compliance**

The information required by this item with respect to Section 16(a) beneficial ownership reporting compliance is set forth in our 2012 Proxy Statement under the caption “Compliance with Section 16(a) of the Securities Exchange Act of 1934” and is incorporated herein by reference.

**Code of Business Conduct and Ethics**

The information required by this item with respect to our Code of Business Conduct and Ethics is set forth in our 2012 Proxy Statement under the caption “Governance of the Company” and is incorporated herein by reference.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item is set forth under the caption “Executive Compensation” in our 2012 Proxy Statement and is incorporated herein by reference.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this item with respect to equity compensation plans is set forth under the caption “Equity Compensation Plan Information” in our 2012 Proxy Statement and with respect to security ownership of certain beneficial owners, directors and executive officers is set forth under the caption “Security Ownership of Certain Beneficial Owners and Management” in our 2012 Proxy Statement and is incorporated herein by reference.

**ITEM 13. CERTAIN RELATIONSHIPS, RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE**

The information required by this item is set forth under the captions “Compensation Committee Interlocks and Insider Participation,” “Certain Relationships and Related Transactions” and “Independence and Committees of the Board of Directors” in our 2012 Proxy Statement and is incorporated herein by reference.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this item is set forth under the caption “Independent Registered Public Accounting Firm” in our 2012 Proxy Statement and is incorporated herein by reference.

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**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

1. The following financial statements are included in Part II, Item 8:

<a href="#">Report of Independent Registered Public Accounting Firm</a>	33
<a href="#">Report of Independent Registered Public Accounting Firm</a>	35
<a href="#">Consolidated Balance Sheets as of December 31, 2011 and January 1, 2011</a>	36
<a href="#">Consolidated Statements of Operations for the years ended December 31, 2011, January 1, 2011, and January 2, 2010</a>	37
<a href="#">Consolidated Statements of Shareholders' Equity and Comprehensive Income for the years ended December 31, 2011, January 1, 2011, and January 2, 2010</a>	38
<a href="#">Consolidated Statements of Cash Flows for the years ended December 31, 2011, January 1, 2011, and January 2, 2010</a>	39
<a href="#">Notes to the Consolidated Financial Statements All other schedules are omitted as the required information is inapplicable or the information is presented in the consolidated financial statements and notes thereto in Item 8 above.</a>	40

2. Exhibits:

<b>Exhibit Number</b>	<b>Exhibit Description</b>
3.1	Amended and Restated Articles of Incorporation of the Company (previously filed as Exhibit 3.1 in the Pre-Effective Amendment No. 4 to the Company's Registration Statement on Form S-1 filed on December 19, 1996 (File No. 333-14183) and incorporated herein by reference).
3.2	Amended and Restated Bylaws of the Company (previously filed as Exhibit 3.2 to the Company's Form 10-K filed on March 9, 2011, and incorporated herein by reference).
3.3	Articles of Amendment to Articles of Incorporation effective June 8, 2011 (previously filed as Exhibit 3.1 to the Company's Form 8-K filed on June 6, 2011, and incorporated herein by reference).
10.1+	Form of Indemnification Agreement (previously filed as Exhibit 10.4 in the Pre-Effective Amendment No. 4 to the Company's Registration Statement on Form S-1 filed on December 19, 1996 (File No. 333-14183) and incorporated herein by reference).

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- 10.2 Form of Distributor Agreement (Domestic) (previously filed as Exhibit 10.1 in the Company's Registration Statement on Form S-1 filed on October 15, 1996 (File No. 333-14183) and incorporated herein by reference).
- 10.3 Form of Distributor Agreement (International) (previously filed as Exhibit 10.2 in the Company's Registration Statement on Form S-1 filed on October 15, 1996 (File No. 333-14183) and incorporated herein by reference).
- 10.4 Credit and Security Agreement dated August 11, 2005, between the Company, as Borrower, and Fifth Third Bank, as Lender (previously filed as Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended October 1, 2005 and incorporated herein by reference).
- 10.5 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 (previously filed as Exhibit 4.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended October 1, 2005 and incorporated herein by reference).
- 10.6 Renewed, Amended and Restated Mortgage and Security Agreement dated August 11, 2005, between the Company, as Mortgagor, and Fifth Third Bank, as Mortgagee (previously filed as Exhibit 4.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended October 1, 2005 and incorporated herein by reference).
- 10.7 Amended and Restated Credit and Security Agreement dated August 11, 2011, between the Company as Borrower, and Fifth Third Bank, as Lender.
- 10.8 Construction and Term Note, dated August 11, 2011, made by the Company in favor of Fifth Third Bank.
- 10.9 Amended and Restated Revolving Line of Credit Note, dated August 11, 2011, made by the Company in favor of Fifth Third Bank.
- 10.10+ 1996 Sun Hydraulics Corporation Stock Option Plan (previously filed as Exhibit 10.3 in the Pre-Effective Amendment No. 4 to the Company's Registration Statement on Form S-1 filed on December 19, 1996 (File No. 333-14183) and incorporated herein by reference).
- 10.11+ Amendment No. 1 to 1996 Stock Option Plan (previously filed as Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1997 and incorporated herein by reference).
- 10.12+ Forms of agreement for grants under the Sun Hydraulics Corporation 1996 Stock Option Plan (previously filed as Exhibit 10.12+ to the Company's Quarterly Report on Form 10-Q for the quarter ended September 25, 2004 and incorporated herein by reference).
- 10.13+ Sun Hydraulics Corporation 2006 Stock Option Plan (previously filed as Exhibit 99.2 to the Company's Form 8-K filed on September 14, 2006 and incorporated herein by reference).
- 10.14+ Sun Hydraulics Corporation Employee Stock Award Program (previously filed as Exhibit 4 to the Company's registration statement on Form S-8 filed on July 20, 1999, and incorporated herein by reference).
- 10.15+ 2001 Sun Hydraulics Corporation Restricted Stock Plan (previously filed as Exhibit 4 to the Company's registration statement on Form S-8 filed on June 12, 2001 (file No. 333-62816), and incorporated herein by reference).
- 10.16+ Form of agreement for grants of restricted shares under the Sun Hydraulics Corporation Restricted Stock Plan (previously filed as Exhibit 10.14 to the Company's Annual Report on Form 10-K filed on March 15, 2010, and incorporated herein by reference).
- 10.17+ Sun Hydraulics Corporation Employee Stock Purchase Plan (previously filed as Exhibit 10.14 to the Company's Form 10-K filed on March 9, 2011, and incorporated herein by reference).

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- 10.18+ Sun Hydraulics Corporation 2004 Nonemployee Director Equity and Deferred Compensation Plan (As Amended and Restated Effective March 1, 2008) (previously filed as Appendix A to the Company's Proxy Statement for the 2008 Annual Meeting of Shareholders filed with the Commission on April 25, 2008 and incorporated herein by reference).
- 10.19+ Amendment to Sun Hydraulics Corporation Amended and Restated 2004 Nonemployee Directory Equity and Deferred Compensation Plan (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended July 2, 2011, and incorporated herein by reference).
- 10.20+ Form of Performance Share Agreement (previously filed as Exhibit 99.1 to the Company's Form 8-K filed on December 16, 2004 and incorporated herein by reference).
- 10.21+ The Sun Hydraulics Corporation 401(k) and ESOP Retirement Plan dated December 12, 2007 (previously filed as Exhibit 10.17 to the Company's Form 10-K filed on March 11, 2009 and incorporated herein by reference).
- 10.22+ First, Second, Third, Fourth, Fifth and Sixth Amendments to Sun Hydraulics Corporation 401(k) and ESOP Retirement Plan.
- 10.23+ 2011 Equity Incentive Plan (previously filed as Exhibit 4.1 to the Company's Registration Statement on Form S-8 filed on October 21, 2011 (File Number 333-177448) and incorporated herein by reference).
- 10.24+ Form of agreement for grants of restricted shares under the Sun Hydraulics 2011 Equity Incentive Plan.
- 10.25+ Sun Hydraulics Limited Share Incentive Plan (previously filed as Exhibit 4 to the Company's Registration Statement on Form S-8 filed on March 27, 2009 (File Number 333158245) and incorporated herein by reference).
- 10.26+ Peter Robson Employment Agreement dated April 22, 1981 (previously filed as Exhibit 10.1+ to the Company's Quarterly Report on Form 10-Q filed on May 6, 2009 and incorporated herein by reference).
- 10.27+ Steven Hancox Employment Agreement dated January 1, 1994 (previously filed as Exhibit 10.2+ to the Company's Quarterly Report on Form 10-Q for the quarter ended April 2, 2011, and incorporated herein by reference).
- 10.28+ Executive Continuity Agreement, dated December 7, 2009, between Sun Hydraulics Corporation and Allen J. Carlson (previously filed as Exhibit 99.1 to the Company's Form 8-K filed on December 11, 2009 and incorporated herein by reference).
- 10.29+ Executive Continuity Agreement, dated December 7, 2009, between Sun Hydraulics Corporation and Tricia L. Fulton (previously filed as Exhibit 99.2 to the Company's Form 8-K filed on December 11, 2009 and incorporated herein by reference).
- 10.30 Securities Purchase Agreement between Sun Hydraulics Corporation and High Country Tek, Inc., dated November 30, 2007 (previously filed as Exhibit 99.1 in the Company's Form 8-K filed on November 30, 2007 and incorporated herein by reference).

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14	Code of Ethics (previously filed as Exhibit 14 in the Company's Annual report on Form 10-K for the year ended December 31, 2005 and incorporated herein by reference).
21	Subsidiaries of the Registrant.
23.1	Mayer Hoffman McCann P.C. Consent of Independent Registered Public Accounting Firm.
23.2	Kirkland, Russ, Murphy and Tapp, P.A. Consent of Independent Registered Public Accounting Firm.
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.
32.1	CEO Certification pursuant to 18 U.S.C. § 1350.
32.2	CFO Certification pursuant to 18 U.S.C. § 1350.
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.DEF	XBRL Definition Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document

+ Executive management contract or compensatory plan or arrangement.



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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 March 13, 2012.

SUN HYDRAULICS CORPORATION

By: /s/ Allen J. Carlson  
Allen J. Carlson, President and Chief Executive Officer

Pursuant to requirements of the Securities Exchange Act of 1934, this Report has been signed by the following persons on behalf of the Registrant and in the capacities indicated as of March 13, 2012.

<u>Signature</u>	<u>Title</u>
<u>/s/ Allen J. Carlson</u> Allen J. Carlson	President, Chief Executive Officer and Director
<u>/s/ Tricia L. Fulton</u> Tricia L. Fulton	Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/s/ Marc Bertoneche</u> Marc Bertoneche	Director
<u>/s/ Wolfgang H. Dangel</u> Wolfgang H. Dangel	Director
<u>/s/ John S. Kahler</u> John S. Kahler	Director
<u>/s/ Christine L. Koski</u> Christine L. Koski	Director
<u>/s/ Philippe Lemaitre</u> Philippe Lemaitre	Director
<u>/s/ Ferdinand E. Megerlin</u> Ferdinand E. Megerlin	Director, Chairman of the Board of Directors
<u>/s/ David N. Wormley</u> David N. Wormley	Director

**\$50,000,000**

**AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT**

**Between**

**SUN HYDRAULICS CORPORATION  
as Borrower,**

**and**

**FIFTH THIRD BANK,  
as Lender**

**Dated as of August 1, 2011**

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**THIS AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT**, dated as of August 1, 2011, is made by **SUN HYDRAULICS CORPORATION**, a Florida corporation ("Borrower"), and **FIFTH THIRD BANK**, an Ohio banking corporation ("Lender").

WITNESSETH:

WHEREAS, Borrower has requested that Lender make loans and other financial accommodations to Borrower in an aggregate amount of up to \$50,000,000, as more particularly described herein; and

WHEREAS, Lender has agreed to make such loans and other financial accommodations to Borrower on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1.1 Defined Terms.

As used in this Agreement, terms defined in the preamble to this Agreement have the meanings therein indicated, and the following terms have the following meanings:

"Accordion Advance(s)" means Advance(s) of a portion of the Accordion Facility.

"Accordion Facility" means the revolving line of credit described in Section 2.2, below.

"Accordion Commitment Fee" has the meaning set forth in Section 2.2(e).

"Accordion Commitment Period" means the period from the Closing Date to, but not including, the Maturity Date.

"Accordion Committed Amount" has the meaning set forth in Section 2.2(a).

"Accordion Note" means the promissory note of Borrower in favor of Lender evidencing the Accordion Facility provided pursuant to Section 2.2(d), as such promissory note may be amended, modified, extended, restated, replaced, or supplemented from time to time.

"Account Designation Letter" means the Notice of Account Designation Letter dated the Closing Date from Borrower to Lender substantially in the form attached hereto as Schedule 1.1-1.

"Activated" means, with respect to the Accordion Facility, all conditions precedent set forth in Sections 4.1 and 4.2 have occurred or been satisfied.

“Advance” shall mean a Revolving Advance, and Accordion Advance, or Construction Advance.

“Affiliate” means as to any Person, any other Person (excluding any Subsidiary) which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, a Person shall be deemed to be “controlled by” a Person if such Person possesses, directly or indirectly, power either (a) to vote 20% or more of the securities having ordinary voting power for the election of directors of such Person or (b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding the foregoing, Lender shall not be deemed an Affiliate of any of Borrower solely by reason of the relationship created by the Credit Documents.

“Agreement” or “Credit Agreement” means this Agreement, as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

“Anti-Terrorism Order” means that certain Executive Order 13224 signed into law on September 23, 2001.

“Applicable Interest Rate” means, (i) with respect to LIBOR Rate Advances, the LIBOR Rate, plus the Applicable Percentage, and (ii) with respect to Base Rate Advances, the Base Rate, plus the Applicable Percentage.

“Applicable Percentage” means, for any day:

(a) prior to the date that the Accordion Facility is Activated, for Revolving Advances and for Letter of Credit Fees, a rate per annum of 1.45%;

(b) from and after the date that the Accordion Facility is Activated, for Revolving Advances, Accordion Advances and Letter of Credit Fees, the rate per annum set forth below opposite the applicable Level then in effect, it being understood that the Applicable Percentage for (i) Base Rate Advances shall be the percentage set forth under the column “Base Rate Margin”, (ii) LIBOR Rate Advances and the Letter of Credit Fee shall be the percentage set forth under the column “LIBOR Rate Margin/Letter of Credit Fee” and (iii) the Unused Fee on the unused portion of the Accordion Facility shall be the percentage set forth under the column “Accordion Facility Unused Fee”:

<u>Level</u>	<u>Leverage Ratio</u>	<u>Base Rate Margin</u>	<u>LIBOR Rate Margin/ Letter of Credit Fee</u>	<u>Accordion Facility Unused Fee</u>
I	£ 1.00x	-0.25%	1.45%	0.0%
II	> 1.00 but £ 1.50x	-0.25%	1.65%	0.20%
III	> 1.50 but £ 2.00	0.00%	1.75%	0.25%
IV	>2.00 but £ 2.50x	0.00%	2.00%	0.30%
V	>2.50x	0.00%	2.25%	0.35%



(c) for Construction Advances, the rate per annum set forth below opposite the applicable Level then in effect, it being understood that the Applicable Percentage shall be (i) the percentage set forth in the “LIBOR Rate Margin” column if the LIBOR Rate is applicable and (ii) the percentage set forth in the “Base Rate Margin” column if the Base Rate is applicable:

<u>Level</u>	<u>Leverage Ratio</u>	<u>Base Rate Margin</u>	<u>LIBOR Rate Margin</u>
I	£ 1.00x	-0.05%	1.65%
II	> 1.00 but £ 1.50x	-0.05%	1.85%
III	> 1.50 but £ 2.00	0.20%	1.95%
IV	>2.00 but £ 2.50x	0.20%	2.20%
V	>2.50x	0.20%	2.45%

The Applicable Percentage shall, in each case, be determined and adjusted quarterly on the date five (5) Business Days after the date on which Lender has received from Borrower the quarterly financial information and certifications required to be delivered to Lender and Lender in accordance with the provisions of Sections 5.1(a) and (b) and 5.2(b) (each an “Interest Determination Date”). Such Applicable Percentage shall be effective from such Interest Determination Date until the next Interest Determination Date. If Borrower shall fail to provide the financial information and certifications in accordance with the provisions of Sections 5.1(a) and (b) and 5.2(b), the Applicable Percentage shall, on the date five (5) Business Days after the date by which Borrower was so required to provide such financial information and certifications to Lender and Lender, be based on Level V until such time as such information and certifications are provided. In the event that any financial statement or certification delivered pursuant to Sections 5.1 or 5.2 is shown by written and credible evidence to be inaccurate (regardless of whether this Agreement or any of the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Percentage for any period (an “Applicable Period”) than the Applicable Percentage applied for such Applicable Period, Borrower shall immediately (a) deliver to Lender a corrected compliance certificate for such Applicable Period, (b) determine the Applicable Percentage for such Applicable Period based upon the corrected compliance certificate, and (c) immediately pay to Lender for the benefit of Lender the accrued additional interest and other fees owing as a result of such increased Applicable Percentage for such Applicable Period, which payment shall be promptly distributed by Lender to Lender entitled thereto. It is acknowledged and agreed that nothing contained herein shall limit the rights of Lender and Lender under the Credit Documents, including their rights under Sections 2.8 and 7.1.

“Appraisal” means an appraisal report with respect to the Project prepared by a real estate appraiser acceptable to Lender setting forth the “as completed” fair market value of the Project.

“BR Default Rate” means, as of any date of determination, the Base Rate plus the Applicable Percentage for Base Rate Loans in effect on such date plus 3%.

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“Bank Product” means any of the following products, services or facilities extended to Borrower or any Subsidiary by Lender: (a) Cash Management Services; and (b) products under any Hedging Agreement.

“Bank Product Debt” means the Indebtedness and other obligations of Borrower or its Subsidiaries relating to Bank Products.

“Bankruptcy Code” means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

“Bankruptcy Event” means any of the events described in Section 7.1(e).

“Base Rate” means, for any day, the lending rate as announced by Lender, from time to time, as its Base Rate which may change as often as daily. In the event that Lender does not, for any reason, announce a Base Rate or discontinues the use of the term “Base Rate” as a benchmark for interest rates on its loans, the Base Rate shall be equal to the Prime Rate.

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 entity quoting such rate to any of its customers regardless of their creditworthiness.

“Base Rate Advances” means Advances that bear interest at an interest rate based on the Base Rate.

“Borrower” has the meaning set forth in the first paragraph of this Agreement.

“Borrower’s Architect” means the architect or engineer selected by Borrower to prepare the Plans and conduct construction progress inspections for the Project.

“Borrower’s Obligations,” “Borrower Obligations” and “Borrower Obligation” mean, collectively or individually, as applicable, without duplication, (i) all of the obligations, indebtedness and liabilities of Borrower to Lender, whenever arising, under this Agreement, the Notes or any of the other Credit Documents including principal, interest, fees, reimbursements and indemnification obligations and other amounts (including, but not limited to, any interest accruing after the occurrence of a filing of a petition of bankruptcy under the Bankruptcy Code with respect to Borrower, regardless of whether such interest is an allowed claim under the Bankruptcy Code) and (ii) all Bank Product Debt.

“Borrowing Date” means, in respect of any Loan, the date such Loan is made.

“Budget” means the budget setting forth the total of the Construction Costs and Non-Construction Costs, as estimated by Borrower and Borrower’s Architect in order to enable Borrower to complete the Project in accordance with the Plans.

“Business” means the meaning set forth in Section 3.10(a)(ii).

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in Tampa, Florida are authorized or required by law to close; provided,

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however, that when used in connection with a rate determination, borrowing or payment in respect of a LIBOR Rate Loan, “Business Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Capital Lease” means any lease of property, real or personal, the obligations with respect to which are required to be capitalized on a balance sheet of the lessee in accordance with GAAP.

“Capital Lease Obligations” means the capitalized lease obligations relating to a Capital Lease determined in accordance with GAAP.

“Capital Stock” means (i) in the case of a corporation, capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (iii) in the case of a partnership, partnership interests (whether general or limited), (iv) in the case of a limited liability company, membership interests and (v) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, in all of the foregoing other than nonvoting stock appreciation rights, nonvoting management incentive plan or other nonvoting participatory interests that are payable as part of the compensation plan of Borrower.

“Cash Collateralize” means to pledge and deposit with or deliver to Lender, as collateral for LOC Obligations, cash or deposit account balances or, other credit support, in each case pursuant to documentation in form and substance satisfactory Lender. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means (i) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition (“Government Obligations”), (ii) U.S. dollar denominated time deposits, certificates of deposit, Eurodollar time deposits and Eurodollar certificates of deposit of with or issued by Lender, in each case with maturities of not more than one year from the date of acquisition, (iii) bankers acceptances issued by Lender, (iv) commercial paper and variable or fixed rate notes issued by Lender or any variable rate notes issued by, or guaranteed by any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody’s and maturing within twelve months of the date of acquisition, (v) repurchase agreements with Lender or a recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States of America, (vi) obligations of any state of the United States or any political subdivision thereof for the payment of the principal and redemption price of and interest on which there shall have been irrevocably deposited Government Obligations maturing as to principal and interest at times and in amounts sufficient to provide such payment, (vii) demand deposits with Lender and (viii) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (i) through (vii) of this definition.

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“Cash Management Services” means any services provided from time to time to Borrower or any Subsidiary of Borrower in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automatic clearinghouse, controlled disbursement, depository, electronic funds transfer, information reporting, lockbox, stop payment, overdraft and/or wire transfer services and all other treasury and cash management services.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, all requests, rules, guidelines or directives issued under or in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means the occurrence, after the date of this Agreement, of (i) the acquisition by any Person or group of Persons (within the meaning of Section 13(d) or Section 14(a) of the Securities Exchange Act of 1934, as amended) of beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under said Act) fifty-one percent (51%) or more of the voting Capital Stock of Borrower, or (ii) within any period of twelve (12) consecutive calendar months, individuals who were directors of Borrower on the first day of such period, together with any directors whose election by such board of directors or whose nomination for election by the shareholders was approved by a vote of the majority of the directors then in office shall cease to constitute a majority of the board of directors of the Borrower.

“Closing Date” means the date of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means a collective reference to Domestic Business Assets of Borrower and its Domestic Subsidiaries, as the same may be expressly set forth in the Security Agreement required to be delivered by Borrower to Lender in the event that the Accordion Facility is Activated.

“Commitment Letter” means the letter agreement dated May 2, 2011 addressed to Borrower from Lender and accepted by Borrower on May 13, 2011, as may be amended, modified, extended, restated, replaced, or supplemented from time to time.

“Commitments” means, collectively, the commitment of Lender to make Revolving Advances, Accordion Advances and Construction Advances.

“Commonly Controlled Entity” means an entity, whether or not incorporated, which is under common control with Borrower within the meaning of Section 4001(b)(1) of ERISA or is part of a group which includes Borrower and which is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 412 of the Code to the extent required by such Section, Section 414(m) or 414(o) of the Code.

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“Completion Date” means the date which is two (2) years after date of the Initial Construction Disbursement.

“Completion of Improvements” means lien-free completion of the Improvements in accordance with the Plans, as evidenced (i) by compliance on the part of Borrower or the Project, as the case may be, with all Legal Requirements relating to the occupancy and use of the Improvements, including all necessary certificates of occupancy (or their equivalent), and (ii) by the documents, items and things described in Section 8.7.

“Compliance Certificate” has the meaning set forth in Section 5.2(b).

“Consolidated” or “consolidated” means, with reference to any term defined herein, such term as applied to the accounts of Borrower and its Subsidiaries, consolidated in accordance with GAAP.

“Consolidated EBIT” means, for any period, for Borrower and its Subsidiaries on a Consolidated basis, Consolidated Net Income for such period and the sum of the following to the extent deducted in the calculation of Consolidated Net Income: (i) total federal, state, local and foreign income taxes, and (ii) Consolidated Interest Expense, all as determined in accordance with GAAP.

“Consolidated EBITDA” means, for any period, for Borrower and its Subsidiaries on a Consolidated basis, Consolidated Net Income for such period and the sum of the following to the extent deducted in the calculation of Consolidated Net Income: (i) total federal, state, local and foreign income taxes, (ii) Consolidated Interest Expense and (iii) depreciation and amortization, all as determined in accordance with GAAP.

“Consolidated Funded Debt” means, for any period, the Funded Debt of Borrower and its Subsidiaries on a Consolidated basis.

“Consolidated Interest Expense” means, for any period, for Borrower and its Subsidiaries on a Consolidated basis, total interest expense (including that attributable to Capital Lease Obligations) for such period with respect to all outstanding Indebtedness of Borrower and its Subsidiaries (including, without limitation, all commissions, discounts and other fees and charges owed by such Persons with respect to letters of credit and bankers’ acceptance financing and net costs of such Persons under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP) but excluding any fair market value adjustments related to Hedge Agreements.

“Consolidated Net Income” means, for any period, for Borrower and its Subsidiaries on a Consolidated basis, the net income after taxes for such period, as determined in accordance with GAAP.

“Consolidated Tangible Net Worth” means, for any period, for Borrower and its Subsidiaries on a Consolidated basis, Consolidated Total Tangible Assets minus Consolidated Total Liabilities as determined in accordance with GAAP applied on a consistent basis.

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“Consolidated Total Liabilities” means for any period, for Borrower and its Subsidiaries on a Consolidated basis, total 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 of Borrower and its Subsidiaries, and all obligations as lessee under off-balance sheet synthetic leases) determined in accordance with GAAP applied on a consistent basis.

“Consolidated Total Tangible Assets” means, for any period, for Borrower and its Subsidiaries on a Consolidated basis, consolidated total assets, as determined in accordance with GAAP applied on a consistent basis; provided that for purposes of this computation, the aggregate amount of any intangible assets of Borrower and its Subsidiaries, including, without limitation, goodwill, franchises, licenses, patents, trademarks, trade names, copyrights, service marks and brand names, shall be subtracted from total assets.

“Construction Advance(s)” means Advance(s) of a portion of the Construction Facility.

“Construction Contract” means (collectively, if more than one) the A.I.A. “Standard Form of Agreement (guaranteed fixed price) between Owner and Contractor” providing for the construction of the Improvements (together with any amendments or replacements of such contract(s) that Borrower may enter into).

“Construction Costs” means all hard costs (e.g., for labor, materials and fixtures) incurred and to be incurred in the construction of the Improvements that are payable in whole or in part from proceeds of the Loan, as more particularly described in the Budget.

“Construction Facility” means the loan for construction and/or remodeling of building improvements described in Section 2.3, below.

“Construction Facility Commitment Fee” has the meaning set forth in Section 2.3(c).

“Construction Facility Conversion Date” means the date which is two (2) years after the date of the Initial Construction Disbursement.

“Construction Facility Maturity Date” means the date which is seven (7) years after the Closing Date.

“Construction Facility Amount” has the meaning set forth in Section 2.3.

“Construction Note” means the promissory note of Borrower in favor of Lender evidencing the Construction Facility provided pursuant to Section 2.3, as such promissory note may be amended, modified, extended, restated, replaced, or supplemented from time to time.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking to which such Person is a party or by which it or any of its property is bound.

“Contractor” means the general contractor selected by Borrower to construct the Improvements.

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“Copyright Licenses” means any agreement, whether written or oral, providing for the grant by or to a Person of any right under any Copyright, including, without limitation, any thereof referred to in Schedule 3.16 to this Agreement.

“Copyrights” means all copyrights (other than copyrights of *de minimus* value) of Borrower and its Subsidiaries in all works, now existing or hereafter created or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Copyright Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise, including, without limitation, any thereof referred to in Schedule 3.16 and all renewals thereof.

“Covenant Not To Encumber” means the Covenant Not To Encumber dated as of the Closing Date given by Borrower to Lender for recording in the public records of Sarasota County, Florida and Manatee County, Florida, in each case as amended, modified, extended, restated, replaced or supplemented from time to time.

“Credit Documents” means this Agreement, each of the Notes, the Letters of Credit and any other LOC Documents, the Security Documents, documents evidencing and/or related to Bank Products and all other agreements, documents, certificates and instruments delivered to Lender by Borrower in connection herewith or therewith.

“Debtor Relief Laws” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any of the events specified in Section 7.1, whether or not any requirement for the giving of notice or the lapse of time, or both, or any other condition, has been satisfied.

“Default Rate” shall mean (a) when used with respect to Borrower’s Obligations, other than Letter of Credit Fees, an interest rate equal to (i) for Base Rate Advances, the BR Default Rate and (ii) for LIBOR Rate Advances, the LIBOR Default Rate, (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Percentage applicable to Letter of Credit Fees plus 3.00% per annum and (c) when used with respect to any other fee or amount due hereunder, a rate equal to the BR Default Rate.

“Deposit Account Control Agreement” shall mean an agreement, among Borrower, a depository institution, and Lender, which agreement is in a form acceptable to Lender and which provides Lender with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) described therein, as the same may be amended, modified, extended, restated, replaced, or supplemented from time to time.

“Dollars” and “\$” means dollars in lawful currency of the United States.

“Domestic Business Assets” means, with respect to any Person, all tangible and intangible assets, including, without limitation, cash, Cash Equivalents, securities, accounts receivable, inventory, supplies, equipment, Patents, Patent Licenses, Trademarks and Trademark

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Licenses, but excluding real property and real property improvements, owned by such Person which are located within any state or commonwealth of the United States or the District of Columbia and are used or are usable in connection with any business activity or operation of such Person.

“Domestic Subsidiary” means any Subsidiary of Borrower that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

“Draw Request” means a request, on the AIA form of Application and Certificate for Payment (AIA Document G702), or on such other form(s) as Lender may require, by Borrower for an Advance of a portion of the Construction Facility.

“EBIT to Interest Expense Ratio” means, , during the four (4) consecutive fiscal quarter period ending on the last day of the applicable period, for Borrower and its Subsidiaries on a Consolidated basis, the ratio of (a) Consolidated EBIT for such period to (b) Consolidated Interest Expense for such period.

“Effective Accordion Note Amount” means the stated principal amount of the Accordion Note then in effect.

“Environmental Issues” has the meaning set forth in Section 3.10(b).

“Environmental Laws” means any and all applicable foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirement of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time be in effect during the term of this Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Plan” means, at any particular time, any employee benefit plan which is covered by Title IV of ERISA and in respect of which Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Eurodollar Reserve Percentage” means for any day, the percentage (rounded if necessary, to the nearest 1/100,000 of 1% (to five decimals points)) which is in effect for such day as prescribed by the Federal Reserve Board (or any successor) for determining the maximum reserve requirement (including without limitation any basic, supplemental or emergency reserves) in respect of Eurocurrency liabilities, as defined in Regulation D of such Board as in effect from time to time, or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“Event of Default” means any of the events specified in Section 7.1; provided, however, that any requirement for the giving of notice or the lapse of time, or both, or any other condition, has been satisfied.



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“Existing Letter of Credit” means each of the Letters of Credit described by applicant, date of issuance, letter of credit number, amount, beneficiary and the date of expiry on Schedule 1.1-6 hereto, if any.

“Extension of Credit” means, the making of an Advance by Lender or the issuance of a Letter of Credit by Lender.

“Facilities” means, collectively, the Revolving Facility, the Accordion Facility, if Activated, and the Construction Facility.

“Final Construction Disbursement” shall have the meaning set forth in Section 8.7.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Funded Debt” means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (d) all obligations of such Person incurred, issued or assumed as the deferred purchase price of property or services purchased by such Person (other than trade debt incurred in the ordinary course of business and due within six months of the incurrence thereof) which would appear as liabilities on a balance sheet of such Person, (e) the principal portion of all Capital Lease Obligations of such Person, (f) all obligations of such Person under Hedging Agreements, excluding any portion thereof which would be accounted for as interest expense under GAAP, (g) the maximum amount of all letters of credit issued or bankers’ acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (h) all preferred Capital Stock issued by such Person and which by the terms thereof could be (at the request of the holders thereof or otherwise) subject to mandatory sinking fund payments, redemption or other acceleration, (i) the principal balance outstanding under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product, (j) all indebtedness of others of the type described in clauses (a) through (i) hereof secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (k) all Guaranty Obligations of such Person with respect to Indebtedness of another Person of the type described in clauses (a) through (i) hereof, and (l) all indebtedness of the type described in clauses (a) through (i) hereof of any partnership or unincorporated joint venture in which such Person is a general partner or a joint venturer.

“GAAP” means: (a) prior to the date that Borrower is required to adopt International Financial Reporting Standards (“IFRS”), generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principal Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the

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circumstances as of the date of determination, consistently applied; and (b) on and after the date that Borrower is required to adopt IFRS, IFRS as issued and set forth in the pronouncements of the International Accounting Standards Board, including standards and interpretations approved by the International Accounting Standards Board and its predecessor the International Accounting Standards Committee, that are applicable to the circumstances as of the date of determination, consistently applied.

“Government Acts” means the meaning set forth in Section 2.15.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory, taxing or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guaranty Obligations” means, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (i) to purchase any such Indebtedness or any property constituting security therefor, (ii) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including without limitation keep well agreements, maintenance agreements, comfort letters or similar agreements or arrangements) for the benefit of any holder of Indebtedness of such other Person, (iii) to lease or purchase Property, securities or services primarily for the purpose of assuring the holder of such Indebtedness, or (iv) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

“Hedging Agreements” means, with respect to any Person, any ISDA Master Agreement, Confirmation and Schedules between Borrower and Lender or any Affiliate of Lender executed on the Closing Date or at any time prior to or after the Closing Date or any other agreement between Borrower and Lender or any Affiliate of Lender 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 exposure 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 Lender or any Affiliate of Lender in connection with any other agreement or transaction between Borrower and Lender or any Affiliate of Lender.)

“Holdback” means the retainage with respect to disbursements for Construction Costs, as provided in Subsection 8.4(a).

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“Improvements” means all buildings, parking and driveway areas, landscaping and other improvements constructed or remodeled using the proceeds of the Construction Facility, all as more particularly described in the Plans.

“Increased Accordion Amount” has the meaning set forth in Section 2.2.

“Indebtedness” means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services purchased by such Person (other than trade debt incurred in the ordinary course of business and due within six months of the incurrence thereof) which would appear as liabilities on a balance sheet of such Person, (e) all obligations of such Person under take-or-pay or similar arrangements or under commodities agreements, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all Guaranty Obligations of such Person with respect to Indebtedness of another Person, (h) the principal portion of all Capital Lease Obligations of such Person, (i) all obligations of such Person under Hedging Agreements, excluding any portion thereof which would be accounted for as interest expense under GAAP, (j) the maximum amount of all letters of credit issued or bankers’ acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (k) all preferred Capital Stock issued by such Person and which by the terms thereof could be (at the request of the holders thereof or otherwise) subject to mandatory sinking fund payments, redemption or other acceleration, (l) the principal balance outstanding under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product and (m) the Indebtedness of any partnership or unincorporated joint venture in which such Person is a general partner or a joint venturer.

“Indemnified Taxes” means Taxes other than Net Income Taxes.

“Indemnitee” shall have the meaning set forth in Section 9.5(b).

“Initial Accordion Amount” has the meaning set forth in Section 2.2.

“Initial Construction Disbursement” means the initial disbursement by Lender for payment of Construction Costs, to be made upon the fulfillment of the conditions set forth in Section 8.5.

“Insolvency” means, with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of such term as used in Section 4245 of ERISA.

“Insolvent” means being in a condition of Insolvency.

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“Inspecting Engineer” means any engineer, architect or consultant designated by Lender from time to time to perform the duties of Inspecting Engineer as provided herein.

“Intellectual Property” means all Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks and Trademark Licenses of Borrower and its Subsidiaries, all goodwill associated therewith and all rights to sue for infringement thereof.

“Interest Period” means, with respect to any LIBOR Rate Advance,

(i) initially, the period commencing on, and including, the Borrowing Date or conversion date, as the case may be, with respect to such LIBOR Rate Advance and ending on, and including, the last day of the month in which such Borrowing Date or conversion date occurred; and

(ii) thereafter, each one (1) month period commencing on, and including, the first day of the month immediately following the prior Interest Period applicable to such LIBOR Rate Advance and ending on, and including, the last day of such month;

provided that the foregoing provisions are subject to the following:

(A) with respect to any LIBOR Rate Advance, unless Borrower has given notice of its election to convert such LIBOR Rate Advance to a Base Rate Advance as provided herein, Borrower shall be deemed to have elected to continue the affected LIBOR Rate Advance as a LIBOR Rate Advance; and

(B) no Interest Period in respect of any Advance shall extend beyond the Maturity Date.

“Interest Rate Determination Date” means the date of the initial Advance under a Facility and the first Business Day of each calendar month thereafter.

“Land” means the real property on which the Improvements are to be constructed, which real property is more particularly described in Exhibit “A” attached hereto.

“Legal Requirements” means (i) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower and/or the Project, including, without limiting the generality of the foregoing, the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof; and (ii) any and all covenants, conditions or restrictions contained in any deed, declaration or other instrument of any nature that relate in any way or are applicable to the Project or the ownership, use or occupancy thereof.

“Lending Office” means, initially, the Lender’s office located at 201 E. Kennedy Boulevard, Suite 1800, Tampa, Florida 33602, and thereafter, such other office of Lender as Lender may from time to time specify Borrower.

“Letter of Credit Fee” means the meaning set forth in Section 2.4(b).

“Letters of Credit” means (a) any letter of credit issued by Lender pursuant to the terms hereof, as such letter of credit may be amended, modified, restated, extended, renewed, increased, replaced or supplemented from time to time in accordance with the terms of this Agreement and (c) any Existing Letter of Credit, in each case as such letter of credit may be amended, modified, extended, renewed or replaced from time to time in accordance with the terms of this Agreement.

“Leverage Ratio” means the ratio of (a) Consolidated Funded Debt on the last day of the applicable period to (b) Consolidated EBITDA for the four (4) consecutive fiscal quarter period ending on the last day of the applicable period.

“LIBOR” means the rate per annum (rounded if necessary, to the nearest 1/100,000 of 1% (to five decimals points)) effective on any Interest Rate Determination Date which is equal to the London interbank offered rate for deposits in Dollars for a one (1) month period, which rate appears on that page of Bloomberg reporting service or such similar service, as determined by Lender, that displays British Bankers’ Association interest settlement rates for deposits in Dollars, as of 11:00 A.M. London time, two (2) Business Days prior to the Interest Rate Determination Date.

“LIBOR Default Rate” means, as of any date of determination, the LIBOR Rate plus the Applicable Percentage for LIBOR Rate Loans in effect on such date plus 3%.

“LIBOR Rate” means a rate per annum (rounded, if necessary, to the nearest 1/100,000 of 1% (to five decimals points)) determined by Lender pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{LIBOR}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

“LIBOR Rate Advances” means Advances the rate of interest applicable to which is based on the LIBOR Rate.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any Capital Lease having substantially the same economic effect as any of the foregoing).

“LOC Documents” means, with respect to any Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any application therefor, and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (i) the rights and obligations of the parties concerned or (ii) any collateral security for such obligations.

“LOC Obligations” means, at any time, the sum of (i) the maximum amount which is, or at any time thereafter may become, available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referred to in such Letters of Credit plus (ii) the aggregate amount of all drawings under Letters of Credit honored by Lender but not theretofore reimbursed.

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“Mandatory Borrowing” has the meaning set forth in Section 2.4(c).

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, property, condition (financial or otherwise) or prospects of Borrower and its Subsidiaries taken as a whole, (b) the ability of Borrower to perform its obligations, when such obligations are required to be performed, under this Agreement, any of the Notes or any other Credit Document or (c) the validity or enforceability of this Agreement, any of the Notes or any of the other Credit Documents or the rights or remedies of Lender hereunder or thereunder or the perfection or priority of any Lien in favor of Lender.

“Material Contract” means any contract or other agreement set forth on Schedule 3.23 and any other contract or agreement, whether written or oral, to which Borrower or any of its Subsidiaries is a party (i) as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a significant adverse impact (for these purposes, any contract requiring payments in any year exceeding 5% of Consolidated Tangible Net Worth) or (ii) any agreement identified in Item 601 of SEC Regulation S-K as a “material contract” required to be filed with appropriate SEC filings in accordance with the periodic reporting requirements of the Securities Exchange Act of 1934.

“Materials” has the meaning set forth in Section 8.2.

“Materials of Environmental Concern” means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

“Maturity Date” means, for the Revolving Facility and, if Activated, the According Facility, August 1, 2016.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a Plan which is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Income Taxes” means, with respect to Lender, (a) any Taxes imposed on or measured by Lender’s overall net income (however denominated), or any franchise Taxes imposed on Lender in lieu of net income Taxes by the jurisdiction (or any political subdivision thereof) under the laws of which Lender is organized or in which its principal office is located or in which its Lending Office is located, and (b) any branch profits Taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Borrower are located.

“Non-Construction Costs” means all costs, other than Construction Costs, incurred and to be incurred in constructing and operating the Project that are payable in whole or in part with proceeds of the Construction Facility, as more particularly described in the Budget.

“Notes” means a collective reference to the Revolving Note, the Accordion Note and the Construction Note.

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“Notice of Borrowing” means the written notice of borrowing as referenced and defined in Section 2.1(b)(i) or 2.2(b)(i), as appropriate.

“Notice of Commencement” means, collectively (if more than one), the notice(s) of commencement with respect to the construction of the Improvements, which are to be executed by Borrower, and recorded by Borrower in the public records of the county in which the Land is located prior to the commencement of construction of the Improvements to which the notice relates. A certified copy of the recorded Notice of Commencement shall be posted on the Land by Borrower, and a photocopy thereof provided to Lender, as soon as possible after the recordation thereof.

“Notice of Conversion” means the written notice of extension or conversion as referenced and defined in Section 2.7.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Other Taxes” means all present or future stamp, court or documentary Taxes and any other excise, property, intangible, recording, filing or similar Taxes which arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document.

“Patent Licenses” means all agreements, whether written or oral, providing for the grant by or to a Person of any right to manufacture, use or sell any invention covered by a Patent, including, without limitation, any thereof referred to in Schedule 3.16 to the Agreement.

“Patents” means all letters patent of the United States or any other country, now existing or hereafter arising, and all improvement patents, reissues, reexaminations, patents of additions, renewals and extensions thereof, including, without limitation, any thereof referred to in Schedule 3.16 to this Agreement, and (ii) all applications for letters patent of the United States or any other country, now existing or hereafter arising, and all provisionals, divisions, continuations and continuations-in-part and substitutes thereof, including, without limitation, any thereof referred to in Schedule 3.16 to this Agreement.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“Payment Date” means, with respect to each Facility, the first (1<sup>st</sup>) day of the month following the initially Advance of funds under such Facility, the first (1<sup>st</sup>) day of each month thereafter to and including the month in which the Maturity Date or the Construction Facility Maturity Date, as applicable, occurs and the Maturity Date or the Construction Facility Maturity Date, as applicable.

“Payment Event of Default” shall mean an Event of Default specified in Section 7.1(a).

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“PBGC” means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA.

“Permitted Acquisition” means an acquisition or a series of related acquisitions by Borrower of the assets or all of the Capital Stock of a Person that is incorporated, formed or organized in the United States or any division, line of business or other business unit of a Person that is incorporated, formed or organized in the United States (such Person or such division, line of business or other business unit of such Person referred to herein as the “Target”), so long as (a) no Default or Event of Default shall then exist or will exist after giving effect thereto, (b) except with respect to a transaction solely involving the purchase of assets of a dealer of Borrower in the ordinary course of Borrower’s business, Borrower shall deliver a pro forma compliance statement demonstrating to the reasonable satisfaction of Lender that Borrower will be in compliance on a Pro Forma Basis with all of the terms and provisions of the financial covenants set forth in Section 5.9 after giving effect to any such acquisition, (c) if the Accordion Facility has been Activated, Lender shall have received (or shall receive in connection with the closing of such acquisition) a first priority perfected security interest in all domestic business property acquired with respect to the Target, except for such property as to which Lender shall determine that the costs of obtaining such a security interest are excessive in relation to the value of the security to be afforded thereby and (d) the total consideration (including, without limitation, cash, stock, assumed debt and earnout obligations, the “Total Consideration”) for all acquisitions made during any fiscal year of Borrower shall not exceed \$10,000,000 in the aggregate.

“Permitted Investments” means:

- (i) cash and Cash Equivalents;
- (ii) receivables owing to Borrower or any of its Subsidiaries and advances to suppliers, in each case if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;
- (iii) investments or loans (pursuant to Section 6.1(d)) made by Borrower in or to a Subsidiary;
- (iv) investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;
- (v) non-cash consideration received in connection with sales of property or assets permitted under Section 6.5(a);
- (vi) advances and loans to employees for the purchase price of Capital Stock of Borrower pursuant to an employee stock option of Borrower;
- (vii) Permitted Acquisitions;



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(viii) loans to any of Borrower's dealers, suppliers or distributors made in the ordinary course of business that shall not exceed any such individual dealer's or distributor's gross amount of accrued commissions due to such dealer or distributor at the time of origination, as calculated by Borrower, or any future advance thereafter, unless secured by other assets of such dealer or distributor;

(ix) life insurance premium advances to Affiliates and stockholders;

(x) cash surrender value of Borrower-owned life insurance policies on Affiliates, shareholders, officers and employees of Borrower, whether maintained during or subsequent to an insured person's termination, maintained in the ordinary course of business in accordance with Borrower's historic practice; and

(xi) Hedging Agreements and Bank Products to the extent permitted hereunder.

As used herein, "investment" shall mean all investments, in cash or by delivery of property made, directly or indirectly in or to any Person, whether by acquisition of shares of Capital Stock, property, assets, indebtedness or other obligations or securities or by loan advance, capital contribution or otherwise.

"Permitted Liens" means:

(i) Liens created by or otherwise existing, under or in connection with this Agreement or the other Credit Documents in favor of Lender;

(ii) purchase money Liens securing purchase money indebtedness (and refinancings thereof) to the extent permitted under Section 6.1(c);

(iii) Liens for taxes, assessments, charges or other governmental levies not yet due, or as to which the period of grace (not to exceed 60 days), if any, related thereto has not expired or which are being contested in good faith by appropriate proceedings, provided that (A) the aggregate amount of such contested Liens shall not exceed \$250,000 and (B) adequate reserves with respect thereto are maintained on the books of Borrower or its Subsidiaries, as the case may be, in conformity with GAAP (or, in the case of Subsidiaries with significant operations outside of the United States of America, generally accepted accounting principles in effect from time to time in their respective jurisdictions of incorporation);

(iv) carriers', warehousemen's, mechanics', materialmen's, repairmen's inchoate, unperfected or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith by appropriate proceedings; provided that a reserve or other appropriate provision shall have been made therefor and the aggregate amount of such Liens is less than \$250,000;

(v) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation and deposits securing

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liability to insurance carriers under insurance or self-insurance arrangements, in each case made in the ordinary course of business and in accordance with historical past practices of Borrower and its Subsidiaries;

(vi) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business, in each case made in the ordinary course of business and in accordance with historical past practices of Borrower and its Subsidiaries;

(vii) any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any Lien referred to in the foregoing clauses; provided that if such Liens relate to property or assets that are Collateral hereunder, then such extension, renewal or replacement Lien shall be limited to all or a part of the property which secured the Lien so extended, renewed or replaced (plus improvements on such property);

(viii) Liens existing on the Closing Date and set forth on Schedule 1.1-4; provided that (a) no such Lien shall at any time be extended to cover property or assets other than the property or assets subject thereto on the Closing Date and (b) if such Liens relate to property or assets that are Collateral hereunder, then the principal amount of the Indebtedness secured by such Liens shall not be increased, extended, renewed, refunded or refinanced;

(ix) Liens arising in connection with Capital Leases; provided that if such Liens relate to property or assets that are or become Collateral hereunder, then only to the extent permitted under Section 6.1(c);

(x) any interest or title of a lessor under any lease entered into by Borrower or any Subsidiary in the ordinary course of its business and covering only the assets so leased;

(xi) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other similar encumbrances not interfering in any material respect with the value or use of the property to which such lien is attached.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Plans” means the architectural, structural and mechanical engineering plans, drawings and specifications for the completion of the Improvements, together with such supplements, amendments or modifications thereto.

“Pledge Agreements” means any Pledge Agreement executed by Borrower to secure Borrower’s Obligations, in each case as amended, modified, extended, restated, replaced, or supplemented from time to time.

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“Prime Rate” means, at any time, the rate of interest per annum the rate of interest 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 Prime 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 Prime 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 parties hereto acknowledge that the Prime Rate is an index or base rate and shall not necessarily be the lowest or best rate charged by any financial institution.

“Pro Forma Basis” means, with respect to any transaction, that such transaction shall be deemed to have occurred as of the first day of the four-quarter period (or twelve month period, as applicable) ending as of the most recent quarter end (or month end, as applicable) preceding the date of such transaction.

“Project” means, collectively, the Land and the Improvements.

“Properties” has the meaning set forth in Section 3.10(a).

“Recovery Event” means theft, loss, physical destruction or damage, taking or similar event with respect to any property or assets owned by Borrower or any of its Subsidiaries which results in the receipt by Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason thereof.

“Reimbursement Obligation” means the obligation of Borrower to reimburse Lender pursuant to Section 2.4(c) for amounts drawn under Letters of Credit.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Reorganization” means, with respect to any Multiemployer Plan, the condition that such Plan is in reorganization within the meaning of such term as used in Section 4241 of ERISA.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty-day notice period is waived under PBGC Reg. §4043.

“Requirement of Law” means, as to any Person, the Certificate of Incorporation and By-laws or other organizational or governing documents of such Person, and each law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” means, as to Borrower, any of the President, the Chief Executive Officer or the Chief Financial Officer.

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“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of Borrower or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Borrower or any of its Subsidiaries, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Borrower or any of its Subsidiaries, now or hereafter outstanding or (d) any payment or prepayment of principal of premium, if any, or interest on redemption purchase, retirement, defeasance, sinking fund or similar payment with respect to any Subordinated Debt.

“Revolving Advance(s)” means Advance(s) of portions of the Revolving Facility.

“Revolving Committed Amount” has the meaning set forth in Section 2.1.

“Revolving Commitment Period” means the period from the Closing Date to, but not including, the Maturity Date.

“Revolving Facility” means the revolving credit facility contemplated in Section 2.1.

“Revolving Note” means the promissory note of Borrower in favor of Lender evidencing the Revolving Facility provided pursuant to Section 2.1(d), as such promissory note may be amended, modified, extended, restated, replaced, or supplemented from time to time.

“S&P” means Standard & Poor’s Ratings Group, a division of The McGraw Hill Companies, Inc.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a person or entity resident in or determined to be resident in a country, that is subject to a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means a person named on the list of Specially Designated Nationals maintained by OFAC.

“Sarbanes-Oxley” means the Sarbanes-Oxley Act of 2002.

“SEC” means the Securities and Exchange Commission or any successor Governmental Authority.

“Securities Account Control Agreement” shall mean an agreement, among Borrower, a securities intermediary, and Lender, which agreement is in a form acceptable to Lender and which provides Lender with “control” (as such term is used in Articles 8 and 9 of the UCC) over the securities account(s) described therein, as the same may be as amended, modified, extended, restated, replaced, or supplemented from time to time.

“Securities Act” means the Securities Act of 1933, together with any amendment thereto or replacement thereof and any rules or regulations promulgated thereunder.

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“Securities Exchange Act” means the Securities Exchange Act of 1934, together with any amendment thereto or replacement thereof and any rules or regulations promulgated thereunder.

“Securities Laws” means the Securities Act, the Securities Exchange Act, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

“Security Agreements” means any Security Agreement executed by Borrower to secure some or all of Borrower’s Obligations, in each case as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

“Security Documents” means any Security Agreement, Pledge Agreement, Deposit Account Control Agreement, Securities Account Control Agreement and any other documents executed and delivered in connection with the granting, attachment and perfection of Lender’s security interests and liens arising thereunder, including, without limitation, UCC financing statements.

“Single Employer Plan” means any Plan which is not a Multiemployer Plan.

“Specified Sales” means (a) the sale, transfer, lease or other disposition of inventory and materials in the ordinary course of business, (b) the sale, transfer or other disposition of cash or Cash Equivalents and (c) the sale, transfer or other disposition of assets consisting of or arising from any Hedging Agreement.

“Subordinated Debt” means any Indebtedness incurred by Borrower which by its terms is specifically subordinated in right of payment to the prior payment of Borrower’s Obligations.

“Subsidiary” means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests 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, partnership or other entity 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. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of Borrower.

“Target” has the meaning set forth in the definition of “Permitted Acquisitions.”

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Total Consideration” has the meaning set forth in the definition of “Permitted Acquisitions.”

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“Trademark License” means any agreement, whether written or oral, providing for the grant by or to a Person of any right to use any Trademark, including, without limitation, any thereof referred to in Schedule 3.16 to this Agreement.

“Trademarks” means all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, elements of package or trade dress of goods or services, logos and other source or business identifiers (other than such items that are of *de minimus* value), together with the goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, including, without limitation, any thereof referred to in Schedule 3.16 to this Agreement, and (ii) all renewals thereof including, without limitation, any thereof referred to in Schedule 3.16.

“Transactions” means the closing of this Agreement and the other Credit Documents and the other transactions contemplated hereby and pursuant to the other Credit Documents (including, without limitation, the initial borrowings under the Credit Documents and the payment of fees and expenses in connection with all of the foregoing).

“Type” means, as to any Advance, its nature as a Base Rate or a LIBOR Rate Advance, as the case may be.

“UCC” means the Uniform Commercial Code from time to time in effect in any applicable jurisdiction.

“United States” or “U.S.” means the United States of America.

“Voting Stock” means, with respect to any Person, Capital Stock issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

“Works” means all works which are subject to copyright protection pursuant to Title 17 of the United States Code.

Section 1.2 Other Definitional Provisions: Time References.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the Notes or other Credit Documents or any certificate or other document made or delivered pursuant hereto.

(b) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, subsection, Schedule and Exhibit references are to this Agreement unless otherwise specified.

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(c) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(d) Unless otherwise expressly indicated, each time reference in any Credit Document shall be to Tampa, Florida time.

(e) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(f) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.”

(g) Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented, amended and restated or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (iv) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (v) all terms defined in this Agreement shall have the defined meanings when used in any other Credit Document or any certificate or other document made or delivered pursuant hereto.

### Section 1.3 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the most recently delivered audited Consolidated financial statements of Borrower and its Subsidiaries, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP, including the adoption of IFRS, would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either the Borrower or the Lender shall so request, Lender and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) Borrower shall provide to Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

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(c) Financial Covenant Calculations. The parties hereto acknowledge and agree that, for purposes of all calculations made in determining compliance for any applicable period or any applicable date with the financial covenants set forth in Section 5.9 and for purposes of determining the Applicable Percentage, (i) after consummation of any Permitted Acquisition, (A) income statement items and other balance sheet items (whether positive or negative) attributable to the Target acquired in such transaction shall be included in such calculations to the extent relating to such applicable period (including by adding any cost saving synergies associated with such Permitted Acquisition in a manner reasonably satisfactory to Lender), subject to adjustments mutually acceptable to Borrower and Lender and (B) Indebtedness of a Target which is retired in connection with a Permitted Acquisition shall be excluded from such calculations and deemed to have been retired as of the first day of such applicable period and (ii) after any sale, lease or transfer permitted by Section 6.5(a) (v), (A) income statement items, cash flow statement items and balance sheet items (whether positive or negative) attributable to the property or assets disposed of shall be excluded in such calculations to the extent relating to such applicable period, subject to adjustments mutually acceptable to Borrower and Lender and (B) Indebtedness that is repaid with the proceeds of such transactions permitted by Section 6.5(a)(v) shall be excluded from such calculations and deemed to have been repaid as of the first day of such applicable period.

## ARTICLE II

### THE LOANS; AMOUNT AND TERMS

#### Section 2.1 Revolving Facility.

(a) Revolving Commitment. During the Revolving Commitment Period, subject to the terms and conditions hereof, Lender agrees to make Revolving Advances in Dollars to Borrower from time to time in a principal amount of up to **FIFTEEN MILLION DOLLARS (\$15,000,000)** (the "Revolving Committed Amount") to finance working capital needs, the issuance of Letters of Credit and other general corporate purposes, including Permitted Acquisitions. Revolving Advances may consist of Base Rate Advances or LIBOR Rate Advances, or a combination thereof, as Borrower may request. Subject to the limitation that the principal amount of the Revolving Facility, plus LOC Obligations of Letter of Credit issued under the Revolving Facility outstanding at any one time not exceed the Revolving Committed Amount and the other provisions of this Agreement, Borrower may borrow, repay all or portions of the Revolving Advances and reborrow under the Revolving Facility until the Maturity Date, after which Lender's obligation to make Revolving Advances shall terminate.

#### (b) Revolving Facility Borrowings.

(i) Notice of Borrowing. Borrower may request a Revolving Advance by delivering a written Notice of Borrowing (or telephone notice promptly confirmed in writing by delivery of a written Notice of Borrowing, which confirmation may be by facsimile) to Lender not later than 11:00 a.m. on the date of the requested Advance. Each such Notice of Borrowing shall be irrevocable and shall specify (A) that a Revolving Advance is requested, (B) the date of the requested borrowing (which shall be a Business Day), (C) the principal amount to be borrowed and (D) whether the borrowing shall be



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comprised of a Base Rate Advance, a LIBOR Rate Advance or a combination thereof. A form of Notice of Borrowing (a “Notice of Borrowing”) is attached as Schedule 2.1(b)(i). If Borrower shall fail to specify in any such Notice of Borrowing the Type of Revolving Advance requested, then such notice shall be deemed to be a request for a LIBOR Rate Advance hereunder. In the event that Borrower intends to request that a LIBOR Rate Advance be made on the Closing Date, Borrower shall give Lender written notice of such intent not less than two (2) Business Days prior to the Closing Date.

(ii) Minimum Amounts. Each Revolving Advance which is a Base Rate Advance shall be in a minimum aggregate amount of \$200,000 and in integral multiples of \$200,000 in excess thereof (or the remaining amount of the Revolving Committed Amount, if less). Each Revolving Advance which is a LIBOR Rate Advance shall be in a minimum aggregate amount of \$200,000 and in integral multiples of \$200,000 in excess thereof (or the remaining amount of the Revolving Committed Amount, if less).

(iii) Advances. If all conditions set forth in this Agreement are met, Lender will make each Revolving Advance requested by Borrower pursuant to this Agreement on the same Business Day that Lender receives the applicable Notice of Borrowing if the Notice of Borrowing is received by Lender prior to 11:00 a.m. on such Business Day and on the next Business Day if the Notice of Borrowing is received by Lender after 11:00 a.m. Each Revolving Advance shall be effected by crediting the principal amount thereof to a deposit account designated by Borrower maintained with Lender.

(iv) Payment in full at Maturity. The entire outstanding principal amount of all Revolving Advances, together with accrued but unpaid interest and all other sums owing with respect thereto, shall be due and payable in full on the Maturity Date, unless accelerated sooner pursuant to Section 7.2.

(c) Interest. Subject to the provisions of Section 2.8, interest on Revolving Advances shall accrue at the Applicable Interest Rate. Until such time as the Accordion Loan is Activated, the Applicable Interest Rate for Revolving Advances shall be the LIBOR Rate, plus the Applicable Percentage specified in clause (a) of the Applicable Percentage definition. From and after the date upon which the Accordion Facility is Activated, the Applicable Interest Rate on Revolving Advances shall be as follows:

(i) Base Rate Advances. The Applicable Interest Rate for each such Base Rate Advance shall be a per annum rate equal to the sum of the Base Rate, plus the Applicable Percentage specified in clause (b) of the Applicable Percentage definition; and

(ii) LIBOR Rate Advances. The Applicable Interest Rate for each such LIBOR Rate Advance shall be a per annum rate equal to the sum of the LIBOR Rate, plus the Applicable Percentage specified in clause (b) of the Applicable Percentage definition.

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Interest on Revolving Advances shall be payable in arrears on each Payment Date. Borrower shall have the option to fix the Applicable Interest Rate on Revolving Advances pursuant to a Hedging Agreement.

(d) Revolving Note/Security. The Revolving Facility shall be evidenced by this Agreement and the Revolving Note. The Revolving Facility is unsecured.

(e) Fees. There is no commitment, loan origination or unused fee payable by Borrower in connection with the Revolving Facility. New Letters of Credit issued under the Revolving Facility shall be subject to the annual fee set forth in Section 2.4(b).

Section 2.2 Accordion Facility.

Provided no Default of Event of Default has occurred and is continuing, Borrower may initiate the activation the Accordion Facility by (i) giving not less than three (3) days prior written notice to Lender specifying the initial principal amount of the Accordion Facility elected by Borrower, which amount shall be an amount not less than \$5,000,000 or an even multiple of \$5,000,000, not to exceed the Accordion Commitment Amount (the "Initial Accordion Amount") and (ii) paying to Lender the applicable Accordion Commitment Fee, as set forth in Section 2.2(e)(i), below. Funding of the initial Accordion Advance shall be subject to satisfaction of the conditions set forth in Section 4.2 of this Agreement. In the event that, at any time that the Accordion Note then in effect is in a principal amount which is less than the Accordion Committed Amount, Borrower may elect to increase the then effective principal amount of the Accordion Facility by \$5,000,000 or an even multiple of \$5,000,000, but not to exceed the Accordion Committed Amount (the "Increased Accordion Amount"), by (i) giving not less than three (3) days prior written notice to Lender setting forth the Increased Accordion Amount and (ii) delivery to Lender of a replacement Accordion Note in the principal amount of the Increased Accordion Amount and such documents modifying the Security Documents as Lender reasonably may require.

(a) Accordion Commitment. During the Accordion Commitment Period, subject to the terms and conditions hereof, Lender agrees to make Accordion Advances in Dollars to Borrower from time to time in a principal amount not to exceed the lesser of (i) Effective Accordion Note Amount or (ii) up to **TWENTY MILLION DOLLARS (\$20,000,000)** (the "Accordion Committed Amount") to finance working capital needs, the issuance of Letters of Credit and other general corporate purposes, including Acquisitions. Accordion Advances may consist of Base Rate Advances or LIBOR Rate Advances, or a combination thereof, as Borrower may request. Subject to the limitation that the principal amount of the Accordion Facility, plus LOC Obligations of Letter of Credit issued under the Accordion Facility outstanding at any one time not exceed then applicable Effective Accordion Note Amount and the other provisions of this Agreement, Borrower may borrow, repay all or portions of the Accordion Advances and reborrow under the Accordion Facility until the Maturity Date, after which Lender's obligation to make Accordion Advances shall terminate.

(b) Accordion Facility Borrowings.

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(i) Notice of Borrowing. Borrower may request an Accordion Advance by delivering a written Notice of Borrowing (or telephone notice promptly confirmed in writing by delivery of a written Notice of Borrowing, which confirmation may be by facsimile) to Lender not later than 11:00 a.m. on the date of the requested Advance. Each such Notice of Borrowing shall be irrevocable and shall specify (A) that an Accordion Advance is requested, (B) the date of the requested borrowing (which shall be a Business Day), (C) the principal amount to be borrowed and (D) whether the borrowing shall be comprised of a Base Rate Advance, a LIBOR Rate Advance or a combination thereof. If Borrower shall fail to specify in any such Notice of Borrowing the Type of Accordion Advance requested, then such notice shall be deemed to be a request for a LIBOR Rate Advance hereunder.

(ii) Minimum Amounts. Each Accordion Advance which is a Base Rate Advance shall be in a minimum aggregate amount of \$200,000 and in integral multiples of \$200,000 in excess thereof (or the remaining amount available under then effective Accordion Note, if less). Each Accordion Advance which is a LIBOR Rate Advance shall be in a minimum aggregate amount of \$200,000 and in integral multiples of \$200,000 in excess thereof (or the remaining amount available under then effective Accordion Note, if less).

(iii) Advances. If all conditions set forth in this Agreement are met, Lender will make each Accordion Advance requested by Borrower pursuant to this Agreement on the same Business Day that Lender receives the applicable Notice of Borrowing, if the Notice of Borrowing is received by Lender prior to 11:00 a.m. on such Business Day, or on the next Business Day, if the Notice of Borrowing is received by Lender after 11:00 a.m. Each Accordion Advance shall be effected by crediting the principal amount thereof to a deposit account designated by Borrower maintained with Lender.

(iv) Payment in full at Maturity. The entire outstanding principal amount of all Accordion Advances, together with accrued but unpaid interest and all other sums owing with respect thereto, shall be due and payable in full on the Maturity Date, unless accelerated sooner pursuant to Section 7.2.

(c) Interest. Subject to the provisions of Section 2.8, interest shall accrue on Accordion Advances at the Applicable Interest Rate as follows:

(i) Base Rate Advances. The Applicable Interest Rate for each such Base Rate Advance shall be a per annum rate equal to the sum of the Base Rate, plus the Applicable Percentage specified in clause (b) of the Applicable Percentage definition; and

(ii) LIBOR Rate Advances. The Applicable Interest Rate for each such LIBOR Rate Advance shall be a per annum rate equal to the sum of the LIBOR Rate, plus the Applicable Percentage specified in clause (b) of the Applicable Percentage definition.

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Interest on Accordion Advances shall be payable in arrears on each Payment Date. Borrower shall have the option to fix the Applicable Interest Rate on Accordion Advances pursuant to a Hedging Agreement.

(d) Accordion Note/Security. The Accordion Facility shall be evidenced by this Agreement and the Accordion Note, as the same may be amended and restated from time to time. From the date that the Accordion Facility is Activated until the Accordion Note is repaid in full, the obligations of Borrower to repay the principal and interest on the Accordion Facility shall be secured by a security interest in the Domestic Business Assets of Borrower and Borrower's Domestic Subsidiaries. Lender's security interest in such Domestic Business Assets shall be created and/or perfected by such Security Documents as Lender may reasonably require. Further, from and after the date upon which the Accordion Facility is Activated and continuing until the Accordion Note has been repaid in full, all of Borrower's obligations under or with respect to all Bank Products and Hedging Agreements shall also be secured by the security interest and Security Documents securing the Accordion Facility.

(e) Fees.

(i) Commitment Fees. At such time as Borrower shall give notice to Lender of Borrower's election to activate the Accordion Facility, Borrower shall pay to Lender a nonrefundable commitment fee equal to 0.20% multiplied by the Initial Accordion Amount. At any time that the then Effective Accordion Note Amount is increased at Borrower's election, as provided in this Section 2.2, Borrower shall pay to Lender a nonrefundable commitment fee equal to 0.20% multiplied by the amount of the increase. The commitment fees payable by Borrower pursuant to this subsection are collectively referred to as the "Accordion Commitment Fee"). The parties recognize and agree that the Accordion Commitment Fee (i) was not and is not a charge for the use of money, but rather a purchase of the right to secure a loan of money on the part of Borrower, and (ii) was a material inducement for Lender to provide the Accordion Facility and for having Lender ready, willing and able to fund the Accordion Facility in accordance with the terms of the Commitment Letter and this Agreement. Borrower's payment of the Accordion Commitment Fee to Lender is and shall be in addition to all other payments (including without limitation principal and interest) now or hereafter payable to Lender pursuant to the Accordion Note and this Agreement.

(ii) Unused Fee. From the date that the Accordion Facility is Activated until the Maturity Date, Company shall pay to Lender an unused fee equal to the percentage rate per annum set forth in the "Accordion Facility Unused Fee" column of the table appearing in clause (b) of the definition of Applicable Percentage multiplied by the daily balance of the unused portion of the Effective Accordion Note Amount existing as of the date of calculation. The unused fee shall be payable quarterly in arrears on the third day of every third month (commencing on the third day of the third month following the effective date of the Accordion Note) and on the Maturity Date and shall be computed on the basis of a year of 360 days and assessed for the actual number of days elapsed.

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Section 2.3 Construction Facility.

Provided no Default or Event of Default has occurred and is continuing and subject to the terms and conditions set forth in this Agreement, Lender agrees that Borrower may borrow, prior to the Construction Facility Conversion Date, up to **FIFTEEN MILLION DOLLARS (\$15,000,000)** to finance the construction of Improvements on the Land in accordance with the Plans and such other construction and/or remodeling work as may be approved by Lender. Borrower agrees to accept the Construction Facility and to use the proceeds thereof only as provided herein. The Construction Facility shall be evidenced by the Construction Note. All Construction Advances shall be made upon and subject to the terms and conditions set forth in Article VIII of this Agreement.

(a) Interest. Subject to the provisions of Section 2.8, interest shall accrue on Construction Advances at the Applicable Interest Rate as follows:

(i) Base Rate Advances. The Applicable Interest Rate for each such Base Rate Advance shall be a per annum rate equal to the sum of the Base Rate plus the Applicable Percentage specified in clause (c) of the Applicable Percentage definition; and

(ii) LIBOR Rate Advances. The Applicable Interest Rate for each such LIBOR Rate Advance shall be a per annum rate equal to the sum of the LIBOR Rate plus the Applicable Percentage specified in clause (c) of the Applicable Percentage definition.

Borrower shall have the option to fix the Applicable Interest Rate on Construction Advances pursuant to a Hedging Agreement.

(b) Payments. Prior to the Construction Facility Conversion Date, payments of interest only on Construction Advances shall be payable in arrears on each Payment Date. From and after the Construction Facility Conversion Date, payments of interest and principal (based upon the amortization of the outstanding principal amount of the Construction Facility on the Construction Facility Conversion Date over a 15-year period) shall be payable on each subsequent Payment Date. The entire outstanding principal amount of Construction Facility, together with accrued but unpaid interest and all other sums owing with respect thereto, shall be due and payable in full on the Construction Facility Maturity Date, unless accelerated sooner pursuant to Section 7.2.

(c) Fees.

(i) Commitment Fee. On the Closing Date Borrower shall pay to Lender a nonrefundable commitment fee in the amount of \$30,000.00 (the "Construction Facility Commitment Fee"). The parties recognize and agree that the Construction Facility Commitment Fee (i) was not and is not a charge for the use of money, but rather a purchase of the right to secure a loan of money on the part of Borrower, and (ii) was a material inducement for Lender to provide the Construction Facility and for having Lender ready, willing and able to fund the Construction Facility in accordance with the terms of the Commitment Letter and this Agreement. Borrower's payment of the Construction Facility Commitment Fee to Lender is and shall be in addition to all other payments (including without limitation principal and interest) now or hereafter payable to Lender pursuant to the Construction Note and this Agreement.

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(ii) Unused Fee. There is no unused fee payable by Borrower to Lender with respect to the Construction Facility.

Section 2.4 Letters of Credit.

(a) Issuance. Subject to the terms and conditions hereof and of the LOC Documents, if any, and any other terms and conditions which Lender may reasonably require, prior to the Maturity Date Lender shall issue Letters of Credit for the account of Borrower from time to time upon request by Borrower in a form reasonably acceptable to Lender; provided, however, that (i) either (A) if the Accordion Facility has not been Activated, the sum of outstanding Revolving Advances plus outstanding LOC Obligations shall not at any time exceed the Revolving Committed Amount or (B) if the Accordion Facility has been activated, the sum of outstanding Revolving Advances, plus outstanding Accordion Advances, plus outstanding LOC Obligations shall not at any time exceed the aggregate of the Revolving Committed Amount plus the then applicable Effective Accordion Note Amount, (ii) all Letters of Credit shall be denominated in U.S. Dollars and (iii) Letters of Credit shall be issued for lawful corporate. No Letter of Credit shall have an original expiry date more than one year from the date of issuance, unless otherwise agreed to by Lender; provided, however, so long as no Default or Event of Default has occurred and is continuing and subject to the other terms and conditions to the issuance of Letters of Credit hereunder, the expiry dates of Letters of Credit may be extended annually or periodically from time to time on the request of Borrower or by operation of the terms of the applicable Letter of Credit to a date not more than one year from the date of extension; provided, further, that no Letter of Credit, as originally issued or as extended, shall have an expiry date extending beyond the date that is one (1) year after the Maturity Date. Each Letter of Credit shall comply with the related LOC Documents. The issuance and expiry date of each Letter of Credit shall be a Business Day. Borrower's Reimbursement Obligations in respect of each Existing Letter of Credit and new Letter of Credit shall be governed by the terms of this Credit Agreement

(b) Letter of Credit Fees. Prior to the date upon which the Accordion Facility is Activated, Borrower shall pay to Lender an annual fee for each new Letter of Credit issued under the Revolving Facility equal to 1.45% of the amount of such Letter of Credit. From and after the date that the Accordion Facility is Activated, Borrower shall pay to Lender an annual fee for each new Letter of Credit issued under the Revolving Facility or the Accordion Facility in an amount equal to the applicable percentage shown in the "LIBOR Rate Margin/Letter of Credit Fee" column of the table appearing in clause (b) of the definition of Applicable Percentage multiplied by the amount of such Letter of Credit.

(c) Reimbursement. In the event of any drawing under any Letter of Credit, Lender will promptly notify Borrower. Borrower shall reimburse Lender on the day of drawing under any Letter of Credit (with the proceeds of a Revolving Advance obtained hereunder or otherwise) in same day funds as provided herein or in the LOC Documents. If Borrower shall fail to reimburse Lender as provided herein, the unreimbursed amount of such drawing shall automatically bear interest at a per annum rate equal to the BR Default Rate for so long as such amount shall be unreimbursed. Unless Borrower shall immediately notify Lender of Borrower's intent to otherwise reimburse Lender, Borrower shall be deemed to have requested a Revolving Advance (a "Mandatory Borrowing") in the amount of the Reimbursement Obligations, the proceeds of which will be used to satisfy the Reimbursement Obligations. Borrower's

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Reimbursement Obligations hereunder shall be absolute and unconditional under all circumstances irrespective of any rights of set-off, counterclaim or defense to payment Borrower may claim or have against Lender, the beneficiary of the Letter of Credit drawn upon or any other Person, including without limitation any defense based on any failure of Borrower to receive consideration or the legality, validity, regularity or unenforceability of the Letter of Credit.

(d) Modification, Extension. The issuance of any supplement, modification, amendment, renewal, or extension to any Letter of Credit shall, for purposes hereof, be treated in all respects the same as the issuance of a new Letter of Credit hereunder.

(e) ISP98 and UCP. Unless otherwise expressly agreed by Lender and Borrower, when a Letter of Credit is issued, (i) the rules of the “International Standby Practices 1998,” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each standby Letter of Credit, and (ii) the rules of The Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance, shall apply to each documentary Letter of Credit.

(f) Cash Collateralization. In the event that any Letter of Credit has an expiry date after the Maturity Date, on or prior to the Maturity Date Borrower shall deliver to Lender Cash Collateral in an amount sufficient to cover all LOC Obligations for each such Letter of Credit.

(i) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) delivered pursuant to Section 2.4(f) shall be maintained in blocked, non-interest bearing deposit accounts with Lender. In the event that any Letter of Credit has an expiry date after the Maturity Date, Borrower shall grant to (and subjects to the control of) Lender a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied as hereinafter provided. If at any time Lender determines that Cash Collateral is subject to any right or claim of any Person other than Lender as herein provided, or that the total amount of such Cash Collateral is less than the LOC Obligations secured thereby, Borrower will, promptly upon demand by Lender, pay or provide to Lender additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(ii) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section in respect of Letters of Credit shall be held and applied to the satisfaction of the specific LOC Obligations for which the Cash Collateral was so provided.

(iii) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce LOC Obligations shall be released to Borrower promptly following (i) the elimination of the applicable LOC Obligations giving rise thereto or (ii) Lender’s good faith determination that there exists excess Cash Collateral.

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(g) Conflict with LOC Documents. In the event of any conflict between this Agreement and any LOC Document (including any letter of credit application and any LOC Documents relating to the Existing Letters of Credit), this Agreement shall control.

Section 2.5 Prepayments.

(a) Optional Prepayments. Borrower shall have the right to prepay Advances in whole or in part from time to time. Borrower shall give two (2) Business Day's advanced irrevocable notice of Borrower's intent to prepay to Lender. Each prepayment pursuant to this Section 2.5(a) shall be applied to the outstanding Facilities as Borrower may elect; provided, however, each prepayment shall be applied first to Base Rate Advances and then to LIBOR Rate Advances in direct order of Interest Period maturities. All prepayments under this Section 2.5(a) shall be without premium or penalty. Interest on the principal amount prepaid through the date of prepayment shall be payable on the next occurring Payment Date that would have occurred had such Advances not been prepaid or, at the option of Borrower or the request of Lender, interest on the principal amount prepaid shall be payable on any date that a prepayment is made hereunder through the date of prepayment.

(b) Bank Product Obligations Unaffected. Any prepayment made pursuant to this Section shall not affect Borrower's obligation to continue to make payments under any Bank Product, which shall remain in full force and effect notwithstanding such prepayment, subject to the terms of such Bank Product.

Section 2.6 Default Rate.

Upon the occurrence and during the continuance of an Event of Default, the principal of and, to the extent permitted by law, interest on the Facilities and any other amounts owing hereunder or under the other Credit Documents shall automatically bear interest at a rate per annum which is equal to the applicable Default Rate. Any default interest owing under this Section 2.6 shall be due and payable on the earlier to occur of (i) demand by Lender and (ii) the Maturity Date.

Section 2.7 Conversion Options.

(a) Borrower may elect from time to time to convert all Base Rate Advances to LIBOR Rate Advances, in whole, but not in part, by giving Lender at least three (3) Business Days' prior irrevocable written notice of such election. A form of Notice of Conversion is attached as Schedule 2.7. If the date upon which the outstanding Base Rate Advances are to be converted to LIBOR Rate Advances is not a Business Day, then such conversion shall be made on the next succeeding Business Day and during the period from such last day of an Interest Period to such succeeding Business Day such Advance shall bear interest as if it were an Base Rate Advance. The Base Rate Advances may not be converted into LIBOR Rate Advances when any Default or Event of Default has occurred and is continuing.

(b) Borrower may elect from time to time to convert all LIBOR Rate Advances to Base Rate Advances, in whole, but not in part, by giving Lender at least one (1) Business Day's prior irrevocable written notice of such election. A form of Notice of Conversion is attached as Schedule 2.7. If the date upon which the LIBOR Rate Advances are to be converted to Base



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Rate Advances is not a Business Day, then such conversion shall be made on the next succeeding Business Day and during the period from such last day of an Interest Period to such succeeding Business Day such Advance shall bear interest as if it were an Base Rate Advance.

Section 2.8 Computation of Interest and Fees.

(a) All fees, interest and all other amounts payable hereunder shall be calculated on the basis of a 360 day year for the actual days elapsed. Any change in the Applicable Interest Rate on Base Rate Advances resulting from a change in the Base Rate shall become effective as of the opening of business on the day on which such change in the Base Rate shall become effective. Any change in the Applicable Interest Rate on LIBOR Rate Advances resulting from a change in the LIBOR Rate shall become effective on the first day of the next Interest Period. Lender shall as soon as practicable notify Borrower and Lender of the effective date and the amount of each such change.

(b) Each determination of an Applicable Interest Rate by Lender pursuant to any provision of this Agreement shall be conclusive and binding on Borrower in the absence of manifest error. Lender shall, at the request of Borrower, deliver to Borrower a statement showing the computations used by Lender in determining any interest rate.

(c) It is the intent of Lender and Borrower to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Lender and Borrower are hereby limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment or acceleration of the maturity of any Obligation), shall the interest taken, reserved, contracted for, charged, or received under this Agreement, under the Notes or otherwise, exceed the maximum nonusurious amount permissible under applicable law. If, from any possible construction of any of the Credit Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this paragraph and such interest shall be automatically reduced to the maximum nonusurious amount permitted under applicable law, without the necessity of execution of any amendment or new document. If Lender shall ever receives anything of value which is characterized as interest on the Facilities under applicable law and which would, apart from this provision, be in excess of the maximum nonusurious amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Facilities and not to the payment of interest, or refunded to Borrower if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Facilities. The right to demand payment of the Facilities or any other Indebtedness evidenced by any of the Credit Documents does not include the right to receive any interest which has not otherwise accrued on the date of such demand, and Lender do not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to Lender with respect to the Facilities shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Facilities so that the amount of interest on account of such indebtedness does not exceed the maximum nonusurious amount permitted by applicable law.

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Section 2.9 Payments.

(a) Each payment (other than prepayments) of principal or interest under this Agreement or any Note shall be applied, first, to any fees then due and owing by Borrower, second, to interest then due and owing hereunder and under the Notes and, third, to principal then due and owing hereunder and under the Notes. Each optional prepayment of the Advances shall be applied in accordance with Section 2.5(a). All payments (including prepayments) to be made by Borrower on account of principal, interest and fees shall be made without defense, set-off or counterclaim and shall be made to Lender for the account of Lender at Lender's office specified in Section 9.2 in Dollars and in immediately available funds not later than 12:00 Noon on the date when due. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

(b) Allocation of Payments After Event of Default. Notwithstanding any other provisions of this Agreement to the contrary, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by Lender on account of Borrower's Obligations or any other amounts outstanding under any of the Credit Documents or in respect of the Collateral shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of Lender in connection with enforcing the rights of Lender under the Credit Documents and any protective advances made by Lender with respect to the Collateral under or pursuant to the terms of the Security Documents;

SECOND, to payment of any fees owed to Lender;

THIRD, to the payment of all of Borrower's Obligations consisting of accrued fees and interest, and including with respect to any Bank Product, any fees, premiums and scheduled periodic payments due under such Bank Product and any interest accrued thereon;

FOURTH, to the payment of the outstanding principal amount of Borrower's Obligations and the payment or cash collateralization of the outstanding LOC Obligations, and including with respect to any Bank Product, any breakage, termination or other payments due under such Hedging Agreement and any interest accrued thereon; and

FIFTH, to the payment of the surplus, if any, to whomever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category and (ii) to the extent that any amounts available for distribution pursuant to clause "FOURTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by Lender in a cash collateral account and applied (A) first, to reimburse Lender

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from time to time for any drawings under such Letters of Credit and (B) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clause "FIFTH" above in the manner provided in this Section 2.9(b).

Section 2.10 Inability to Determine Interest Rate.

Notwithstanding any other provision of this Agreement, if Lender shall reasonably determine (which determination shall be conclusive and binding absent manifest error) that, by reason of circumstances affecting the relevant market, reasonable and adequate means do not exist for ascertaining LIBOR for any Interest Period, Lender shall forthwith give telephone notice of such determination, confirmed in writing, to Borrower at least two Business Days prior to the first day of such Interest Period. Unless Borrower shall have notified Lender upon receipt of such telephone notice that Borrower wishes to rescind or modify its request regarding any new LIBOR Rate Advances, such Advances that were requested to be made as LIBOR Rate Advances shall be made as Base Rate Advances and Advances were requested to be converted into or continued as LIBOR Rate Advances shall be converted into Base Rate Advances. Until any such notice has been withdrawn by Lender, no further Advances shall be made as, continued as, or converted into, LIBOR Rate Advances.

Section 2.11 Illegality.

Notwithstanding any other provision of this Agreement, if any Change in Law or in the interpretation or application thereof by the relevant Governmental Authority to Lender shall make it unlawful for Lender to make or maintain LIBOR Rate Advances as contemplated by this Agreement or to obtain in the interbank eurodollar market the funds with which to make such LIBOR Rate Advances, if Lender is match-funding such LIBOR Rate Advances, (a) Lender shall promptly notify Borrower thereof, (b) the commitment of Lender hereunder to make LIBOR Rate Advances or continue LIBOR Rate Advances as such shall forthwith be suspended until Lender shall give notice that the condition or situation which gave rise to the suspension shall no longer exist, and (c) Advances then outstanding as LIBOR Rate Advances, if any, shall be converted on the last day of the Interest Period or within such earlier period as required by law as Base Rate Advances. Borrower hereby agree to promptly pay Lender, upon its demand, any additional amounts necessary to compensate such Lender for actual and direct costs (but not including anticipated profits) reasonably incurred by Lender in making any repayment in accordance with this Section including, but not limited to, any interest or fees payable by Lender to the provider of funds obtained by Lender in order to make or maintain its LIBOR Rate Advances hereunder. A certificate as to any additional amounts payable pursuant to this Section submitted by Lender to Borrower shall be conclusive in the absence of manifest error. Lender agrees to use reasonable efforts to avoid or to minimize any amounts which may otherwise be payable pursuant to this Section; provided, however, that such efforts shall not cause the imposition on such Lender of any additional costs or legal or regulatory burdens deemed by such Lender in its sole discretion to be material.

Section 2.12 Yield Protection.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Lender (except any reserve requirement reflected in the LIBOR Rate);

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(ii) subject Lender to any (or any increase in any) Taxes with respect to any Credit Document or any Letter of Credit (except for the imposition of, or any change in the rate of, any Net Income Tax); or

(iii) impose on Lender or the London interbank market any other condition, cost or expense affecting this Agreement or LIBOR Rate Advances made by Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to Lender of making or maintaining LIBOR Rate Advances or of maintaining its obligation to make any such Advances, or to increase the cost to Lender of issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by Lender (whether of principal, interest or any other amount) then, provided that Lender has complied with Sections 2.12(e) and (f), upon request of Lender, Borrower will pay to Lender, such additional amount or amounts as will compensate Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If Lender shall have reasonably determined that any Change in Law affecting Lender, regarding capital requirements has or would have the effect of reducing the rate of return on Lender's capital or on the capital of Lender's holding company, if any, as a consequence of this Agreement, the Advances made or to be made by Lender as contemplated by this Agreement, or the Letters of Credit issued by Lender, to a level below that which Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration Lender's policies and the policies of Lender's holding company with respect to capital adequacy) by an amount reasonably deemed by Lender to be material, then, provided that Lender has complied with Sections 2.12(e) and (f), from time to time, within fifteen (15) days after demand by Lender, Borrower will pay to Lender such additional amount or amounts as will compensate Lender or Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay Lender the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of Lender to demand compensation pursuant to this Section shall not constitute a waiver of Lender's right to demand such compensation, provided that Borrower shall not be required to compensate Lender pursuant to this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that Lender notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of Lender's intention to claim compensation therefore (except

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that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Notice to Borrower. Lender shall promptly notify Borrower of any event which it has knowledge after the date hereof which will entitle Lender to compensation and will use commercially reasonable efforts to avoid the need for, or reduce, such compensation for itself.

(f) Reasonable Efforts. Lender agrees to use reasonable efforts to avoid or to minimize any amounts which might otherwise be payable pursuant to this paragraph of this Section; provided, however, that such efforts shall not cause the imposition on Lender of any additional costs or legal or regulatory burdens deemed by Lender to be material.

Section 2.13 Indemnity.

Borrower hereby agrees to indemnify Lender and to hold Lender harmless from any funding loss or expense which Lender may sustain or incur as a consequence of (a) default by Borrower in payment of the principal amount of or interest on any Facility in accordance with the terms hereof, (b) default by Borrower in accepting an Advance after Borrower has given a notice in accordance with the terms hereof, and/or (c) default by Borrower in making any prepayment after Borrower has given a notice in accordance with the terms hereof. A certificate as to any additional amounts payable pursuant to this Section submitted by Lender to Borrower shall be conclusive in the absence of manifest error. The agreements in this Section shall survive termination of this Agreement and payment of the Notes and all other amounts payable hereunder.

Section 2.14 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower under any Credit Document shall be made free and clear of and without reduction or withholding for any Taxes.

(b) Payment of Other Taxes by Borrower. Without limiting the provisions of paragraph (a) above, Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Lender timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by Borrower. Borrower shall indemnify Lender, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Lender shall be conclusive absent manifest error. In addition, Borrower shall indemnify Lender, within thirty (30) days after demand therefor, for any incremental Taxes that may become payable by Lender as a result of any failure of Borrower to pay any Taxes when due to the appropriate Governmental Authority or to deliver to such Lender, pursuant to paragraph (d), documentation evidencing the payment of Taxes.

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(d) Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section, Borrower shall deliver to Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lender.

(e) Treatment of Certain Refunds. If Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section, it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of Lender, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrower, upon the request of Lender, agrees to repay the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Lender in the event Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will Lender be required to pay any amount to Borrower pursuant to this paragraph (e) the payment of which would place Lender in a less favorable net after-Tax position than Lender would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

(f) Each party's obligations in this Section 2.14 shall survive the termination of the Credit Documents and any obligations payable thereunder.

Section 2.15 Letters of Credit Indemnification; Nature of Lender's Duties.

(a) In addition to its other obligations under Section 2.4, Borrower hereby agrees to protect, indemnify, pay and save Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that Lender may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit or (ii) the failure of Lender to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future *de jure* or *de facto* government or governmental authority (all such acts or omissions, herein called "Government Acts").

(b) As between Borrower and Lender, Borrower shall assume all risks of the acts, omissions or misuse of any Letter of Credit by the beneficiary thereof. Lender shall not be responsible: (i) for the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits

thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (iii) for failure of the beneficiary of a Letter of Credit to comply fully with conditions required in order to draw upon a Letter of Credit; (iv) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) for errors in interpretation of technical terms; (vi) for any loss or delay in the transmission or otherwise of any document required in order to make a drawing under a Letter of Credit or of the proceeds thereof; and (vii) for any consequences arising from causes beyond the control of Lender, including, without limitation, any Government Acts. None of the above shall affect, impair, or prevent the vesting of Lender's rights or powers hereunder.

(c) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by Lender, under or in connection with any Letter of Credit or the related certificates, if taken or omitted in good faith, shall not put Lender under any resulting liability to Borrower. It is the intention of the parties that this Agreement shall be construed and applied to protect and indemnify Lender against any and all risks involved in the issuance of the Letters of Credit, all of which risks are hereby assumed by Borrower, including, without limitation, any and all risks of the acts or omissions, whether rightful or wrongful, of any Government Authority. Lender shall not, in any way, be liable for any failure by Lender or anyone else to pay any drawing under any Letter of Credit as a result of any Government Acts or any other cause beyond the control of Lender.

(d) Nothing in this Section 2.15 is intended to limit the Reimbursement Obligation of Borrower contained in Section 2.4(c). The obligations of Borrower under this Section 2.15 shall survive the termination of this Agreement. No act or omissions of any current or prior beneficiary of a Letter of Credit shall in any way affect or impair the rights of Lender to enforce any right, power or benefit under this Agreement.

(e) Notwithstanding anything to the contrary contained in this Section 2.15, Borrower shall have no obligation to indemnify Lender in respect of any liability incurred by Lender arising out of the gross negligence or willful misconduct of Lender (including action not taken by Lender), as determined by a court of competent jurisdiction.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES**

To induce Lender to enter into this Agreement and to make the Extensions of Credit herein provided for, Borrower hereby represents and warrants to Lender that:

##### **Section 3.1 Financial Condition.**

The audited consolidated financial statements of Borrower and its Subsidiaries for the fiscal years ended December 31, 2008, 2009 and 2010, together with the related consolidated balance sheet, statements of income and retained earning, equity and cash flows for the fiscal years ended on such dates, and Borrower's Form 10-K and (ii) the unaudited consolidated financial statements of Borrower and its Subsidiaries for fiscal quarter ended March 31, 2011 and Form 10-Q for such quarter:

(i) were prepared in accordance with GAAP (to the extent applicable) consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, by an independent nationally recognized accounting firm (except with respect to the unaudited financial statements);

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(ii) fairly present the financial condition of Borrower and its Subsidiaries as of the date or dates thereof (subject, in the case of the unaudited financial statements, to normal year-end adjustments) and results of operations for the period covered thereby; and

(iii) show all Indebtedness and other liabilities, direct or contingent, of Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, commitments, and as to the audited consolidated financial statements, contingent obligations, all to the extent required by GAAP.

Section 3.2 No Change.

Since December 31, 2010 (and, after delivery of annual audited financial statements in accordance with Section 5.1(a), from the date of the most recently delivered annual audited financial statements) there has been no development or event which, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

Section 3.3 Corporate Existence; Compliance with Law; Patriot Act Information.

Borrower (a) is duly organized, validly existing and in good standing under the laws of the State of Florida, (b) has the requisite power and authority and the legal right to own and operate all its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified to conduct business and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except to the extent that the failure to so qualify or be in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 3.3 as of the Closing Date, is the following information for Borrower: the exact legal name and any former legal names of Borrower in the four (4) months prior to the Closing Date, the state of incorporation or organization, the type of organization, the jurisdictions in which Borrower is qualified to do business, the chief executive office, the principal place of business, the business phone number, the organization identification number and the federal tax identification number.

Section 3.4 Corporate Power; Authorization; Enforceable Obligations.

Borrower has full power and authority and the legal right to execute, deliver and perform the Credit Documents to which it is party and has taken all necessary limited liability company or corporate action to authorize the execution, delivery and performance by it of the Credit Documents to which it is party. No material consent or material authorization of, filing with,



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notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the borrowings hereunder or with the execution, delivery or performance of any Credit Document by Borrower (other than those which have been obtained) or with the validity or enforceability of any Credit Document against Borrower (except such filings as are necessary in connection with the perfection of the Liens created by such Credit Documents). Each Credit Document to which it is a party has been duly executed and delivered on behalf of Borrower. Each Credit Document to which it is a party constitutes a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

Section 3.5 Compliance with Laws; No Conflict; No Default.

(a) The execution, delivery and performance by Borrower of the Credit Documents to which Borrower is a party, in accordance with their respective terms, the borrowings hereunder and the transactions contemplated hereby do not and will not, by the passage of time, the giving of notice or otherwise, (i) require any Governmental Approval (other than such Governmental Approvals that have been obtained or made and not subject to suspension, revocation or termination) or violate any Requirement of Law relating to Borrower, (ii) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws, articles of organization, operating agreement or other organizational documents of Borrower or any material indenture, agreement or other instrument to which such Person is a party or by which any of its properties may be bound or any Governmental Approval relating to such Person, or (iii) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by such Person other than Liens arising under the Credit Documents that in the event of any noncompliance with the provisions of subparagraphs (i) and (ii) above reasonably could be expected, individually or in the aggregate, to have a Material Adverse Effect.

(b) Borrower (i) (A) has all Governmental Approvals required by law for it to conduct its business, each of which is in full force and effect, (B) each such Governmental Approval is final and not subject to review on appeal and (C) each such Governmental Approval is not the subject of any pending or, to the best of its knowledge, threatened attack by direct or collateral proceeding, and (ii) is in compliance with each Governmental Approval applicable to it and in compliance with all other Requirements of Law relating to it or any of its respective properties, in each case except to the extent the failure to obtain such Governmental Approval or failure to comply with such Governmental Approval or Requirement of Law could not reasonably be expected to have a Material Adverse Effect.

(c) Borrower is not in default under or with respect to any of its Material Contracts or under or with respect to any of its other material Contractual Obligations, or any judgment, order or decree to which it is a party, in any respect which could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

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### Section 3.6 No Material Litigation.

Except as set forth on Schedule 3.6, no litigation, investigation, bankruptcy or insolvency, injunction, order or claim affecting or relating to Borrower or any of its Subsidiaries, any such Person's properties or revenues, or any Credit Document is pending or, to the best knowledge of Borrower, overtly threatened in writing by or against Borrower or any of its Subsidiaries or against any of its or their respective properties or revenues that has not been settled, dismissed, vacated, discharged or terminated which, if adversely determined, could reasonably be expected to have a Material Adverse Effect, and no judgments are outstanding which could reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 3.6 hereto is a detailed description of all litigation pending against Borrower or any Subsidiary of Borrower as of the Closing Date, which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

### Section 3.7 Investment Company Act; PUHCA; Etc.

Borrower is not an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. Borrower is not subject to regulation under the Federal Power Act, the Interstate Commerce Act, the Public Utility Holding Company Act of 2005 or any federal or state statute or regulation limiting its ability to incur Borrower Obligations.

### Section 3.8 Margin Regulations.

No part of the proceeds of any Extension of Credit hereunder will be used directly or indirectly for any purpose which violates, or which would be inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. Borrower (a) is not engaged, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" "margin stock" within the respective meanings of each of such terms under Regulation U and (b) does not own "margin stock" except as identified in the financial statements referred to in Section 3.1 and the aggregate value of all "margin stock" owned by Borrower taken as a group does not exceed 25% of the value of its assets.

### Section 3.9 ERISA.

Neither a Reportable Event nor an "accumulated funding deficiency" (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any ERISA Plan, and each ERISA Plan has complied in all material respects with the applicable provisions of ERISA and the Code, except to the extent that any such occurrence or failure to comply would not reasonably be expected to have a Material Adverse Effect. No termination of a Single Employer Plan has occurred resulting in any liability that has remained underfunded, and no Lien in favor of the PBGC or an ERISA Plan has arisen, during such five-year period which could reasonably be expected to have a Material Adverse Effect. The present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such ERISA Plans) did not, as of the last annual valuation date prior to the date on which this

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representation is made or deemed made, exceed the value of the assets of such ERISA Plan allocable to such accrued benefits by an amount which, as determined in accordance with GAAP, could reasonably be expected to have a Material Adverse Effect. Neither Borrower, nor any of its Subsidiaries nor any Commonly Controlled Entity is currently subject to any liability for a complete or partial withdrawal from a Multiemployer Plan which could reasonably be expected to have a Material Adverse Effect.

Section 3.10 Environmental Matters.

(a) Except as could not be reasonably expected to result in a Material Adverse Effect:

(i) The facilities and properties owned, leased or operated by Borrower or any of its Subsidiaries, including, without limitation, the Land (collectively, the "Properties") do not contain any Materials of Environmental Concern (i) in violation of, or (ii) present in any fashion that triggers investigation, reporting or remedial action under, any Environmental Law, subject to the disclosure set forth in paragraph (b) below.

(ii) The Properties and all operations of Borrower and its Subsidiaries at the Properties are in compliance, and have in the last five years been in compliance, in all material respects with all applicable Environmental Laws, and to Borrower's knowledge, there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the business operated by Borrower or any of its Subsidiaries (the "Business"), subject to the disclosure set forth in paragraph (b) below.

(iii) Neither Borrower nor any Subsidiary thereof has received any written or actual notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the Business, nor does Borrower or any Subsidiary thereof have knowledge or reason to believe that any such notice will be received or is being threatened, subject to the disclosure set forth in paragraph (b) below.

(iv) Materials of Environmental Concern have not been transported or disposed of from the Properties by Borrower in violation of, or in a manner or to a location which could give rise to liability under any Environmental Law, nor have any Materials of Environmental Concern been generated, treated, stored or disposed of at, on or under any of the Properties by Borrower or to Borrower's knowledge, by any other Person in violation of, or in a manner that could give rise to liability under, any applicable Environmental Law.

(v) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of Borrower or any Subsidiary thereof, threatened, under any Environmental Law to which Borrower or any Subsidiary is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business, subject to the disclosure set forth in paragraph (b) below.

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(vi) Borrower has not caused, nor to Borrower's knowledge, has any other Person caused any release or threat of release of Materials of Environmental Concern at or from the Properties, or arising from or related to the operations of Borrower or any Subsidiary in connection with the Properties or otherwise in connection with the Business, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

(b) For purposes of disclosure, Schedule 3.10 describes certain environmental violations at Properties as more specifically set forth in the reports referenced in Schedule 3.10 (the "Environmental Issues"). None of the Environmental Issues could reasonably be expected to have a Material Adverse Effect.

Section 3.11 Purpose of Facilities.

The proceeds of each Facility shall be used solely by Borrower for the purposes stated in the description of the applicable Facility set forth in Section 2.1, Section 2.2 and Section 2.3.

Section 3.12 Subsidiaries.

Set forth on Schedule 3.12 is a complete and accurate list of all Subsidiaries of Borrower as of the date hereof. Information on the attached Schedule includes state of incorporation or organization; the number of authorized shares of each class of Capital Stock or other equity interests; the number of outstanding shares of each class of Capital Stock or other equity interests, the owner thereof and the percentage of such ownership; and the number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and similar rights. The outstanding Capital Stock and other equity interests of all such Subsidiaries is validly issued, fully paid and non-assessable and is owned free and clear of all Liens.

Section 3.13 Ownership; Insurance.

Borrower is the owner of, and has good and marketable title to and adequate insurance coverage for, all of its respective assets which, together with assets leased or licensed by Borrower, represents all assets individually or in the aggregate material to the conduct of the businesses of Borrower taken as a whole, and none of such assets is subject to any Lien other than Permitted Liens. Borrower enjoys peaceful and undisturbed possession under all of its leases and all such leases are valid and subsisting and in full force and effect except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 3.14 Indebtedness.

Except as otherwise permitted under Section 6.1, Borrower and its Subsidiaries have no Indebtedness.

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Section 3.15 Taxes.

Borrower and its Subsidiaries have filed, or caused to be filed, all tax returns (federal, state, local and foreign) required to be filed and paid (a) all amounts of taxes shown thereon to be due (including interest and penalties) and (b) all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by them, except for such taxes (i) which are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP. Borrower is not aware as of the Closing Date of any proposed tax assessments against it or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

Section 3.16 Intellectual Property.

Borrower and its Subsidiaries owns, or has the legal right to use, all material Intellectual Property, material tradenames, material technology, know-how and processes necessary for each of them to conduct its business as currently conducted. Set forth on Schedule 3.16 is a list of all material Intellectual Property owned by Borrower and its Subsidiaries or that Borrower or any of its Subsidiaries has the right to use. Except as provided on Schedule 3.16, no claim has been asserted and is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does Borrower or any of its Subsidiaries know of any such claim, and, to the knowledge of Borrower and its Subsidiaries, the use of such Intellectual Property by Borrower or any of its Subsidiaries does not infringe on the rights of any Person, except for such claims and infringements that in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Schedule 3.16 may be updated from time to time by Borrower to include new Intellectual Property by giving written notice thereof to Lender.

Section 3.17 Solvency.

Immediately before and after giving effect to the Transactions, (a) Borrower is solvent and is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, and (b) the fair saleable value of Borrower's assets, measured on a going concern basis, exceeds all probable liabilities, including those to be incurred pursuant to this Agreement. Immediately before and after giving effect to the Transactions, Borrower will not have unreasonably small capital in relation to the business in which it is or proposes to be engaged. After giving effect to the Transactions, Borrower has not incurred, or believes that it will incur, debts beyond its ability to pay such debts as they become due. In executing the Credit Documents and consummating the Transactions, Borrower does not intend to hinder, delay or defraud either present or future creditors or other Persons to which Borrower is or will become indebted.

Section 3.18 Investments.

All Investments of Borrower and its Subsidiaries are Permitted Investments.

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Section 3.19 Location of Collateral.

Set forth on Schedule 3.19(a) is a list of the Properties of Borrower and its Subsidiaries with street address, county and state where located as of the Closing Date. Set forth on Schedule 3.19(a) is a list of the Properties of Borrower and its Subsidiaries with street address, county and state where located as of the Closing Date. Set forth on Schedule 3.19(b) is a list of all locations where any tangible personal property of Borrower and its Subsidiaries is located, including county and state where located as of the Closing Date. Set forth on Schedule 3.19(c) is the chief executive office and principal place of business of Borrower and its Subsidiaries as of the Closing Date.

Section 3.20 No Burdensome Restrictions.

Neither Borrower nor any of its Subsidiaries is a party to any agreement or instrument or subject to any other obligation or any charter or corporate restriction or any provision of any applicable law, rule or regulation which, individually or in the aggregate, could reasonably be expected to restrict their business in a manner that would have a Material Adverse Effect.

Section 3.21 Labor Matters.

Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect, there are no collective bargaining agreements or Multiemployer Plans covering the employees of Borrower or any of its Subsidiaries as of the Closing Date, and neither Borrower nor any of its Subsidiaries (i) has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years, other than as set forth in Schedule 3.21 hereto or (ii) has knowledge of any potential or pending strike, walkout or work stoppage.

Section 3.22 Accuracy and Completeness of Information.

All factual information heretofore, contemporaneously or hereafter furnished by or on behalf of Borrower or any of its Subsidiaries to Lender for purposes of or in connection with this Agreement or any other Credit Document, or any transaction contemplated hereby or thereby, is or will be true and accurate in all material respects and not incomplete by omitting to state any material fact necessary to make such information not misleading. There is no fact now known to Borrower or any of its Subsidiaries which has, or could reasonably be expected to have, a Material Adverse Effect.

Section 3.23 Material Contracts.

Schedule 3.23 sets forth a complete and accurate list of all Material Contracts of Borrower and its Subsidiaries in effect as of the Closing Date. As of the Closing Date, other than as set forth in Schedule 3.23, each such Material Contract is, and after giving effect to the transactions contemplated by the Credit Documents will be, in full force and effect in accordance with the terms thereof and neither Borrower nor a Subsidiary thereof has violated in any material respect any such Material Contract. Borrower has delivered to Lender for its review a correct and complete copy of each written agreement listed in Schedule 3.23 (as amended to date).

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Section 3.24 Brokers' Fees.

Neither Borrower nor any of its Subsidiaries has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with any of the Transactions contemplated under the Credit Documents other than the closing and other fees payable pursuant to this Agreement.

Section 3.25 Anti-Terrorism Laws.

Neither Borrower nor any of its Subsidiaries is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq.*) (the "Trading with the Enemy Act"), as amended. Neither any Borrower nor any of its Subsidiaries is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. Borrower (i) is not a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, has not and does not engage in any dealings or transactions, or is otherwise associated, with any such blocked person.

Section 3.26 Compliance with OFAC Rules and Regulations.

(a) None of Borrower, its Subsidiaries or their respective Affiliates is in violation of and shall not violate any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://www.ustreas.gov/offices/enforcement/ofac/> or as otherwise published from time to time.

(b) None of Borrower, its Subsidiaries or their respective Affiliates (i) is a Sanctioned Person or a Sanctioned Entity, (ii) has a more than 10% of its assets located in Sanctioned Entities, or (iii) derives more than 10% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any Loan will be used nor have any been used to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Entity.

Section 3.27 Compliance with FCPA.

Borrower and its Subsidiaries is in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*, and any foreign counterpart thereto. Neither Borrower nor its Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to Borrower or its Subsidiary or to any other Person, in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*

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**ARTICLE IV**  
**CONDITIONS PRECEDENT**

Section 4.1 Conditions to Closing and Initial Extensions of Credit.

This Agreement shall become effective upon, and the obligation of Lender to make the initial Extensions of Credit on the Closing Date is subject to, the satisfaction of the following conditions precedent:

(a) Execution of Credit Documents. Lender shall have received (i) counterparts of this Agreement, (ii) the Revolving Note, (iii) the Construction Note, and (iv) the Covenant Not To Encumber, in each case conforming to the requirements of this Agreement and executed by a duly authorized officer of each party thereto, and in each case in form and substance reasonably satisfactory to Lender.

(b) Authority Documents. Lender shall have received the following:

(i) Articles of Incorporation/Charter Documents. Copies of the articles of incorporation or other charter documents, as applicable, of Borrower certified (A) by an officer of Borrower (pursuant to a secretary's certificate in substantially the form of Schedule 4.1-1 attached hereto) as of the Closing Date to be true, correct, complete and in full force and effect as of such date and (B) to be true and complete as of a recent date by the appropriate Governmental Authority of the state of its incorporation.

(ii) Resolutions. Copies of resolutions of the board of directors of Borrower approving and adopting the Credit Documents, the Transactions contemplated therein and authorizing execution and delivery thereof, certified by a secretary or assistant secretary of Borrower (pursuant to a secretary's certificate in substantially the form of Schedule 4.1-1 attached hereto) as of the Closing Date to be true and correct and in force and effect as of such date.

(iii) Bylaws/Operating Agreement. A copy of the bylaws or comparable operating agreement of Borrower certified by a secretary or assistant secretary of Borrower (pursuant to a secretary's certificate in substantially the form of Schedule 4.1-1 attached hereto) as of the Closing Date to be true and correct and in force and effect as of such date.

(iv) Good Standing. A copy of certificates of good standing, existence or its equivalent with respect to Borrower certified as of a recent date by the appropriate Governmental Authorities of the state of incorporation or organization and each other state in which the failure to so qualify and be in good standing could reasonably be expected to have a Material Adverse Effect on the business or operations of Borrower and its Subsidiaries in such state.

(v) Incumbency. An incumbency certificate of Borrower certified by a secretary or assistant secretary (pursuant to a secretary's certificate in substantially the form of Schedule 4.1-1 attached hereto) to be true and correct as of the Closing Date.



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(c) Legal Opinions of Counsel. Lender shall have received opinions of legal counsel for Borrower, dated the Closing Date and addressed to Lender and Lender, which opinions shall be in form and substance acceptable to Lender.

(d) Personal Property Searches. Lender shall have received, in form and substance satisfactory to Lender:

(i) searches of UCC filings in the jurisdiction of the chief executive office of Borrower, the state of incorporation or organization of Borrower and each jurisdiction where any Collateral is located or where a filing would need to be made in order to perfect Lender's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens;

(ii) searches of ownership of Intellectual Property in the appropriate governmental offices and such patent/trademark/copyright filings as requested by Lender in order to perfect Lender's security interest in the Intellectual Property;

(e) Liability, Casualty and Business Interruption Insurance. Lender shall have received copies of insurance policies or certificates and endorsements of insurance evidencing liability (including product liability) and casualty insurance meeting the requirements set forth herein or in the Security Documents and business interruption insurance satisfactory to Lender. Lender shall be named as loss payee and/or additional insured with respect to such insurance, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Lender, that it will give Lender thirty (30) days prior written notice before any such policy or policies shall be altered or cancelled.

(f) Solvency Certificate Compliance. Lender shall have received an officer's certificate prepared by the chief financial officer of Borrower as to the financial condition, solvency and related matters of Borrower, after giving effect to the initial borrowings under the Credit Documents, in substantially the form of Schedule 4.1-2 hereto.

(g) Account Designation Letter. Lender shall have received the executed Account Designation Letter in the form of Schedule 1.1-1 hereto.

(h) Notice of Borrowing. Lender shall have received a Notice of Borrowing in the form of Schedule 2.1(b)(i) hereto with respect to the Advance, if any, to be made on the Closing Date.

(i) Consents. Lender shall have received evidence that all governmental, shareholder, board of director and third party consents and approvals necessary in connection with the financings and other transactions contemplated hereby have been obtained.

(j) Due Diligence. Lender shall have (i) completed in form and scope reasonably satisfactory thereto its business, legal, financial and environmental due diligence of Borrower and its Subsidiaries, and (ii) received such documentation and information from Borrower and its Subsidiaries as required by Lender to comply with applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the requirements of OFAC and the Patriot Act.

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(k) Compliance with Laws. The financings and other Transactions contemplated hereby shall be in compliance with all applicable laws and regulations (including all applicable securities and banking laws, rules and regulations).

(l) Bankruptcy. There shall be no bankruptcy or insolvency proceedings with respect to Borrower or any of its Subsidiaries.

(m) Material Adverse Effect. No event, condition or circumstance which has had or could reasonably be expected to have a Material Adverse Effect shall have occurred since December 31, 2010.

(n) Revolver Availability. Immediately after giving effect to this Agreement and the initial Extensions of Credit hereunder, the sum of the outstanding Revolving Advances plus outstanding LOC Obligations shall not exceed the Revolving Committed Amount.

(o) Financial Statements. Lender shall have received copies of the financial statements and other financial information referred to in Section 3.1 hereof, each in form and substance satisfactory to it.

(p) Officer's Certificates. Lender shall have received a certificate executed by a Responsible Officer of Borrower as of the Closing Date stating that (i) no action, suit, investigation or proceeding is pending or, to the knowledge of Borrower, threatened in any court or before any arbitrator or governmental instrumentality (A) with respect to Borrower or any of its Subsidiaries that reasonably could be expected to have a Material Adverse Effect on Borrower or any of its Subsidiaries, this Agreement or the other Credit Documents, that has not been settled, dismissed, vacated, discharged or terminated prior to the Closing Date or (B) with respect to this Agreement or the other Credit Documents that has not been settled, dismissed, vacated, discharged or terminated prior to the Closing Date, and (ii) immediately after giving effect to this Agreement (including the initial Extensions of Credit hereunder), the other Credit Documents and all the transactions contemplated therein to occur on such date, (A) no Default or Event of Default exists, (B) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects, and (C) Borrower is in compliance with each of the financial covenants set forth in Section 5.9 on a Pro Forma Basis.

(q) Additional Matters. All other documents and legal matters in connection with the transactions contemplated by this Agreement shall be reasonably satisfactory in form and substance to Lender and its counsel.

#### Section 4.2 Conditions to the Accordion Facility.

The obligation of Lender to make the initial Advance under the Accordion Facility is subject to the satisfaction of the following conditions precedent on the date of making such initial Accordion Advance:

(a) Receipt of Notice and Fee. Lender has received from Borrower the notice of Borrower's election to activate the Accordion Facility setting forth the Initial Accordion Amount, as provided in Section 2.2, and the applicable Accordion Commitment Fee has been paid to Lender.

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(b) Receipt of Additional Credit Documents. Lender shall have received (i) the Accordion Note, substantially in the form attached hereto as Schedule 4.2(b), in the Initial Accordion Amount (ii) a Security Agreement, substantially in the form attached hereto as Schedule 4.2(b)(2), granting to Lender a first security interest in all Collateral, and (iii) such other Security Documents as Lender may reasonably require based upon the nature of the Collateral, including, without limitation, UCC financing statements for each appropriate jurisdiction as is necessary, in Lender's sole discretion, to perfect Lender's security interest in the Collateral, in each case conforming to the requirements of this Agreement and executed by a duly authorized officer of each party thereto, and in each case in form and substance reasonably satisfactory to Lender.

(c) Current Authority Documents. Lender shall have received the following:

(i) Good Standing. A copy of certificates of good standing, existence or its equivalent with respect to Borrower certified as of a recent date by the appropriate Governmental Authorities of the state of incorporation or organization and each other state in which the failure to so qualify and be in good standing could reasonably be expected to have a Material Adverse Effect on the business or operations of Borrower and its Subsidiaries in such state.

(ii) Incumbency. An incumbency certificate of Borrower in form and substance satisfactory to Lender, certified by a secretary or assistant secretary to be true and correct as of the Closing Date.

(d) Updated Personal Property Searches. Lender shall have received, in form and substance satisfactory to Lender, currently dated updates to the searches delivered to Lender pursuant to Section 4.1(d).

(e) Notice of Borrowing. Lender shall have received a Notice of Borrowing in the form of Schedule 2.2(b)(i) hereto with respect to the Advance, if any, to be made on the Closing Date.

(f) Bankruptcy. There shall be no bankruptcy or insolvency proceedings with respect to Borrower or any of its Subsidiaries.

(g) Material Adverse Effect. No event, condition or circumstance which has had or could reasonably be expected to have a Material Adverse Effect shall have occurred since the Closing Date.

(h) Default. No Default or Event of Default shall have occurred and be continuing on such date.

#### Section 4.3 Conditions to All Extensions of Credit.

The obligation of Lender to make any Extension of Credit hereunder is subject to the satisfaction of the following conditions precedent on the date of making such Extension of Credit:

(a) Representations and Warranties. The representations and warranties made by Borrower herein, in the other Credit Documents or which are contained in any certificate furnished at any time under or in connection herewith shall be true and correct on and as of the date of such Extension of Credit as if made on and as of such date, except to the extent they expressly relate to an earlier date.

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(b) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to such Extension of Credit.

(c) Compliance with Commitments. Immediately after giving effect to the making of any such Extension of Credit (and the application of the proceeds thereof), (i) the sum of the aggregate principal amount of outstanding Revolving Advances plus LOC Obligations issued under the Revolving Facility shall not exceed the Revolving Committed Amount and (ii) the sum of the aggregate principal amount of outstanding Accordion Advances plus LOC Obligations issued under the Accordion Facility shall not exceed the Effective Accordion Note Amount.

(d) Additional Conditions to Revolving Advances. If a Revolving Advance is requested, all conditions set forth in Section 2.1 shall have been satisfied.

(e) Additional Conditions to Accordion Advances. If an Accordion Advance is requested, (i) all conditions set forth in Section 2.2 shall have been satisfied.

(f) Additional Conditions to Letters of Credit. If the issuance of a Letter of Credit is requested, (i) all conditions set forth in Section 2.4 shall have been satisfied.

(g) Additional Conditions to Construction Advances. If a Construction Advance is requested, all conditions applicable to the Construction Advance so requested, as set forth in Article VIII, shall have been satisfied.

Each request for an Extension of Credit and each acceptance by Borrower, of any such Extension of Credit shall be deemed to constitute representations and warranties by Borrower as of the date of such Extension of Credit that the applicable conditions in paragraphs (a) through (g) of this Section have been satisfied.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Borrower hereby covenants and agrees, on the Closing Date and thereafter for so long as this Agreement is in effect, until all of Lender's obligations to make Advances have terminated, no Note remains outstanding and unpaid and Borrower's Obligations together with interest and all other amounts owing to Lender hereunder, are paid in full, Borrower shall, and shall cause each of their Subsidiaries (other than in the case of Sections 5.1, 5.2 or 5.7 hereof), to:

#### Section 5.1 Financial Statements.

Furnish to Lender:

(a) Annual Financial Statements. As soon as available, but in any event within one hundred and twenty (120) days after the end of each fiscal year of Borrower, (i) a copy of the consolidated and consolidating balance sheet of Borrower and its consolidated Subsidiaries as of the end of such fiscal year and the related consolidated and consolidating statements of income and retained earnings and of cash flows of Borrower and its consolidated Subsidiaries for such year which, other than in the case of the consolidating statements, shall be audited by a firm of independent certified public accountants of nationally recognized standing reasonably acceptable to Lender, setting forth in each case in comparative form the figures for the previous year, reported on without a "going concern" or like qualification or exception, or qualification indicating that the scope of the audit was inadequate to permit such independent certified public accountants to certify such financial statements without such qualification and (ii) if the Accordion Facility has been Activated, an updated Schedule 3.19(b):

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(b) Quarterly Financial Statements. As soon as available and in any event within forty-five (45) days after the end of each fiscal quarter of Borrower, (i) a copy of the consolidated and consolidating balance sheet of Borrower and its consolidated Subsidiaries as of the end of such period and related consolidated statements of income and retained earnings and of cash flows for Borrower and its consolidated Subsidiaries for such quarterly period and for the portion of the fiscal year ending with such period, in each case setting forth in comparative form consolidated figures for the corresponding period or periods of the preceding fiscal year (subject to normal recurring year-end audit adjustments);

all such financial statements to be complete and correct in all material respects (subject, in the case of interim statements, to normal recurring year-end audit adjustments) and to be prepared in reasonable detail and, in the case of the annual and quarterly financial statements provided in accordance with subsections (a) and (b) above, in accordance with GAAP applied consistently throughout the periods reflected therein and further accompanied by a description of, and an estimation of the effect on the financial statements on account of, a change, if any, accounting principles as provided in Section 1.3.

Notwithstanding the foregoing, financial statements and reports required to be delivered pursuant to the foregoing provisions of this Section may be delivered electronically and if so, shall be deemed to have been delivered on the date on which Lender receives such reports from Borrower through electronic mail; provided that, upon Lender's request, Borrower shall provide paper copies of any documents required hereby to Lender.

Section 5.2 Certificates; Other Information.

Furnish to Lender:

(a) Within seven (7) Business Days after receipt thereof, copies of any reports or "management letter" or other similar document or documents submitted to Borrower by a certified public accountant in connection with the examination of the financial statements of Borrower or any of its Subsidiaries;

(b) No later than thirty (30) days after the end of each of Borrower's first three fiscal quarters, and concurrently with the delivery of Borrower's annual financial statement, a

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certificate signed by the president and chief financial officer of Borrower, certifying (i) compliance with the applicable financial covenants set forth in Section 5.9, (ii) the calculated Leverage Ratio, and (iii) that no Default or Event of Default has occurred and is continuing under any of the documents evidencing or securing the Facilities, or if a Default or Event of Default has occurred, the nature of such Default or Event of Default and the actions being taken or proposed in connection with the remedy of such Default or Event of Default (a “Compliance Certificate”), which Compliance Certificate shall be in the form attached hereto as Schedule 5.2(b), together with all supporting information, worksheets and calculations establishing compliance with the applicable financial covenants;

(c) Within seven (7) days after the filing thereof, Borrower’s Form 10-K and Form 10-Q and any reports or other documents filed by Borrower or any of its Subsidiaries with the SEC;

(d) Concurrently with or prior to the delivery of the financial statements referred to in Sections 5.1(a) above, an updated copy of Schedule 3.16 if the Accordion Facility has been Activated and Borrower has registered, applied for registration of, acquired or otherwise obtained ownership of any new Intellectual Property since the Closing Date or since such Schedule was last updated, as applicable; and

(e) Promptly, such other information as may be reasonably requested from time to time by Lender.

Section 5.3 Payment of Taxes and Other Obligations.

Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its taxes (federal, state, local and any other taxes) and other obligations and liabilities of whatever nature and any additional costs that are imposed as a result of any failure to so pay, discharge or otherwise satisfy such taxes, obligations and liabilities, except when the amount or validity of any such taxes, obligations and liabilities is currently being contested in good faith by appropriate proceedings and reserves, if applicable, in conformity with GAAP with respect thereto have been provided on the books of Borrower.

Section 5.4 Conduct of Business and Maintenance of Existence.

Continue to engage in business of the same general type as conducted by it on the Closing Date; preserve, renew and keep in full force and effect its existence and good standing and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business and to maintain its goodwill; comply with all Contractual Obligations and Requirements of Law applicable to it except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.5 Maintenance of Property; Insurance.

(a) Keep all material property useful and necessary in its business in good working order and condition (ordinary wear and tear and obsolescence excepted).

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(b) Maintain with financially sound and reputable insurance companies (i) insurance 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, fire, theft and extended coverage casualty insurance coverage insuring Borrower's property, including, without limitation, any Collateral for the Accordion Facility, in an amount of not less than the full replacement value thereof, (ii) general public liability insurance (including, without limitation, automobile and product liability) in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (iii) business interruption insurance and (iv) during any period of construction of Improvements, cause the policy evidencing fire and extended coverage insurance for the Improvements to be in the so-called "Builder's Risk 100% Completed Value Non-Reporting" form; and furnish to Lender, upon written request, full information as to the insurance carried. Lender shall be named as loss payee or an additional insured, as applicable, with respect to such insurance policies (except that Lender need not be named the loss payee under any property insurance until such time as the Accordion Facility has been Activated), and each provider of such insurance policies shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Lender, that it will give Lender thirty (30) days prior written notice before any such policy or policies shall be altered or canceled, and that no act or default of Borrower or any of its Subsidiaries or any other Person shall affect the rights of Lender under such policy or policies. The present insurance coverage of Borrower is outlined as to carrier, policy number, expiration date, type and amount on Schedule 5.5(b).

(c) In the case of the occurrence of any material business interruption or material casualty, damage to, loss or destruction of any Collateral for the Accordion Facility or any material part thereof, or seizure of an such Collateral for any reason, including, without limitation, action by any foreign government, Borrower shall promptly give written notice thereof to Lender generally describing the nature and extent of such damage or destruction. In case of any loss, damage to or destruction of such Collateral or any part thereof, Borrower, whether or not the insurance proceeds, if any, received on account of such damage or destruction shall be sufficient for that purpose, at Borrower's cost and expense, will promptly repair or replace such Collateral so lost, damaged or destroyed.

Section 5.6 Inspection of Property; Books and Records; Discussions.

Keep proper books of records and accounts in which full, true and correct entries shall be made of all dealings and transactions in relation to its businesses and activities, such entries to be in conformity with GAAP and all Requirements of Law; and permit, during regular business hours and upon reasonable notice by Lender, Lender to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired, and to discuss the business, operations, properties and financial and other condition of Borrower and its Subsidiaries with officers and employees of Borrower and with their independent certified public accountants.

Section 5.7 Notices.

Give notice in writing to Lender of:

(a) promptly, but in any event within five (5) Business Days after Borrower knows or has reason to know thereof, the occurrence of any Default or Event of Default;

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(b) promptly, the occurrence of any default or event of default under any Contractual Obligation of Borrower or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of \$500,000;

(c) promptly, any litigation, or any investigation or proceeding known to Borrower (i) affecting Borrower or any of its Subsidiaries which, if adversely determined, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of \$500,000, (ii) affecting or with respect to this Agreement or any other Credit Document or (iii) involving an environmental claim or potential liability under Environmental Laws;

(d) as soon as possible and in any event within thirty (30) days after Borrower knows or has reason to know thereof: (i) the occurrence or expected occurrence of any Reportable Event with respect to any ERISA Plan, a failure to make any required contribution to an ERISA Plan, the creation of any Lien in favor of the PBGC (other than a Permitted Lien) or an ERISA Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or Borrower or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the terminating, Reorganization or Insolvency of, any Plan;

(e) any notice of any violation of any Requirement of Law received by Borrower or any of its Subsidiaries from any Governmental Authority including, without limitation, any notice of violation of Environmental Laws which could reasonably be expected to have a Material Adverse Effect;

(f) any labor controversy that has resulted in, or threatens to result in, a strike or other work action against Borrower or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect;

(g) any attachment, judgment, lien, levy or order exceeding \$500,000 that may be assessed against or threatened against Borrower other than Permitted Liens; and

(h) promptly, any other development or event which could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action Borrower proposes to take with respect thereto. In the case of any notice of a Default or Event of Default, Borrower shall specify that such notice is a Default or Event of Default notice on the face thereof.

Section 5.8 Environmental Laws.

(a) Comply in all material respects with, and take reasonable steps to ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws and obtain and comply in all material respects with and maintain, and take



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reasonable steps to ensure that all tenants and subtenants obtain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws;

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws except to the extent that the same are being contested in good faith by appropriate proceedings and the pendency of such proceedings could not reasonably be expected to have a Material Adverse Effect; and

(c) Defend, indemnify and hold harmless Lender, and its employees, agents, officers and directors, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of Borrower or any of its Subsidiaries or the Properties, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, reasonable attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing arise out of the gross negligence or willful misconduct of the party seeking indemnification therefor as determined by a court of competent jurisdiction in a final and non-appellable judgment. The agreements in this paragraph shall survive repayment of Borrower's Obligations.

#### Section 5.9 Financial Covenants.

(a) Commencing on the day immediately following the Closing Date and continuing until such time as the Accordion Facility is Activated, Borrower shall comply with the following financial covenants:

(i) Consolidated Tangible Net Worth. Borrower shall maintain a Consolidated Tangible Net Worth of not less than \$92,000,000, which amount shall be increased annually by an amount equal to fifty percent (50%) of Consolidated Net Income for the prior year as shown on the annual financial statement delivered to Lender as provided in Section 5.1(a). Compliance shall be tested on the last day of each calendar quarter on a trailing 4-quarter basis.

(ii) Minimum Consolidated EBITDA. Borrower shall maintain Consolidated EBITDA of not less than \$5,000,000. Upon the funding of the initial Advance under the Accordion Facility or the Construction Facility, whichever shall first occur, this covenant shall terminate and be of no further force or effect.

(b) Commencing with end of the first calendar quarter after the initial Advance under the Accordion Facility or the Construction Facility, whichever shall first occur, Borrower shall comply with the following financial covenants:

(i) Consolidated Tangible Net Worth. Borrower shall continue to maintain not less than the Consolidated Tangible Net Worth set forth in subsection (a)(i), above.

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(ii) Leverage Ratio. Borrower shall maintain a Leverage Ratio equal to or less than 3.00 to 1.00.

(iii) Consolidated EBIT to Consolidated Interest Expense Ratio. Borrower shall maintain a Consolidated EBIT to Consolidated Interest Expense ratio equal to not less than 2.50 to 1.00.

(c) Compliance Testing. Compliance with each of the financial covenants set forth in this Section 5.9 shall be tested on the last day of each calendar quarter on a trailing 4-quarter basis.

Section 5.10 Compliance with Law.

Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders, and all applicable restrictions imposed by all Governmental Authorities, applicable to it and its property if noncompliance with any such law, rule, regulation, order or restriction could reasonably be expected to have a Material Adverse Effect.

Section 5.11 Pledged Assets.

In the event that the Accordion Facility is Activated:

(a) Borrower will, and will cause each of its Subsidiaries to, cause 100% of the Capital Stock of each of its direct or indirect Domestic Subsidiaries to be subject at all times to a first priority, perfected Lien in favor of Lender pursuant to the terms and conditions of the Security Documents or such other security documents as Lender shall reasonably request.

(b) If, subsequent to the date the Accordion Facility is Activated, Borrower shall acquire any securities, instruments, chattel paper or other personal property required for perfection to be delivered to Lender as Collateral hereunder or under any of the Security Documents, Borrower shall promptly (and in any event within five (5) Business Days) after such acquisition notify Lender of same. Borrower shall, and shall cause each of its Subsidiaries to, take such action at its own expense as may be necessary or otherwise requested by Lender (including, without limitation, any of the actions described in Section 4.2 hereof) to ensure that Lender has a first priority perfected Lien to secure Borrower's Obligations in all Domestic Business Assets, subject only to Permitted Liens.

Section 5.12 Covenants Regarding Intellectual Property.

From and after the date upon which the Accordion Facility is Activated:

(a) Borrower shall notify Lender promptly if it knows or has reason to know that any material application, letters patent or registration relating to any material Patent, material Patent License, material Trademark or material Trademark License of Borrower or any of its Subsidiaries may become abandoned, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office or any court) regarding Borrower's or any of its Subsidiary's ownership of any material Patent or material Trademark, its right to patent or register the same, or to enforce, keep and maintain the same, or its rights under any material Patent License or material Trademark License.

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(b) (i) Concurrently with the delivery of the quarterly and annual financial statements of Borrower pursuant to Section 5.1(a) and (b) hereof, Borrower shall provide to Lender and its counsel a complete and correct list of all new Intellectual Property owned by or licensed to Borrower or any of its Subsidiaries with respect to which Lender has not filed a notice of grant of security interest with the United States Patent and Trademark Office or the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, as applicable.

(ii) Upon request of Lender, Borrower shall execute and deliver any and all agreements, instruments, documents, and papers as Lender may reasonably request to evidence Lender's security interest in the Intellectual Property and the general intangibles (including goodwill) related thereto or represented thereby.

(c) Borrower and its Subsidiaries will take all reasonably necessary actions, including, without limitation, in any proceeding before the United States Patent and Trademark Office or the United States Copyright Office, to maintain all material items of Intellectual Property of Borrower and its Subsidiaries, including, without limitation, payment of maintenance fees, filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings.

(d) In the event that Borrower becomes aware that any material Intellectual Property is infringed, misappropriated or diluted by a third party in any material respect, Borrower shall notify Lender promptly after it learns thereof and shall, unless Borrower shall reasonably determine that such Intellectual Property is not material to the business of Borrower or Borrower and its Subsidiaries taken as a whole, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, or take such other actions as Borrower and Lender shall reasonably deem appropriate under the circumstances to protect such Intellectual Property.

Section 5.13 Deposit and Securities Accounts.

Borrower shall maintain each of its material operating deposit accounts with Lender.

Section 5.14 Further Assurances.

Upon the reasonable request of Lender, after the Accordion Facility is Activated, promptly perform or cause to be performed any and all acts and execute or cause to be executed any and all documents which are necessary or advisable to create or maintain in favor of Lender Liens on all Domestic Business Assets of Borrower that are duly perfected in accordance with all applicable Requirements of Law.

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**ARTICLE VI**  
**NEGATIVE COVENANTS**

Borrower hereby covenants and agrees, on the Closing Date and thereafter for so long as this Agreement is in effect, until all of Lender's obligations to make Advances have terminated, no Note remains outstanding and unpaid and Borrower's Obligations together with interest and all other amounts owing to Lender hereunder, are paid in full, that:

Section 6.1 Indebtedness.

Borrower will not, and will not permit any Domestic Subsidiary to, contract, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness arising or existing under this Agreement and the other Credit Documents;

(b) Indebtedness existing as of the Closing Date as referenced in the financial statements referenced in Section 3.1 (and set out more specifically in Schedule 6.1(b)) hereto and renewals, refinancings or extensions thereof in a principal amount not in excess of that outstanding as of the date of such renewal, refinancing or extension;

(c) Indebtedness incurred after the Closing Date consisting of Capital Leases and/or purchase money Liens not exceeding \$1,000,000.00, in the aggregate;

(d) Unsecured intercompany Indebtedness among Borrower; provided that any such Indebtedness shall be (i) fully subordinated to Borrower's Obligations hereunder on terms reasonably satisfactory to Lender and (ii) evidenced by promissory notes which shall be pledged to Lender as Collateral for Borrower's Obligations in the event that the Accordion Facility is Activated;

(e) Indebtedness and obligations owing under Bank Products and other Hedging Agreements not entered into for speculative purposes;

(f) Indebtedness in respect of Guaranty Obligations to the extent permitted under Section 6.3.

Section 6.2 Liens.

Borrower will not, and will not permit any Subsidiary to, contract, create, incur, assume or permit to exist any Lien with respect to any Domestic Business Assets of Borrower or its Subsidiaries, whether now owned or hereafter acquired, except for Permitted Liens.

Section 6.3 Guaranty Obligations.

Borrower will not enter into or otherwise become or be liable in respect of any Guaranty Obligations (excluding specifically therefrom endorsements in the ordinary course of business of negotiable instruments for deposit or collection) other than (a) any Guaranty Obligations in favor

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of Lender, (b) guaranties given by Borrower or any of its Subsidiaries in connection with obligations not constituting Indebtedness, including real property leases and other contracts entered into in the ordinary course of business, and (c) guaranties by Borrower of Indebtedness of Borrower or its Subsidiaries permitted under Section 6.1.

Section 6.4 Nature of Business.

Borrower will not, and will not permit any Subsidiary to, alter the character of its business in any material respect from that conducted as of the Closing Date.

Section 6.5 Consolidation, Merger, Sale or Purchase of Assets, etc.

Borrower will not, and will not permit any Domestic Subsidiary to:

(a) dissolve, liquidate or wind up its affairs, sell, transfer, lease to a third party or otherwise dispose of its property or assets or agree to do so at a future time except the following shall be expressly permitted:

(i) Specified Sales;

(ii) the disposition of property or assets as a result of a Recovery Event;

(iii) the sale, lease, transfer or other disposition of machinery, parts and equipment no longer used or useful in the conduct of the business of Borrower or any of its Subsidiaries;

(iv) the sale, lease or transfer of property or assets between Borrower and its Subsidiaries, so long as any Liens of Lender with respect to such property or assets remain in full force and effect and fully perfected after giving effect to such transaction; and

(v) any other sale, lease or transfer of property or assets not to exceed 5% of Consolidated Tangible Net Worth in the aggregate in any fiscal year (measured as of the end of the preceding fiscal year);

provided, that in each case (other than with respect to clause (iv) above) (A) at least 75% of the consideration received therefor by Borrower or any such Subsidiary shall be in the form of cash or Cash Equivalents, (B) after giving effect to the sale, lease, transfer or other disposition of such property or assets and the repayment of Indebtedness (if any) with the proceeds thereof, Borrower shall be in compliance on a Pro Forma Basis with the financial covenants set forth in Section 5.9 hereof and shall be in compliance with all other terms and conditions of this Agreement and (C) no Event of Default shall exist or shall result from such sale, lease, transfer or other disposition of property or assets; or

(b) without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed by Lender, (i) purchase, lease or otherwise acquire the property or assets of any Person, except (A) as part of a Permitted Acquisition or (B) purchases or other acquisitions of inventory, materials, property and equipment in the ordinary course of business which are not

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limited or prohibited by this Agreement, or (ii) enter into any transaction of merger or consolidation, except for (A) Permitted Investments and Permitted Acquisitions, and (B) the merger or consolidation of a Subsidiary with and into Borrower; provided that Borrower will be the surviving corporation.

Section 6.6 Advances, Investments and Loans.

Borrower will not, and will not permit any Domestic Subsidiary to, lend money or extend credit or make advances to any Person, or purchase or acquire any Capital Stock, obligations or securities of, or any other interest in, or make any capital contribution to, any Person, except for Permitted Investments and Permitted Acquisitions.

Section 6.7 Transactions with Affiliates.

Except as permitted in subsection (vi) of the definition of Permitted Investments, Borrower will not, and will not permit any Subsidiary to, enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any officer, director, shareholder or Affiliate other than on terms and conditions substantially as favorable as would be obtainable in a comparable arm's-length transaction with a Person other than an officer, director, shareholder or Affiliate.

Section 6.8 Ownership of Subsidiaries; Restrictions.

Borrower will not, and will not permit any Subsidiary to, create, form or acquire any Subsidiaries, except for wholly-owned Subsidiaries. Borrower will not, and will not permit any Subsidiary to, sell, transfer, pledge or otherwise dispose of any Capital Stock or other equity interests in any of its Subsidiaries, nor will it, or permit any Subsidiary to, issue, sell, transfer, pledge or otherwise dispose of any of its Capital Stock or other equity interests, except as required by the Credit Documents or pursuant to a transaction permitted by Section 6.5(a)(iv).

Section 6.9 Fiscal Year; Organizational Documents; Material Contracts.

Borrower will not, and will not permit any of its Subsidiaries to, change its fiscal year. Borrower will not, and will not permit any of its Subsidiaries to, amend, modify or change their articles of incorporation (or corporate charter or other similar organizational document), operating agreement or bylaws (or other similar document) in any material respect without the prior written consent of Lender. Borrower will not, and will not permit any of its Subsidiaries to, without the prior written consent of Lender, (a) (i) change its state of incorporation or organization, without providing thirty (30) days prior written notice to Lender and without filing (or confirming that Lender has filed) such financing statements and amendments to any previously filed financing statements as Lender may reasonably require, or (ii) change its registered legal name, without providing thirty (30) days prior written notice to Lender and without filing (or confirming that Lender has filed) such financing statements and amendments to any previously filed financing statements as Lender may require, (b) amend, modify, cancel or terminate or fail to renew or extend or permit the amendment, modification, cancellation or termination of any of the Material Contracts (other than in the ordinary course of business), except in the event that such amendments, modifications, cancellations or terminations could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect,

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(c) have more than one state of incorporation, organization or formation or (d) change its accounting method (except in accordance with GAAP) in any manner adverse to the interests of Lender.

Section 6.10 Limitation on Restricted Actions.

(a) Borrower will not, and will not permit any Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Person to (i) pay dividends or make any other distributions to Borrower on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to Borrower, (iii) make loans or advances to Borrower, (iv) sell, lease or transfer any of its properties or assets to Borrower, or (v) act as a guarantor and pledge its assets pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof, or amend or otherwise modify the Credit Documents, except (in respect of any of the matters referred to in clauses (i)-(iv) above) for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Credit Documents, (B) Legal Requirements, (C) any document or instrument governing Indebtedness incurred pursuant to Section 6.1(c), provided that any such restriction contained therein relates only to the asset or assets leased or acquired in connection therewith or (D) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien.

(b) Borrower will not, and will not permit any Subsidiary to, directly or indirectly, enter into any Indebtedness or other agreement with financial covenants or other restrictions on Borrower or such Subsidiary which are more restrictive, in the reasonable determination of Lender, than the financial covenants and other restrictions contained herein.

Section 6.11 Restricted Payments.

Borrower will not, and will not permit any Subsidiary to, directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment if, as a result of such action, Borrower would fail to comply, on a Pro Forma Basis, with any applicable financial covenant set forth in Section 5.9.

Section 6.12 Sale Leasebacks.

Borrower will not, and will not permit any Subsidiary to, directly or indirectly, become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which Borrower or any of its Subsidiaries has sold or transferred or is to sell or transfer to a Person which is not Borrower or a Subsidiary thereof or (b) which Borrower or any of its Subsidiaries intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by Borrower or any of its Subsidiaries to another Person which is not Borrower or Subsidiary thereof in connection with such lease.

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Section 6.13 No Further Negative Pledges.

Borrower will not, and will not permit any Subsidiary to, enter into, assume or become subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security to secure obligations under such agreement if security is given for some other obligation, except (a) pursuant to this Agreement and the other Credit Documents, (b) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 6.1(c), provided that any such restriction contained therein relates only to the asset or assets leased or acquired in connection therewith, and (c) in connection with any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien.

Section 6.14 Modifications of Subordinated Indebtedness.

Borrower will not, and will not permit any Subsidiary to, after the issuance thereof, amend or modify (or permit the amendment or modification of) any of the terms of any Subordinated Debt of Borrower or Subsidiary if such amendment or modification would add or change any terms in a manner adverse to Lender, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto or change any subordination provision thereof.

Section 6.15 Foreign Asset Purchases.

Borrower will not, and will not permit any Subsidiary to, use any of the Advances in excess of \$10,000,000 to purchase foreign assets or direct an Advance in excess of \$10,000,000 to any one or more of Borrower's Foreign Subsidiaries.

Section 6.16 Transfer or Change of Location of Collateral.

Borrower will not, after the date on which the Accordion Facility is Activated, transfer or permit the transfer to another location not currently owned or leased by Borrower, any Collateral or the books and records related to any of the Collateral. After the date on which the Accordion Facility is Activated, Borrower shall provide, at any time and from time to time, written lists of the location of the Collateral within thirty (30) days after Lender's request therefor.

Section 6.17 Change of Borrower's Name.

Borrower will not change Borrower's name without giving twenty (20) days prior written notice to Lender.



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**ARTICLE VII**  
**EVENTS OF DEFAULT**

Section 7.1 Events of Default.

An Event of Default shall exist upon the occurrence of any of the following specified events (each an “Event of Default”):

(a) Payment. (i) Borrower shall fail to pay any principal or interest on any Facility when due (whether at maturity, by reason of acceleration or otherwise) in accordance with the terms hereof; or (ii) Borrower shall fail to reimburse Lender for any LOC Obligations when due (whether at maturity, by reason of acceleration or otherwise) in accordance with the terms hereof; or (iii) Borrower shall fail to pay any or other Borrower Obligation or any fee or other amount payable hereunder when due (whether at maturity, by reason of acceleration or otherwise) in accordance with the terms hereof; or

(b) Misrepresentation. Any representation or warranty made or deemed made herein, in the Security Documents or in any of the other Credit Documents or which is contained in any certificate, document or financial or other statement furnished at any time under or in connection with this Agreement shall prove to have been incorrect, false or misleading in any material respect on or as of the date made or deemed made; or

(c) Covenant Default. (i) Borrower shall fail to perform, comply with or observe any term, covenant or agreement applicable to it contained in Sections 5.1, 5.2, 5.4, 5.7 or 5.9, 5.11 or Article VI hereof; or (ii) Borrower shall fail to comply with any other covenant, contained in this Agreement or the other Credit Documents or any other agreement, document or instrument between Borrower and Lender or executed by Borrower in favor of Lender (other than as described in Sections 7.1(a) or 7.1(c)(i) above), and in the event such breach or failure to comply is capable of cure, is not cured within the time prescribed therein, or to the extent not prescribed therein, within thirty (30) days of its occurrence; or

(d) Indebtedness Cross-Default. Borrower or any of its Subsidiaries shall (i) default in any payment of principal of or interest on any Indebtedness (other than the Indebtedness hereunder) in a principal amount outstanding of at least \$500,000.00 in the aggregate for Borrower and its Subsidiaries beyond the period of grace (not to exceed 30 days), if any, provided in the instrument or agreement under which such Indebtedness was created; or (ii) default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Indebtedness hereunder) in a principal amount outstanding of at least \$500,000.00 in the aggregate for Borrower and its Subsidiaries or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or to be repurchased, prepaid, deferred or redeemed (automatically or otherwise); or (iii) default beyond the period of grace (not to exceed 30 days) in the observance or performance of any material agreement or condition under any Hedging Agreement that is a Bank Product; or

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(e) **Bankruptcy Default.** (i) Borrower or any of its Subsidiaries shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to have it judged bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or any of its Subsidiaries shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any of its Subsidiaries any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against Borrower or any of its Subsidiaries any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of their assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Borrower or any of its Subsidiaries shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or any of its Subsidiaries shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(f) **Judgment Default.** One or more judgments, orders, decrees or arbitration awards shall be entered against Borrower or any of its Subsidiaries involving in the aggregate a liability (to the extent not covered by third-party insurance) of \$500,000.00 or more and all such judgments, orders, decrees or arbitration awards shall not have been paid and satisfied, vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof or any injunction, temporary restraining order or similar decree shall be issued against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect; or

(g) **ERISA Default.** (i) Any Person shall engage in any “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any ERISA Plan, (ii) any “accumulated funding deficiency” (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan (other than a Permitted Lien) shall arise on the assets of Borrower, any of its Subsidiaries or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lender, likely to result in the termination of such ERISA Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) Borrower, any of its Subsidiaries or any Commonly Controlled Entity shall, or in the reasonable opinion of Lender is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or

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Reorganization of, any Multiemployer Plan or (vi) any other similar event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could have a Material Adverse Effect; or

(h) Change of Control. There shall occur a Change of Control; or

(i) Invalidity of Credit Documents. Any Credit Document shall fail to be in full force and effect or, once the Accordion Facility has been Activated, shall fail to give Lender and/or Lender the security interests, liens, rights, powers and privileges purported to be created thereby (except as such documents may be terminated or no longer in force and effect in accordance with the terms thereof, other than those indemnities and provisions which by their terms shall survive), or Borrower or any Person acting by or on behalf of Borrower shall deny or disaffirm any of Borrower's Obligations, or any Lien shall fail to be perfected on a material portion of the Collateral; or

(j) Uninsured Loss. Any uninsured damage to or loss, theft or destruction of any assets of Borrower or any of its Subsidiaries shall occur that is in excess of \$5,000,000.00; or

(k) Subordinated Debt. The subordination provisions under any Subordinated Debt shall cease to be in full force and effect or shall cease to give Lender the rights, powers and privileges purported to be created thereby; or

(l) Classification as Senior Debt. Borrower's Obligations shall cease to be classified as "Senior Indebtedness," "Designated Senior Indebtedness" or any similar designation under any Subordinated Debt instrument.

If a Default shall have occurred under the Credit Documents, then such Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Credit Documents or is otherwise expressly waived by Lender (in its sole and absolute discretion); and once an Event of Default occurs under the Credit Documents, then such Event of Default will continue to exist until it is expressly waived by Lender.

#### Section 7.2 Acceleration; Remedies.

Upon the occurrence and during the continuation of an Event of Default, then, and in any such event, (a) if such event is a Bankruptcy Event, automatically Lender's obligation to make Advances shall immediately terminate and the Facilities (with accrued interest thereon), and all other Borrower Obligations under the Credit Documents (including, without limitation, the maximum amount of all contingent liabilities under Letters of Credit) shall immediately become due and payable, and Borrower shall immediately pay to Lender cash collateral as security for the LOC Obligations for subsequent drawings under then outstanding Letters of Credit in an amount equal to the maximum amount which may be drawn under Letters of Credit then outstanding and (b) if such event is any other Event of Default, any or all of the following actions may be taken: Lender may (i) by notice to Borrower declare all obligations of Lender to make Advances to be terminated forthwith, whereupon such obligations shall immediately terminate, (ii) by notice of default to Borrower, declare the Facilities (with accrued interest thereon) and all other Borrower's Obligations under the Credit Documents (including without

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limitation the maximum amount of all contingent liabilities under Letters of Credit) to be due and payable forthwith and direct Borrower to pay to Lender cash collateral as security for the LOC Obligations for subsequent drawings under then outstanding Letters of Credit an amount equal to the maximum amount of which may be drawn under Letters of Credit then outstanding, whereupon the same shall immediately become due and payable, (iii) if deemed reasonably necessary by Lender, hire, at the expense of Borrower, one or more consultants and Borrower agrees to cooperate with such consultants, (iv) exercise any rights or remedies of Lender or Lender under this Agreement or any other Credit Document, including, without limitation, any rights or remedies with respect to any Collateral, and (v) exercise any rights or remedies available to Lender or Lender under applicable law.

## ARTICLE VIII

### THE CONSTRUCTION FACILITY

#### Section 8.1 Construction Advances.

Subject to the provisions of this Agreement, from time to time as work on the Project progresses, Lender shall make Construction Advances to Borrower, in an aggregate principal amount not to exceed the Budget, in the amounts specified in Section 8.4, for the purpose of paying Construction Costs and Non-Construction Costs incurred in connection with the Project. Borrower agrees that all Construction Advances will be made by such means as Lender may from time to time designate; provided, however, that Lender shall not be required to see to the proper application of any such Construction Advance and shall not incur any liability for any failure of such proper application. Further, following an Event of Default and for so long as such Event of Default remains uncured (if cure thereof is accepted by Lender), Lender reserves the right to disburse Construction Advances directly to contractors and subcontractors and no further direction or authorization from Borrower shall be necessary following an Event of Default to warrant disbursement directly to the contractors and subcontractors, and all disbursements to the contractors and subcontractors shall satisfy *pro tanto* the obligations of Lender hereunder. As a condition precedent to the Initial Construction Disbursement, Borrower shall furnish to Lender a complete construction schedule and a current trade cost breakdown, itemized as to trade items, trade descriptions.

#### Section 8.2 Stored Materials.

Lender shall from time to time make, upon the request of Borrower, Construction Advances for major building materials, furniture, fixtures and equipment (the "Materials"), which are to be incorporated into the Improvements but which, at the time of the Construction Advance, are stored on site or at the manufacturing or a warehouse storage site and are not yet affixed to or incorporated into the Improvements, provided that:

(a) The Materials are securely stored and protected from and bonded or insured against theft, vandalism and the elements to Lender's reasonable satisfaction, and provided further that the aggregate amount advanced for materials stored at any time shall not exceed \$1,000,000.00;

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(b) All conditions for a Construction Advance under this Agreement are satisfied;

(c) If not yet delivered to the Land, the Materials are fully manufactured and stored in a designated area which effectively segregates the Materials from all other materials or equipment located at the manufacturing or warehouse storage site;

(d) The storer shall have agreed with Lender that Lender and/or Inspecting Engineer may inspect the Materials at any time;

(e) Lender has received, in respect of each requested Construction Advance, invoices for the full price of the Materials.

#### Section 8.3 Requests for Advances.

To receive Construction Advances, Borrower shall submit each Draw Request to Lender not more frequently than once monthly on or before the tenth (10<sup>th</sup>) day of each month. Upon receipt of the Draw Request and the documentation required hereby in connection therewith, Lender may cause an inspection to be made of the progress of construction. If Lender elects not to cause an inspection to be made or otherwise determines as a result of any such inspection that construction is proceeding diligently and in accordance with the Plans approved in the manner required by this Agreement, and if all conditions to such Construction Advance as hereinafter provided shall have been fulfilled, Lender will make the Construction Advance on or before the twentieth (20<sup>th</sup>) day of the same month, upon and subject to all of the terms and conditions of this Agreement, including, without limitation, the following:

(a) In no event shall Lender be required to advance any Construction Facility proceeds for any work performed or materials delivered after the Construction Facility Conversion Date. No Draw Request shall be funded prior to the date upon which Lender has received and approved such Draw Request and all documentation required hereby, and all disbursements will be made to Borrower in a manner determined by Lender or, with Lender's approval, as Borrower directs in writing. Borrower, in making payment to such party or parties as shall have supplied labor, material or service, shall accurately designate the items of account and the contract for which payment is being made. All Construction Facility proceeds will be considered to have been advanced to and received by Borrower upon, and interest on the Construction Facility proceeds will be payable by Borrower from and after, the advance of the Construction Facility proceeds as aforesaid; and

(b) All Construction Advances shall be used only for the payment of line items as shown in the Budget (as the same may be adjusted from time to time with the prior written approval of Lender) and shall be evidenced by the Construction Note and this Agreement.

#### Section 8.4 Disbursement Amounts.

Subject to the allocations contained in the Budget and the limitations on disbursements that are hereinafter set forth, each Construction Advance shall be made in an amount equal to the percentage of work completed and incorporated into the Improvements, multiplied by the total allocation of Construction Facility proceeds available for such work pursuant to the Budget, plus the amount allocable to Materials which qualify for disbursement under Section 8.2, less

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amounts previously advanced for such work and/or Materials and less the applicable Holdback, up to a maximum of one hundred percent (100%) of all approved Construction Costs incurred by Borrower (excluding the value of the Land) plus approved Non-Construction Costs incurred by Borrower. Notwithstanding the foregoing, the aggregate principal amount to be disbursed shall not exceed the amount that results in the lesser of (i) a loan-to-cost ratio for the Project of not more than eighty percent (80%) based on the cost breakdown approved by Lender and/or Lender's inspecting engineer, or (ii) a loan-to-value ratio for the Project of seventy-five percent (75%) based on the "as completed" fair market value of the Project, as determined the Appraisal. Disbursement of Construction Advances shall be subject to the following additional provisions:

(a) There shall be withheld from the amount of each Advance of Construction Costs a sum (the "Holdback") equal to ten percent (10%) of such Construction Costs. All Holdback amounts will be disbursed by Lender at the time of the Final Construction Disbursement; and

(b) Subject to the terms and conditions of this Agreement, Lender will make disbursements to pay actual costs approved by Lender and shown on the Budget of (i) labor performed on, and equipment and Materials incorporated into, the Improvements, and (ii) developing the Project. At no time shall the undisbursed balance of the Construction Facility (taking into account all Construction Facility proceeds theretofore advanced by Lender and all construction theretofore completed) be less than the sum of (y) the amount allocated by Lender to complete the construction of the Improvements and (z) the aggregate amount of Holdbacks to date.

Section 8.5 Conditions to Initial Construction Disbursement.

Notwithstanding anything to the contrary contained in this Agreement, Lender shall have no obligation to make the Initial Construction Disbursement unless and until:

(a) The conditions set forth in Subsections 4.3(a), (b) and (c) are satisfied;

(b) the Construction Contract and the Plans have been submitted to and approved by Lender and are in full force and effect;

(c) Lender has received a list of all subcontracts and, to the extent required by Lender, Lender has also received and approved the subcontracts with the subcontractors as to form, substance and the qualifications of the subcontractors thereunder;

(d) in Lender's determination, there remain sufficient undisbursed and unallocated proceeds of the Construction Facility to fully fund the construction and equipping of the Project to completion in accordance with the approved Plans;

(e) unless waived by Lender, until Lender has received each of the following documents, items and things, all of which shall be satisfactory in form and substance to Lender:

(i) a detailed cost breakdown for construction of the Improvements;

(ii) evidence that Completion of Improvements can be achieved for a total cost that does not exceed the amount allocated thereto in the Budget (which evidence shall include, but will not necessarily be limited to, a satisfactory plan and cost review prepared by Inspecting Engineer);

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(iii) a building timetable verifying that Completion of Improvements can be achieved by the Construction Facility Conversion Date;

(iv) approval by Inspecting Engineer of the final Plans and cost breakdown for construction of the Improvements;

(v) evidence that all licenses, permits, consents, approvals and authorizations for the construction of the Improvements, including without limitation the building permit(s), are in full force and effect and that no notices of violation or revocation with respect thereto have been received;

(vi) evidence that (A) the Notice of Commencement has been duly executed and recorded and (B) Borrower has caused to be posted on the Land a certified copy of the recorded Notice of Commencement;

(vii) a certificate of insurance or other evidence that the builder's risk insurance required by Section 5.5(b), above, is in full force and effect with respect to the Improvements;

(viii) a current boundary survey of the Land; and

(ix) a current Appraisal of the Project on an "as completed" basis.

#### Section 8.6 Subsequent Disbursements.

Once the Initial Construction Disbursement has been made by Lender, Lender shall make further Construction Advances no more often than monthly (including the Final Construction Disbursement) upon receipt of a Draw Request, subject to the continuing satisfaction of the conditions set forth in Section 8.5 and to the following additional conditions:

(a) Lender shall have received such lien waivers, releases and affidavits with respect to all prior disbursements and all prior work, from contractors, subcontractors, sub-subcontractors, materialmen and other potential lienors (including without limitation Borrower's Engineer), as may be reasonably required by Lender;

(b) All licenses, permits, consents, approvals and authorizations for the construction and development of the Improvements, or so much thereof as to which construction has been commenced, shall be in full force and effect and no notices of violation or revocation with respect to any thereof shall have been received;

(c) Lender shall have received such updates or recertifications to the survey of the Land as Lender may reasonably require, including, without limitation, a foundation survey when the foundation of the Improvements has been completed;

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(d) Lender shall have received verification from the Inspecting Engineer, based upon a visual inspection, that the percentage or stage of completion is as represented on the Draw Request, and that all construction to date is in accordance with the approved Plans; and

(e) Lender shall have received such other instruments, documents and certificates as Lender may reasonably request.

Section 8.7 Final Construction Disbursement.

Lender shall make the final Construction Advance for payment of Construction Costs, and shall release any Holdbacks that have not been theretofore released (collectively, the "Final Construction Disbursement"), upon Lender's receipt of the following documents, items and things, all of which shall be satisfactory in form and substance to Lender:

(a) Certificates of the Contractor and Inspecting Engineer (i) stating that the Improvements have been fully completed in accordance with the Plans approved by Lender and all applicable building, fire, safety, environmental and similar codes, and (ii) containing such other details concerning the construction of the Improvements as Lender may reasonably request, together with verification of such statements and information by the Inspecting Engineer;

(b) An affidavit from the Contractor, together with recordable lien waivers and releases of lien satisfactory to Lender from all contractors, subcontractors, sub-subcontractors, materialmen and all other persons entitled to enforce a lien against the Project under the Florida Construction Lien Law with respect to work completed to the date of the Final Construction Disbursement (which may be conditioned upon receipt of a specified portion of the proceeds of the Final Construction Disbursement), and such additional affidavits and assurances as may be reasonably required by Lender to determine that the Project will be free and clear of mechanics' liens;

(c) Evidence that all certificates or permits required for the use and occupancy of the Improvements have been duly issued by the appropriate Governmental Authority, together with copies of all such certificates and permits;

(d) An as-built survey locating all Improvements, certified for the benefit of Borrower and Lender, showing that no encroachments exist over the boundaries of the Land or over any set-back or right-of-way lines; and

(e) As-built plans and specifications for the Improvements, certified by Borrower's Engineer.

Section 8.8 Additional Conditions to Disbursement.

Anything contained herein, or in any other agreement between Borrower and Lender, to the contrary notwithstanding, Lender shall not be obligated to make any Construction Advance hereunder that it otherwise would be obligated to make if, on the date such Construction Advance is to be made:

(a) Borrower shall be unwilling or unable to pay for that portion of Construction Costs and Non-Construction Costs then due and payable that will not be covered by such Construction Advance;



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(b) there is of record any mortgage, lien, charge or other encumbrance on the Project or the Properties;

(c) Any portion of the Improvements theretofore constructed shall have been destroyed or materially damaged by fire or other casualty and (i) Lender shall not have received insurance proceeds sufficient in the judgment of Lender to effect the satisfactory restoration of the Improvements and to permit the completion thereof on or before the Construction Facility Conversion Date, or (ii) Borrower shall not have agreed to fund any deficit, as reasonably estimated by Lender and in a manner satisfactory to Lender, in order to effect the satisfactory restoration of the affected Improvements and to permit the completion thereof on or before the Construction Facility Conversion Date;

(d) Lender shall reasonably determine that (i) the undisbursed portion of the Construction Facility is insufficient to fully complete the Improvements in a lien-free condition and to pay or provide for all reasonably anticipated Non-Construction Costs and (ii) Borrower has failed to provide Lender with satisfactory evidence of Borrower's willingness and ability to provide the additional amount necessary to cover such shortfall; or

(e) Any of the conditions set forth in Subsection 4.3(a), Subsection 4.3(b) or Subsection 4.3(c) is not satisfied.

**ARTICLE IX**  
**MISCELLANEOUS**

Section 9.1 Modification, Waiver, Consent.

No purported modification or waiver of any provision of this Agreement, and no purported consent to any departure by Borrower from strict compliance with any of its obligations hereunder, shall be effective in any event unless the same is in writing and signed by Lender, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on Borrower in any event not specifically required of Lender hereunder shall not entitle Borrower to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder. Any Advance of proceeds of any of the Facilities hereunder shall not constitute a waiver of any of the conditions of Lender's obligations to make further Advances nor, in the event Borrower is unable to satisfy any such condition, shall any such waiver have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default as hereinabove provided. From and after the occurrence of any Event of Default, Lender may accept or reject any offer or undertaking by Borrower to cure same in the exercise of Lender's sole discretion.

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Section 9.2 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) If to Borrower:

Sun Hydraulics Corporation  
1500 West University Parkway  
Sarasota, FL 34243  
Attention: Tricia Fulton, Chief Financial Officer  
Telephone: (941) 362-1232  
Fax: (941) 362-1268  
Email: triciaf@sunhydraulics.com

(ii) If to Lender:

Fifth Third Bank (Tampa Bay)  
201 East Kennedy Boulevard, Suite 1800  
MD T201KA  
Tampa, FL 33602  
Attention: Andrew D. Hahn, Vice President  
Telephone: (813) 306-2448  
Fax: (813) 306-2529  
Email: Andrew.Hahn@53.com

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Lender. Lender and Borrower may, in their discretion, agree to accept notices and other communications hereunder by electronic communications pursuant to procedures approved by them, provided that approval of such procedures may be limited to particular notices or communications.

Unless Lender otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the

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recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

Section 9.3 No Waiver; Cumulative Remedies.

No failure to exercise and no delay in exercising, on the part of Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 9.4 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the Notes and the making of the Extensions of Credit, provided that all such representations and warranties shall terminate on the date upon which all obligations of Lender to make Advances hereunder have been terminated and all amounts owing hereunder and under any Notes have been paid in full.

Section 9.5 Payment of Expenses and Taxes; Indemnity.

(a) Costs and Expenses. Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by Lender and its Affiliates (including the reasonable fees, charges and disbursements of counsel for Lender), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by Lender (including the fees, charges and disbursements of any counsel for Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Credit Documents, including its rights under this Section, or (B) in connection with the Advances made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Advances or Letters of Credit.

(b) Indemnification by Borrower. Borrower shall indemnify Lender and each Related Party of Lender (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, penalties, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party arising out of,

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in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions, (ii) any Advance or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by Borrower or any of its Subsidiaries, or any liability under Environmental Law related in any way to Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, brought by a third party, and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are the result of the gross negligence or willful misconduct of such Indemnitee. This paragraph (b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from non-Tax claim.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, Borrower shall not assert, and Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the Transactions, any Facility or Letter of Credit or the use of the proceeds thereof. To the fullest extent permitted by applicable law, Lender shall not assert, and Lender hereby waives, any claim against Borrower, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the Transactions, any Facility or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the Transactions.

(d) Payments. All amounts due under this Section shall be payable promptly/not later than five (5) days after demand therefor.

(e) Survival. The agreements contained in this Section shall survive the termination of the Commitments and the repayment, satisfaction or discharge of Borrower's Obligations.

#### Section 9.6 Successors and Assigns: Assignment.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, and participants of Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

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(b) Assignments. Lender, in the exercise of its sole discretion, may (i) assign this Agreement and the other Credit Documents, including all of its rights hereunder and thereunder, and cause the assignee or any subsequent assignee to make any Advances not made at the time of the assignment, or (ii) participate one or more of the Facilities with one or more other lending institutions; and, in either such event, all the provisions of this Agreement shall continue to apply to the Facilities. Lender shall have the right to disclose to any prospective assignee or participant in one or more of the Facilities such information regarding any Borrower as Lender may deem necessary or expedient. Borrower shall have no right to assign this Agreement or the proceeds to be advanced hereunder without Lender's prior written consent. Notwithstanding the foregoing, in the event Borrower does make an assignment of this Agreement or its rights hereunder, Lender may, at Lender's option, continue to make Advances hereunder to Borrower or Borrower's successors in interest, and all sums so advanced shall be deemed Advances made in pursuance and not in modification hereof and shall be evidenced by the Notes and secured by the Security Documents, if any.

Section 9.7 Right of Set off.

(a) If an Event of Default shall have occurred and be continuing, Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Lender or any such Affiliate to or for the credit or the account of Borrower against any and all of the obligations of Borrower now or hereafter existing under this Agreement or any other Credit Document to Lender, irrespective of whether or not Lender shall have made any demand under this Agreement or any other Credit Document and although such obligations of Borrower may be contingent or unmatured or are owed to a branch or office of Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that Lender or its Affiliates may have. Lender agrees to notify Borrower promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

(b) Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of setoff and counterclaim with respect to such participation as fully as if such lender were a direct creditor of Borrower in the amount of such participation.

Section 9.8 Table of Contents and Section Headings.

The table of contents and the Section and subsection headings herein are intended for convenience only and shall be ignored in construing this Agreement.

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Section 9.9 Counterparts; Effectiveness.

(a) This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by Borrower and Lender and Lender shall have received copies hereof and thereof (telexed or otherwise), and thereafter this Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or email shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 9.10 Severability.

Any provision of this Agreement 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 hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.11 Integration.

This Agreement and the other Credit Documents represent the agreement of Borrower and Lender with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by Lender or Borrower relative to the subject matter hereof not expressly set forth or referred to herein or therein.

Section 9.12 Governing Law.

This Agreement and the Notes and the rights and obligations of the parties under this Agreement and the Notes shall be governed by, and construed and interpreted in accordance with, the law of the State of Florida.

Section 9.13 Consent to Jurisdiction and Service of Process.

All judicial proceedings brought against Borrower with respect to this Agreement, any Note or any of the other Credit Documents may be brought in any state or federal court of competent jurisdiction in the State of Florida, and, by execution and delivery of this Agreement, Borrower accepts, for itself and in connection with its properties, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and irrevocably agrees to be bound by any final judgment rendered thereby in connection with this Agreement from which no appeal has been taken or is available. Borrower irrevocably agrees that all service of process in any such proceedings in any such court may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to it at its address set forth in Section 9.2 or at such other address of which Lender shall have been notified pursuant thereto, such service being hereby acknowledged by Borrower to be effective and binding service in every respect. Borrower and Lender irrevocably waives any objection, including, without limitation, any objection to the laying of venue or based on the grounds of *forum non*

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*conveniens* which it may now or hereafter have to the bringing of any such action or proceeding in any such jurisdiction. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of Lender to bring proceedings against Borrower in the court of any other jurisdiction.

Section 9.14 Acknowledgments.

Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of each Credit Document;

(b) Lender has no fiduciary relationship with or duty to Borrower arising out of or in connection with this Agreement and the relationship between Lender, on one hand, and Borrower, on the other hand, in connection herewith is solely that of debtor and creditor; and

(c) no joint venture exists among Lender and Borrower.

Section 9.15 Waivers of Jury Trial; Waiver of Consequential Damages.

BORROWER AND LENDER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 9.16 Patriot Act Notice.

Lender (for itself and not on behalf of any other party) hereby notifies Borrower that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the Patriot Act.

Section 9.17 Resolution of Drafting Ambiguities.

Borrower acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of this Agreement and the other Credit Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

Section 9.18 Continuing Agreement.

This Credit Agreement shall be a continuing agreement and shall remain in full force and effect until all Borrower Obligations (other than those obligations that expressly survive the termination of this Credit Agreement) have been paid in full and all obligations of Lender to make Advances and Letters of Credit have been terminated. Upon termination, Borrower shall

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have no further obligations (other than those obligations that expressly survive the termination of this Credit Agreement) under the Credit Documents and Lender shall, at the request and expense of Borrower, deliver any Collateral in its possession to Borrower and release any and all Liens on the Collateral; provided that should any payment, in whole or in part, of Borrower's Obligations be rescinded or otherwise required to be restored or returned by Lender, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, then the Credit Documents shall automatically be reinstated and any and all Liens of Lender shall reattach to the Collateral and all amounts required to be restored or returned and all costs and expenses incurred by Lender in connection therewith shall be deemed included as part of Borrower's Obligations.

Section 9.19 Press Releases and Related Matters.

Borrower consents to the publication by Lender of customary advertising material relating to the Transactions using the name, product photographs, logo or trademark of Borrower.

Section 9.20 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each Transaction, Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document) are an arm's-length commercial transaction between Borrower and their Affiliates, on the one hand, and Lender, on the other hand, and Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the Transactions and the other Credit Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, Lender is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person; (c) Lender has not assumed or will assume an advisory, agency or fiduciary responsibility in favor of Borrower with respect to any of the Transactions or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Credit Document (irrespective of whether Lender has advised or is currently advising Borrower or any of its Affiliates on other matters) and Lender has no obligation to Borrower or any of its Affiliates with respect to the Transactions except those obligations expressly set forth herein and in the other Credit Documents; (d) Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower and its Affiliates, and Lender has no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) Lender has not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the Transactions (including any amendment, waiver or other modification hereof or of any other Credit Document) and Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against Lender with respect to any breach or alleged breach of agency or fiduciary duty.



Section 9.21 Responsible Officers.

Lender is authorized to rely upon the continuing authority of the Responsible Officers with respect to all matters pertaining to the Credit Documents including, but not limited to, the selection of interest rates, the submission of requests for Extensions of Credit and certificates with regard thereto. Such authorization may be changed only upon written notice to Lender and evidence, reasonably satisfactory to Lender, of the authority of the Person giving such notice and such notice shall be effective not sooner than five (5) Business Days following receipt thereof by Lender (or such earlier time as agreed to by Lender).

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

BORROWER:

**SUN HYDRAULICS CORPORATION,**  
a Florida corporation

By: /s/ Tricia Fulton  
Name: Tricia Fulton  
Title: CFO

LENDER:

**FIFTH THIRD BANK,**  
a Florida banking corporation

By: /s/ Andrew D. Hahn  
Name: Andrew D. Hahn  
Title: Vice President

## CONSTRUCTION AND TERM NOTE

\$15,000,000.00

As of August 1, 2011

**FOR VALUE RECEIVED, SUN HYDRAULICS CORPORATION**, a Florida corporation, as maker, having an address of 1500 West University Parkway, Sarasota, Florida 34243 ("**Borrower**"), hereby unconditionally promises to pay to the order of **FIFTH THIRD BANK**, an Ohio banking corporation, having its principal place of business at 201 East Kennedy Boulevard, Suite 1800, Tampa, Florida 33602 ("**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of **FIFTEEN MILLION AND 00/100THS DOLLARS** (\$15,000,000.00), or so much thereof as from time to time may be advanced by Lender pursuant to the terms and conditions of the Credit Agreement (defined below), in lawful money of the United States of America, with interest thereon as herein provided, to be paid as provided herein.

**1. CERTAIN DEFINED TERMS**

Capitalized terms utilized herein which are not defined herein but which are defined in that certain Amended and Restated Credit Agreement dated of even date herewith executed by and between Borrower and Lender (the "**Credit Agreement**") shall have the meanings ascribed to such terms in the Credit Agreement.

**2. PAYMENT TERMS**

Principal and interest on this Note shall be due and payable as follows:

(a) The principal amount of this Note from time to time advanced and outstanding shall bear interest at the Applicable Interest Rate in effect from time to time.

(b) Following the initial Advance hereunder and until the Construction Facility Conversion Date, Borrower shall pay all accrued and unpaid interest to Lender, commencing on the first applicable Payment Date after such initial Advance and continuing on each Payment Date thereafter through and including the month in which the Construction Facility Conversion Date occurs.

(c) Commencing on the first Payment Date following the Construction Facility Conversion Date and continuing on each Payment Date thereafter through and including the month in which the Construction Facility Maturity Date occurs, Borrower shall pay monthly installments of principal and accrued interest to Lender, in an amount sufficient to fully amortize the outstanding principal balance of this Note over a fifteen (15) year period in substantially equal monthly payments.

(d) Each payment from Borrower shall be applied as provided in the Credit Agreement.

(e) Lender will invoice Borrower, on a monthly basis, for interest and/or principal due by Borrower to Lender under this Note, and should Borrower fail to pay any such interest and/or principal due on any Payment Date, Lender, at its option and in its sole discretion, may debit any of Borrower's accounts with Lender for the amount of such interest and/or principal due on such Monthly Payment Date.

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(f) The entire outstanding balance of the principal sum and all accrued but unpaid interest thereon and all of Borrower's Obligations with respect to the Construction Facility shall be due and payable from Borrower hereunder in full on the Construction Facility Maturity Date.

(g) Interest shall be computed as provided in the Credit Agreement. Interest so computed shall accrue for each and every day on which any indebtedness remains outstanding hereunder.

(h) Remittances in an amount less than the required amount due under this Note on any Payment Date shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where this Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks.

### **3. DEFAULT AND ACCELERATION**

Upon the occurrence of an Event of Default, the (a) whole of the principal sum of this Note from time to time outstanding, (b) interest, default interest, late charges and any and all other sums, as provided in this Note or the other Credit Documents and (c) all other Borrower Obligations shall, without notice in the case of the occurrence of an Event of Default which is a Bankruptcy Default, or with notice in the case of the occurrence of an Event of Default which is not a Bankruptcy Default, become immediately due and payable at the option of Lender.

### **4. DEFAULT INTEREST**

Borrower hereby agrees that upon the occurrence of an Event of Default, Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal sum of this Note at the Default Rate. The Default Rate shall be computed from the occurrence of the Event of Default until the earlier of the date upon which the Event of Default is cured or the date upon which the Borrower's Obligations are paid in full. This clause, however, shall not be construed as an agreement or privilege to extend any Payment Date, or as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default.

### **5. PREPAYMENT**

The indebtedness evidenced by this Note may be prepaid in whole or in part at any time and from time to time, without penalty.

### **6. SECURITY**

This Note is unsecured.

### **7. SAVINGS CLAUSE**

This Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance due hereunder at a rate which could subject Lender to either civil or criminal liability as a result of such rate being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Note, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of such maximum rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to such

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maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Construction Advances, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread through the full stated term of this Note until payment in full so that the rate or amount of interest on account of the Construction Advances does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Construction Advances for so long as the Construction Advances are outstanding.

#### **8. LATE CHARGE**

Time is of the essence of all provisions of this Note. If any sum payable under this Note is not paid prior to the twentieth (20th) day after the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of (a) five percent (5%) of the unpaid sum or (b) the maximum amount permitted by applicable law to defray the expenses incurred by Lender in handling and processing the delinquent payment and to compensate Lender for the loss of the use of the delinquent payment. This provision shall not be deemed to create a grace period for making payments under this Note and shall not preclude Lender from exercising Lender's rights under Section 3 of this Note.

#### **9. NO ORAL CHANGE**

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

#### **10. WAIVERS**

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any kind, except for notices specifically provided for in the Credit Documents, and no release of any security for the Construction Facility or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note or the other Credit Documents made by agreement between Lender or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower and any other person or entity who may become liable for the payment of all or any part of the Borrower's Obligations. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note or the other Credit Documents. In addition, acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default. If Borrower is a corporation, limited liability company or partnership, the agreements contained herein shall remain in full force and effect and applicable notwithstanding any changes in the shareholders or members or partners comprising, or the officers and directors or managers or general partners relating to, the corporation, limited liability company or partnership, and the term "Borrower" as used herein, shall include any alternative or successor corporation, partnership or limited liability company, but no predecessor corporation or limited liability company or partnership shall be relieved of liability hereunder.

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(Nothing in the foregoing sentence shall be construed as consent to, or a waiver of, any prohibition or restriction on transfers of interests in any partnership, corporation or limited liability company which may be set forth in any of the Credit Documents).

**11. RIGHT OF SETOFF.**

To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law and the Credit Agreement, if an Event of Default shall have occurred and be continuing, to charge or setoff all sums owing on the debt against any and all such accounts, and at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this Section.

**12. TRANSFER**

Lender shall have the absolute right to sell, assign and transfer this Note and all of Lender's rights hereunder and under any or all of the Credit Documents as provided in the Credit Agreement.

**13. WAIVER OF TRIAL BY JURY**

**BORROWER AND LENDER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE CONSTRUCTION FACILITY, THE APPLICATION FOR THE FACILITIES, THIS NOTE OR THE OTHER CREDIT DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS, MEMBERS, MANAGERS OR AGENTS IN CONNECTION THEREWITH.**

**14. APPLICABLE LAW**

This Note shall be governed, construed, applied and enforced in accordance with the laws of the State of Florida and the applicable laws of the United States of America.

**15. COUNSEL FEES**

In the event that it should become necessary to employ counsel to collect or enforce the Borrower's Obligations or to protect or foreclose any security therefor, hereunder or under any of the other Credit Documents, Borrower also agrees to pay all reasonable fees and expenses of Lender, including, without limitation, reasonable attorney's fees actually incurred for the services of such counsel, whether or not suit be brought.

**16. NOTICES**

Any demand, notice or other communication herein or in any of the Loan Documents required or permitted to be given in writing shall be deemed sufficiently given when given in compliance with the Credit Agreement.

**17. MISCELLANEOUS**

(a) Wherever pursuant to this Note (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the discretion of Lender reasonably exercised and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(b) Whenever used, the singular shall include the plural, the plural shall include the singular, and the words "Lender" and "Borrower" shall include their respective successors, assigns and legal representatives.

(c) This "Construction and Term Note" is not secured by a mortgage on Florida real estate; however, this Note is given in partial renewal and replacement of that certain "Renewal and Future Advance Revolving Line of Credit Promissory Note," dated as of August 11, 2005 made by the Borrower in favor of the Lender in the original principal amount of \$35,000,000.00 (the "**Prior Note**") and supersedes in its entirety the obligations of Borrower to Lender thereunder with respect to a \$15,000,000.00 portion of the principal amount of the Prior Note. The obligations of Borrower to Lender under the Prior Note were secured by a certain "Renewed, Amended and Restated Mortgage and Security Agreement" by Borrower in favor of the Lender, counterparts of which were recorded in the Public Records of Manatee County and Sarasota County, Florida. Florida documentary stamp taxes in excess of \$2,450.00 were paid on the indebtedness of Borrower renewed and evidenced by the Prior Note and further partially renewed hereby in connection with the recordation of the "Mortgage, Security Agreement and Assignment of Rents and Leases" dated July 23, 2003, given by Borrower in favor of SouthTrust Bank recorded in Official Records Book 1849, Page 741 of the Public Records of Manatee County, Florida (and subsequently assigned to Lender).

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

BORROWER:

**SUN HYDRAULICS CORPORATION**, a  
Florida corporation

By:                   /s/ Tricia Fulton                    
Tricia Fulton, its Chief Financial Officer

(Corporate Seal)

**AMENDED AND RESTATED  
REVOLVING LINE OF CREDIT NOTE**

**\$15,000,000.00****As of August 1, 2011**

**FOR VALUE RECEIVED, SUN HYDRAULICS CORPORATION**, a Florida corporation, as maker, having an address of 1500 West University Parkway, Sarasota, Florida 34243 ("**Borrower**"), hereby unconditionally promises to pay to the order of **FIFTH THIRD BANK**, an Ohio banking corporation, having its principal place of business at 201 East Kennedy Boulevard, Suite 1800, Tampa, Florida 33602 ("**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of **FIFTEEN MILLION AND 00/100THS DOLLARS** (\$15,000,000.00), or such sums as may be advanced and outstanding from time to time pursuant to the Credit Agreement (defined below), in lawful money of the United States of America, with interest thereon as herein provided, to be paid as provided herein.

This Amended and Restated Revolving Line of Credit Note (this "**Note**") represents a renewal loan made on a revolving credit basis pursuant to that certain "Amended and Restated Credit and Security Agreement" dated of even date herewith to which Borrower and Lender are parties (such Amended and Restated Credit and Security Agreement as originally executed and as same may be amended and modified from time to time being herein referred to as the "**Credit Agreement**"). The principal amount of this Note is to be advanced and/or repaid pursuant to the terms of Credit Agreement. Pursuant to the terms and provisions of the Credit Agreement, Borrower may borrow, repay such borrowings or portions thereof, and reborrow; provided, however, the total principal amount outstanding under this Note at any one time shall never exceed Fifteen Million and No/100 Dollars (\$15,000,000.00).

**1. CERTAIN DEFINED TERMS**

(a) Capitalized terms utilized herein which are not defined herein but which are defined in the Credit Agreement shall have the meanings ascribed to such terms in the Credit Agreement.

**2. PAYMENT TERMS**

Principal and interest on this Note shall be due and payable as follows:

(a) The principal amount of this Note from time to time advanced and outstanding shall bear interest at the Applicable Interest Rate in effect from time to time.

(b) Borrower shall pay all accrued and unpaid interest to Lender, commencing on the first applicable Payment Date after the initial Advance hereunder and continuing on each Payment Date thereafter through and including the month in which the Maturity Date occurs.

(c) Each payment from Borrower shall be applied as provided in the Credit Agreement.

(d) Lender will invoice Borrower, on a monthly basis, for interest and/or principal due by Borrower to Lender under this Note, and should Borrower fail to pay any such interest and/or principal due on any Payment Date, Lender, at its option and in its sole discretion, may debit any of Borrower's accounts with Lender for the amount of such interest and/or principal due on such Monthly Payment Date.

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(e) The entire outstanding balance of the principal sum and all accrued but unpaid interest thereon and all of Borrower's Obligations with respect to the Revolving Facility shall be due and payable from Borrower hereunder in full on the Maturity Date.

(f) Interest shall be computed as provided in the Credit Agreement. Interest so computed shall accrue for each and every day on which any indebtedness remains outstanding hereunder.

(g) Remittances in an amount less than the required amount due under this Note on any Payment Date shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where this Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks.

### **3. DEFAULT AND ACCELERATION**

Upon the occurrence of an Event of Default, the (a) whole of the principal sum of this Note from time to time outstanding, (b) interest, default interest, late charges and any and all other sums, as provided in this Note or the other Credit Documents and (c) all other Borrower Obligations shall, without notice in the case of the occurrence of an Event of Default which is a Bankruptcy Default, or with notice in the case of the occurrence of an Event of Default which is not a Bankruptcy Default, become immediately due and payable at the option of Lender.

### **4. DEFAULT INTEREST**

Borrower hereby agrees that upon the occurrence of an Event of Default, Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal sum of this Note at the Default Rate. The Default Rate shall be computed from the occurrence of the Event of Default until the earlier of the date upon which the Event of Default is cured or the date upon which the Borrower's Obligations are paid in full. This clause, however, shall not be construed as an agreement or privilege to extend any Payment Date, or as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default.

### **5. PREPAYMENT**

The indebtedness evidenced by this Note may be prepaid in whole or in part at any time and from time to time, without penalty.

### **6. SECURITY**

This Note is unsecured.

### **7. SAVINGS CLAUSE**

This Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance due hereunder at a rate which could subject Lender to either civil or criminal liability as a result of such rate being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Note, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of such maximum rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have



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been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Revolving Advances, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread through the full stated term of this Note until payment in full so that the rate or amount of interest on account of the Revolving Advances does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Revolving Advances for so long as the Revolving Advances are outstanding.

#### **8. LATE CHARGE**

Time is of the essence of all provisions of this Note. If any sum payable under this Note is not paid prior to the twentieth (20th) day after the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of (a) five percent (5%) of the unpaid sum or (b) the maximum amount permitted by applicable law to defray the expenses incurred by Lender in handling and processing the delinquent payment and to compensate Lender for the loss of the use of the delinquent payment. This provision shall not be deemed to create a grace period for making payments under this Note and shall not preclude Lender from exercising Lender's rights under Section 3 of this Note.

#### **9. NO ORAL CHANGE**

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

#### **10. WAIVERS**

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any kind, except for notices specifically provided for in the Credit Documents, and no release of any security for the Revolving Facility or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note or the other Credit Documents made by agreement between Lender or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower and any other person or entity who may become liable for the payment of all or any part of the Borrower's Obligations. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note or the other Credit Documents. In addition, acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default. If Borrower is a corporation, limited liability company or partnership, the agreements contained herein shall remain in full force and effect and applicable notwithstanding any changes in the shareholders or members or partners comprising, or the officers and directors or managers or general partners relating to, the corporation, limited liability company or partnership, and the term "Borrower" as used herein, shall include any alternative or successor corporation, partnership or limited liability company, but no predecessor corporation or limited liability company or partnership shall be relieved of liability hereunder. (Nothing in the foregoing sentence shall be construed as consent to, or a waiver of, any prohibition or restriction on transfers of interests in any partnership, corporation or limited liability company which may be set forth in any of the Credit Documents).

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**11. RIGHT OF SETOFF.**

To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law and the Credit Agreement, if an Event of Default shall have occurred and be continuing, to charge or setoff all sums owing on the debt against any and all such accounts, and at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this Section.

**12. TRANSFER**

Lender shall have the absolute right to sell, assign and transfer this Note and all of Lender's rights hereunder and under any or all of the Credit Documents as provided in the Credit Agreement.

**13. WAIVER OF TRIAL BY JURY**

**BORROWER AND LENDER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE REVOLVING FACILITY, THE APPLICATION FOR THE FACILITIES, THIS NOTE OR THE OTHER CREDIT DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS, MEMBERS, MANAGERS OR AGENTS IN CONNECTION THEREWITH.**

**14. AUTHORITY**

Borrower represents that it has full power, authority and legal right to execute and deliver this Note, the Credit Agreement and the other Credit Documents and that this Note, the Credit Agreement and the other Credit Documents constitute valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms.

**15. APPLICABLE LAW**

This Note shall be governed, construed, applied and enforced in accordance with the laws of the State of Florida and the applicable laws of the United States of America.

**16. COUNSEL FEES**

In the event that it should become necessary to employ counsel to collect or enforce the Borrower's Obligations or to protect or foreclose any security therefor, hereunder or under any of the other Credit Documents, Borrower also agrees to pay all reasonable fees and expenses of Lender, including, without limitation, reasonable attorney's fees actually incurred for the services of such counsel, whether or not suit be brought.



**SUN HYDRAULICS CORPORATION**  
**Amendments to 401(K) and ESOP Retirement Plan**

FIRST AMENDMENT

September 22, 2008

(Final Section 415 Limit Regulations)

1. Section 4.10 of the Plan, entitled "Maximum on Annual Additions," is revised effective as of January 1, 2008 by the addition of the following paragraph at the end of such Section 4.10:

"(i) For purposes of this Section 4.10 of the Plan and Section 415(c) of the Code, "415 Compensation" shall be the Participant's Compensation but shall not include any payments the Employer makes to a retired or terminated Participant after the Participant's date of severance from employment (within the meaning of Section 401(k)(2)(B)(i)(I) of the Code) with the Employer, except that for Plan Years beginning on or after January 1, 2008, post-severance payments shall be included in 415 Compensation for purposes of this Section to the extent that such payments:

(i) are made to the Participant within 2-1/2 months after the date of severance from employment with the Employer or, if later, by the end of the limitation year which includes such date of severance;

(ii) would have been paid to the Participant while the Participant continued in employment with the Employer, absent a severance from employment; and

(iii) consist of (A) regular salary or wage payments for services during the Participant's regular employment (including overtime or shift differential, commissions, bonuses, or other similar regularly scheduled components of the Participant's regular pay), (B) payments of vacation pay, sick time or other paid time off accrued during the Participant's active employment with the Employer but not yet paid by the last day of active employment, or (C) military differential pay."

SECOND AMENDMENT

December 16, 2008

(Non-spousal Rollovers)

1. Section 7.13 of the Plan, entitled "Direct Rollover," is revised effective as of January 1, 2009 by the addition of the following paragraph at the end of Subsection 7.13(b)(3):

"(3) Effective for distributions payable after December 31, 2008 as a result of an Employee's death, the term distributee shall also include an individual who is the deceased Employee's designated beneficiary but is not the surviving spouse of the deceased Employee, and a direct trustee-to-trustee transfer to an Individual Retirement Account established on behalf of such non-spousal beneficiary shall be treated as an eligible rollover distribution for purposes of this Section 7.13 and Code Section 402(c), to the extent permitted by Treasury Regulations or other guidance published under section 402(c) of the Code."

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THIRD AMENDMENT

December 22, 2009

(Pension Protection Act)

1. Section 1.11 of the Plan defining the term "Compensation" is amended by adding the following to the end of Section 1.11, effective for Plan Years beginning after December 31, 2008:

"For Plan Years beginning after December 31, 2008, any military differential pay paid to a Participant by the Company shall be treated as Compensation. For this purpose, military differential pay consists of any payments made by the Company to a Participant for periods in which the Participant is on active military duty, representing the difference between (A) the wages the Participant would have received from the Company if the Participant were actively performing services for the Company and (B) the Participant's military compensation."

2. Section 1.37 of the Plan defining the term "Income," is hereby further amended by inserting the following at the end of Subsection 1.37, effective for Plan Years beginning after December 31, 2007:

"For Plan Years beginning after December 31, 2007, notwithstanding anything in the preceding paragraph or elsewhere in this Section 1.37 to the contrary, the requirement that gap period income be allocated pursuant to Treasury Regulations Section 1.401(k)-2(b)(2) shall no longer apply to Excess Aggregate Contributions, Excess Contributions, and Excess Deferred Compensation returned to a Participant. Thus, with respect to such items, the Plan Administrator may exclude gap period income that is allocated to Participants' accounts prior to distribution."

3. Section 7.5 of the Plan, entitled "Distribution of Benefits," is amended by replacing "ninety (90) days" with "180 days (or, prior to January 1, 2008, 90 days)", effective on and after January 1, 2008.

4. Section 7.6 of the Plan, entitled "Distribution of Benefit Upon Death" is amended by inserting the following as a new subsection (f):

"Effective on and after January 1, 2007, if a Participant dies while performing qualified military service [within the meaning of Section 414(u) of the Code], his or her surviving spouse or other Beneficiary shall be entitled to receive the same death benefits from the Plan that would have been payable under this Section 7.6 if the Participant had resumed active employment with the Company immediately prior to the date of his death.

5. Section 7.13 of the Plan, entitled "Direct Rollover," is revised effective as of January 1, 2009 by the addition of the following at the end of Subsection 7.13(b)(2):

"For distributions made after December 31, 2007, an Eligible Retirement Plan shall include a Roth IRA as described in Code Section 408A; however, for taxable years beginning prior to January 1, 2010, the income restrictions that apply to a rollover from a traditional IRA into a Roth IRA will continue to apply."

FOURTH AMENDMENT

December 4, 2010

1. Section 4.14 of the Plan, entitled "Directed Investment Account," is hereby further amended by revising the first sentence of Subsection 4.14(a) to read as follows, effective for Plan Years beginning after December 31, 2010:

"Participants may, subject to a procedure established by the Administrator (the Participant Direction Procedures) and applied in a uniform nondiscriminatory manner, direct the Trustee, in writing (or in such other form which is acceptable to the Trustee), to invest all of their accounts, excluding the Participants' ESOP Accounts, in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures, including providing the Trustee with directions to invest the portions of their account attributable to one or more specified sources or accounts in different assets."

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2. Section 7.4 of the Plan, entitled “Determination of Benefits Upon Termination of Employment” is amended by revising the fourth paragraph of Subsection 7.4(a) to read as follows:

“Effective on and after March 28, 2005 but prior to January 1, 2011, there will be no mandatory lump sum cashout distributions out of this Plan, and during such period notwithstanding any other provision of the Plan, the Participant’s consent to the distribution shall now be required before the Plan may make any immediate lump sum cashout distribution.

FIFTH AMENDMENT

June 7, 2011

1. Section 1.33 of the Plan, defining the term “Section 414(s) Compensation,” is hereby amended to read as follows:

1.33 “414(s) Compensation” means the Participant’s wages and other compensation paid by the Employer for which the Employer is required to furnish the Participant a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Code. The period for determining 414(s) Compensation must be the calendar year ending with or within the Plan Year. An Employer shall further limit the period taken into account to that part of the calendar year in which an Employee was a Participant in the component of the Plan being tested. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.

For Plan Years beginning after December 31, 1996, for purposes of this Section, the family member aggregation rules of Code Section 414(q)(6) (as in effect prior to the Small Business Job Protection Act of 1996) are eliminated.

2. Section 4.5 of the Plan, entitled “Allocation of Contributions and Earnings”, is amended by revising subsection 4.5(j) to read as follows:

“For the purposes of this Section, “415 Compensation” in excess of \$150,000 (or such other amount provided in the Code) shall be disregarded. Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. If “415 Compensation” for any prior determination period is taken into account in determining a Participant’s minimum benefit for the current Plan Year, the “415 Compensation” for such determination period is subject to the applicable annual “415 Compensation” limit in effect for that prior period. Notwithstanding the foregoing, the 415 Compensation of each Participant taken into account for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance

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with Code Section 401(a)(17)(B). For this purpose, in determining the minimum benefit in Plan Years beginning on or after January 1, 1989, the annual “415 Compensation” limit in effect for determination periods beginning before that date is \$200,000 (or such other amount as adjusted for increases in the cost of living in accordance with Code Section 415(d) for determination periods beginning on or after January 1, 1989, and in accordance with Code Section 401(a)(17)(B) for determination periods beginning on or after January 1, 1994). For determination periods beginning prior to January 1, 1989, the \$200,000 limit shall apply only for Top Heavy Plan Years and shall not be adjusted. For any short Plan Year the “415 Compensation” limit shall be an amount equal to the “415 Compensation” limit for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).”

3. Section 4.6 of the Plan, entitled “Actual Deferral Percentage Tests,” is revised by deleting the last paragraph of Subsection 4.6(a), effective for Plan Years beginning on or after January 1, 2002.
4. Section 4.7 of the Plan, entitled “Adjustment to Actual Deferral Percentage Tests,” is revised by deleting subparagraphs 4.7(b)(2) and (4), and renumbering the other subparagraphs of Subsection 4.7(b) accordingly.
5. Section 4.9 of the Plan, entitled “Adjustment to Actual Contribution Percentage Tests,” is revised by deleting subparagraphs 4.9(f)(2) and (4), and renumbering the other subparagraphs of Subsection 4.9(f) accordingly.
6. Section 4.11 of the Plan, entitled “Adjustment for Excess Annual Additions” is revised by replacing the words “... the annual additions under this Plan would cause...” in the first sentence of Subsection 4.11(a) with the words “...the annual additions under this Plan for any limitation year beginning prior to July 1, 2007 would cause...”
7. Article IV of the Plan, entitled “Contributions and Allocations” is amended by adding the following new Section 4.18 at the end thereof:

“4.18 Income Adjustment. Any excess deferred compensation distributed under Section 4.2(f), any excess contributions distributed pursuant to Section 4.7(a) and excess aggregate contributions distributed pursuant to Section 4.9(b) shall be adjusted for any investment income or loss up to the date of the distribution. The investment income or loss attributable to such distributable contributions shall be the sum of (i) the income or loss on such contributions for the Plan Year, plus (ii) the income or loss on such contributions for the gap period, determined under any reasonable method selected by the Plan Administrator. If no other method has been specified by the Plan Administrator, the investment income or loss allocable to such excess contributions shall be the sum of: (1) income or loss allocable to the Participant’s Elective Account (or, for purposes of Section 4.9(b), Account) for the Plan Year multiplied by a fraction, the numerator of which is such Participant’s excess contributions for the Plan Year and the denominator is the Participant’s account balance attributable to elective deferrals (or, for purposes of Section 4.9(b), matching contributions) without regard to any income or loss occurring during such Plan Year; and (2) ten percent of the amount determined under (1) multiplied by the number of whole calendar months between the end of the Plan Year and the date of distribution, counting the month of distribution if distribution occurs after the 15th of such month. Any method used to determine income or loss hereunder shall be used consistently for all Participants in determining the income or loss allocable to

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distributable contributions hereunder and shall be the same method that is used by the Plan in allocating income or loss to Participants' Accounts. For purposes of this paragraph, the "gap period" means the period between the end of the Plan Year and the date of distribution; provided, however, that income or loss for the gap period may be determined as of a date that is no more than seven days before the date of distribution.

For Plan Years beginning after December 31, 2007, notwithstanding anything in the preceding paragraph or elsewhere in this Section 4.18 to the contrary, the requirement that gap period income be allocated pursuant to Treasury Regulations Section 1.401(k)-2(b)(2) shall no longer apply to excess aggregate contributions, excess contributions, and excess deferred compensation returned to a Participant. Thus, with respect to such items, the Plan Administrator may exclude gap period income that is allocated to Participants' accounts prior to distribution."

8. Section 5.2 of the Plan, entitled "Acquisition Loans" is amended by revising Subsection 5.2(c) to read as follows:

"(c) Loan Payment. Repayment of principal and interest on any Acquisition Loan shall be made by the Trustee from contributions made pursuant to Article IV which are designated to be used for the repayment of the Acquisition Loan and may be made pursuant to the provisions of Section 5.10(b) from (i) to the extent permitted by law, cash dividends on Employer Stock acquired with the proceeds of an Acquisition Loan, which are allocated to Participant's ESOP Accounts and earnings, if any, thereon; and (ii) cash dividends on Employer Stock held in the Loan Suspense Account and earnings, if any, thereon. The payments made with respect to an Acquisition Loan by the Trustee during any Plan Year shall not exceed an amount equal to the sum of such contributions and dividends received during the Plan Year or in prior Plan Years less the amount of such loan payments made in prior Plan Years."

Section 5.2 is further amended by adding the following as additional Subsections 5.2(f) and 5.2(g):

"(f) Exclusive Benefit. An Acquisition Loan must be primarily for the benefit of Participants in the Plan.

(g) Notwithstanding any other provision of this Plan to the contrary, the ESOP Trust may not enter in any arrangement granting any other person a put option with respect to Employer Stock except as described in Section 5.6 below, and may not obligate itself to acquire Employer Stock or other securities from a particular stockholder at an indefinite time determined upon the happening of a future event such as the death of the stockholder."

9. Section 5.10, entitled "Distribution of Dividends on Employer Stock" is revised by adding the following as a new Subsection 5.10(c):

"(c) Dividends paid with respect to the shares of Company Stock allocated to a Participant's Company Stock Account may be reinvested in shares of Company Stock in accordance with Section 5.10(a)(ii) or (iii) above only if the portion of the affected Participants' Accounts attributable to the reinvested dividends is 100 percent vested and non-forfeitable."



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10. Section 5.11 of the Plan, entitled "Prohibited Allocations of Securities in an S Corporation," is deleted from the Plan.
11. Section 6.3 of the Plan, entitled "Valuation of Employer Stock," is amended by adding the following new sentence to the end thereof:  
"Notwithstanding the foregoing, in the case of a transaction between the Trust Fund and a disqualified person (within the meaning of Section 4975 of the Code), the value of the Employer Company Stock shall be determined as of the date of the transaction, whether or not this date is a Valuation Date."
12. Section 7.4 of the Plan, entitled "Determination of Benefits Upon Termination," is amended by adding the following as a new subsection 7.4(f):  
"(f) The amount of any Forfeiture from a Participant's Accounts shall first be taken from the unvested portion of the Participant's Accounts other than his ESOP Account. If the Forfeiture of such other Accounts is not sufficient to reduce the fair market value of his unvested interest in his or her Accounts to the percentage of the total balance of his Accounts determined under Subsection (b) above, the remainder of the Forfeiture shall be deducted from the Participant's ESOP Account."
13. Section 8.2 of the Plan, entitled "Termination," is amended by adding the following new Subsection 8.2(c) :  
"(c) Notwithstanding anything in the preceding paragraph to the contrary, amounts held in the Participant's Elective Deferral Account may not be distributed as a result of the termination of the Plan if a successor defined contribution plan is established by the Employer within the period ending twelve months after distribution of all assets from the Plan. For this purpose, a defined contribution plan is not treated as a successor defined contribution plan if the plan is an employee stock ownership plan (as defined in Code Section 4975(e)(7) or 409(a)), a simplified employee pension plan (as defined in Code Section 408(k)), a SIMPLE IRA plan (as defined in Code Section 408(p)), a plan or contract that satisfies the requirements of Code Section 403(b), or a plan that is described in Code Sections 457(b) or 457(f). Furthermore, if at all times during the 24-month period beginning 12 months before the date of the Plan's termination, fewer than 2% of the Participants in the Plan as of the date of Plan termination are eligible under the other defined contribution plan, then the other defined contribution plan is not a successor defined contribution plan."
14. Section 9.3 of the Plan, entitled "Determination of Top Heavy Status for Plan Years Beginning After December 31, 2001" is amended by revising Subsection 9.3(b)(1) to read as follows:  
"Distributions during year ending on the determination date. The present values of accrued benefits and the amounts of account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Code Section 416(g)(2) during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

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SIXTH AMENDMENT

November 14, 2011

1. Section 1.19 of the Plan, defining the term “Eligible Employee,” is hereby amended by revising the third paragraph of such Section 1.19 to read as follows:

Employees of an Affiliated Employer shall not be eligible to participate in this Plan unless such Affiliated Employer has specifically adopted this Plan in writing and becomes a Participating Employer.

2. Section 1.20 of the Plan, defining the term “Employee,” is hereby amended by revising its first sentence to read as follows:

“Employee” means any person who is employed by the Employer or is employed by any other Participating Employer, and excludes any person who is employed as an independent contractor.

3. Article I of the Plan, “Definitions,” is hereby amended by adding a new Section 1.34A to of the Plan, defining the term “HCT Employee”:

1.34A “HCT Employee” means an Employee who is employed by High Country Tek, but has not been employed by the Employer or any other Participating Employer.

4. Article I of the Plan, “Definitions,” is hereby amended by adding a new Section 1.56A to of the Plan, defining the term “Participating Employer”, effective as of January 1, 2012:

1.56A “Participating Employer” means any Affiliated Employer which has specifically adopted this Plan in writing, with the consent of the Company. For this purpose, High Country Tek, Inc. shall become a Participating Employer, effective January 1, 2012.

5. Section 1.57 of the Plan, defining the term “Period of Service,” is hereby amended by revising its first two sentences to read as follows:

“Period of Service” means the aggregate of all periods commencing with the Employee’s first day of employment or reemployment with the Employer or Affiliated Employer and ending on the date a 1-Year Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service for the Employer (or for an HCT Employee, if later, the date High Country Tek first became an Affiliated Employer).

6. Section 1.55 of the Plan, defining the term “Participant’s ESOP Account,” is hereby amended by revising the first portion of its first sentence as follows, effective January 1, 2012:

“Participant’s ESOP Account” means the account established and maintained by the Administrator for each Participant (other than an HCT Employee) with respect to that Participant’s total interest in the Plan...

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7. Section 3.2 of the Plan, entitled "Effective Date of Participation," is amended by adding the following new paragraph to the end thereof, effective as of January 1, 2012:

Any HCT Employee who had already met the eligibility requirements of Section 3.1 as of December 31, 2011 shall become a Participant, effective as of January 1, 2012.

8. Section 4.1 of the Plan, entitled "Formula for Determining Employer Contribution," is amended by adding the following as a new paragraph (f) to the end thereof, effective as of January 1, 2012:

(f) An HCT Employee shall not be considered a Participant eligible for matching contributions pursuant to Section 4.1(b) or for discretionary employer profit sharing contributions pursuant to Section 4.1(c).

9. Section 4.5 of the Plan, entitled "Allocation of Contribution and Earnings," is amended by adding the following paragraph (4) to Subsection 4.5(b), effective as of January 1, 2012:

(4) Notwithstanding the foregoing, an HCT Employee shall be a Participant for purposes of Subsection 4.1(b)(1), but shall not be considered a Participant eligible for employer matching or profit sharing contributions under Subsections 4.1(b)(2) and (3).

**RESTRICTED SHARE AGREEMENT**

**THIS RESTRICTED SHARE AGREEMENT** (the "Agreement"), made effective as of \_\_\_\_\_, between SUN HYDRAULICS CORPORATION, a Florida corporation (the "Corporation"), and \_\_\_\_\_ ("Participant").

**WITNESSETH:**

**WHEREAS**, Participant is an employee of the Corporation and/or a subsidiary of the Corporation ("Subsidiary");

**WHEREAS**, the Corporation has adopted the Sun Hydraulics Corporation 2011 Equity Incentive Plan (the "Plan") in order to provide its officers, employees and directors with incentives to achieve long-term corporate objectives. The Plan was adopted by the Board of Directors on September 9, 2011 and will be submitted for approval by the shareholders of the Company at the Company's 2012 Annual Meeting. This award is made subject to the receipt of shareholder approval of the Plan at the 2012 Annual Meeting and will automatically terminate if such approval is not received.

**WHEREAS**, the Compensation Committee of the Corporation's Board of Directors has granted an award of Restricted Shares (as defined below in Section 1) under the Plan to the Participant on the terms and conditions set forth below;

**NOW, THEREFORE**, in consideration of the various covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Grant of Restricted Shares.

The Corporation hereby grants to Participant a total of \_\_\_\_\_ (\_\_\_\_\_) shares of the common stock, \$.001 par value per share, of the Corporation (the "Restricted Shares"), subject to the transfer restrictions and other conditions set forth in this Agreement.

2. Restrictions.

(a) Participant shall have all rights and privileges of a shareholder of the Corporation with respect to the Restricted Shares, including voting rights and the right to receive dividends paid with respect to such shares, except that the following restrictions shall apply, until such time or times as restrictions lapse under Section 3 of this Agreement:

(i) Participant shall not be entitled to delivery of the certificate or certificates for any of the Restricted Shares until the restrictions imposed by this Agreement have lapsed with respect to those Restricted Shares, at the times defined in Section 3;

(ii) other than regular cash dividends and such other distributions as the Board of Directors may in its sole discretion designate, the Corporation will retain custody of all distributions ("Retained Distributions") made or declared with respect to the Restricted Shares (and such Retained Distributions will be subject to the same restrictions, terms and conditions as are applicable to the Restricted Shares) until such time, if ever, as the Restricted Shares with respect to which such Retained Distributions shall have been made, paid or declared shall have become vested, and such Retained Distributions shall not bear interest or be segregated in separate accounts;

(iii) the Restricted Shares may not be sold, transferred, assigned, pledged or otherwise encumbered or disposed of by Participant before these restrictions have lapsed pursuant to Section 3, except with the consent of the Corporation; and

(iv) the Restricted Shares and Retained Distributions shall be subject to forfeiture upon termination of Participant's employment with the Corporation to the extent set forth in Section 6 below and upon the breach of any restrictions, terms or conditions of this Agreement.

Once any portion of Participant's Restricted Share award has become vested under Section 3, the newly vested shares shall no longer be subject to the preceding restrictions, and shall no longer be considered to be Restricted Shares.

(b) Any attempt to dispose of Restricted Shares in a manner contrary to the restrictions set forth in this Agreement shall be ineffective.

3. When Restrictions Lapse.

Provided that Participant is employed by the Corporation or a Subsidiary on the applicable date, the Restricted Shares shall vest and the restrictions set forth in this Agreement shall lapse with respect to such vested shares as follows:

<u>Date</u>	<u>Vested Shares</u>
_____	_____
_____	_____
_____	_____

or at such earlier time as the restrictions may lapse pursuant to Sections 6 or 8 of this Agreement. The foregoing notwithstanding, in the event of a pending or threatened change in control, in connection with any merger, consolidation, acquisition, separation, reorganization, liquidation or like occurrence in which the Corporation is involved, the Board of Directors may, in its sole discretion, take such actions as permitted under the Plan.

4. Issuance of Stock Certificates for Shares.

The stock certificate or certificates representing the Restricted Shares shall be issued promptly following the execution of this Agreement, and shall be delivered to the Corporate Secretary or such other custodian as may be designated by the Corporation, to be held until the restrictions have lapsed under Section 3. Such stock certificate or certificates shall bear the following legend:

The transferability of this certificate and the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of a Restricted Share Agreement entered into between the registered owner and Sun Hydraulics Corporation. A copy of such Agreement is on file in the offices of, and will be made available for a proper purpose by, the Corporate Secretary of Sun Hydraulics Corporation.

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Contemporaneously with the execution of this Agreement, Employee shall deliver to the Corporation one or more stock powers endorsed in blank relating to the Restricted Shares, which will permit transfer to the Corporation of all or any portion of the Restricted Shares that shall be forfeited or that shall not become vested under the terms of this Agreement.

Once the restrictions imposed by this Agreement have lapsed with respect to any portion of the Restricted Shares, upon the written request of Participant, a stock certificate or certificates for such portion of the Restricted Shares shall be returned and exchanged for new stock certificates without the foregoing legend for the newly vested portion of the Restricted Shares. Upon the written request of Participant, the certificates representing the newly vested shares shall be delivered to Participant (or to the person to whom the rights of Participant shall have passed by will or the laws of descent and distribution) promptly after the date on which the restrictions imposed on such shares by this Agreement have lapsed, but not before Participant has made any tax payment to the Corporation or made other arrangements for tax withholding, as required by Section 5. Once the restrictions imposed by this Agreement have lapsed with respect to all of the Restricted Shares, all certificates held by the Corporation representing the vested shares shall be delivered promptly to Participant (or to the person to whom the rights of Participant shall have passed by will or the laws of descent and distribution), provided that Participant has made any tax payment to the Corporation or made other arrangements for tax withholding, as required by Section 5.

5. Tax Withholding.

Whenever the restrictions on Participant's rights to some or all of the Restricted Shares lapse under Section 3 of this Agreement or upon Participant's filing an election with the Internal Revenue Service pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended, the Corporation shall notify Participant of the amount of tax which must be withheld by the Corporation under all applicable federal, state and local tax laws. Participant agrees to make arrangements with the Corporation to (a) remit a cash payment of the required amount to the Corporation, (b) to authorize the deduction of such amounts from Participant's compensation or (c) to otherwise satisfy the applicable tax withholding requirement in a manner satisfactory to the Corporation.

6. Forfeiture On Termination of Employment.

If the Participant's employment with the Corporation or Subsidiary is terminated for any reason, either by the Corporation or Participant, during the term of this Agreement, any Restricted Shares remaining subject to the restrictions imposed by this Agreement shall be forfeited; provided, however, that in the event of termination by reason of death, permanent total disability, or retirement at or after normal retirement age, any remaining restrictions automatically shall lapse.

7. Restricted Shares Not to Affect Employment.

Neither this Agreement nor the Restricted Shares granted hereunder shall confer upon Participant any right to continued employment with the Corporation or any Subsidiary, and shall not in any way modify or restrict the Corporation's or such Subsidiary's right to terminate such employment.

8. Agreement Subject to the Plan.

This Agreement and the rights and obligations of the parties hereto are subject to and governed by the terms of the Plan as the same may be amended from time to time, the provisions of which are incorporated by reference into this Agreement.

9. Miscellaneous.

(a) In the event of any change or changes in the outstanding Common Stock of the Corporation by reason of any stock dividend, recapitalization, reorganization, merger, consolidation, combination or any similar transaction, the Board of Directors shall adjust the number of shares of Common Stock issued as Restricted Shares under this Agreement, and make any and all other adjustments deemed appropriate by the Board of Directors in such manner as the Board of Directors deems necessary to prevent material dilution or enlargement of the rights granted to Employee.

(b) This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument.

(c) The terms of this Agreement may only be amended, modified or waived by a written agreement executed by both of the parties hereto.

(d) The validity, performance, construction and effect of this Agreement shall be governed by the laws of the State of Florida, without giving effect to principles of conflicts of law.

(e) This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein.

(f) Except as otherwise herein provided, this Agreement shall be binding upon and shall inure to the benefit of the Corporation, its successors and assigns, and of Participant and Participant's personal representatives.

**IN WITNESS WHEREOF**, the parties have executed this Restricted Share Agreement as of the day and year first above written.

ATTEST:

**SUN HYDRAULICS CORPORATION**

\_\_\_\_\_  
Gregory C. Yadley, Secretary

By: \_\_\_\_\_  
Allen J. Carlson, Chief Executive Officer

**PARTICIPANT**

Witness:

\_\_\_\_\_  
«FullName»

## SUBSIDIARIES OF THE COMPANY

<b>Name of Subsidiary</b>	<b>Organized under the laws of</b>	<b>Additional Name Under Which Subsidiary Does Business</b>
Sun Hydraulik Holdings Limited	England and Wales	Sun Hydraulics
Sun Hydraulics Limited	England and Wales	Sun Hydraulics
Sun Hydraulik GmbH	The Federal Republic of Germany	Sun Hydraulics
Sun Hydraulics Korea Corporation	Korea	Sun Hydraulics
High Country Tek, Inc.	Florida	



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our report dated March 12, 2012, accompanying the consolidated financial statements included in the Annual Report of Sun Hydraulics Corporation on Form 10-K for the years ended December 31, 2011 and January 1, 2011. We hereby consent to the incorporation by reference of said report in the Registration Statements of Sun Hydraulics Corporation on Forms S-8 (File No. 333-30801, effective July 3, 1997, File No. 333-83269, effective July 20, 1999, File No. 333-62816, effective June 12, 2001, File No. 333-66008 effective July 27, 2001, File No. 333-119367, effective September 29, 2004, File No. 333-124174, effective April 19, 2005, File No. 333-158245, effective March 27, 2009, and File No. 333-177448, effective October 21, 2011).

/s/ Mayer Hoffman McCann P.C.

March 12, 2012  
Clearwater, Florida

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our report dated March 12, 2010, accompanying the consolidated financial statements of operations, stockholders' equity and comprehensive income, and cash flows for the year ended January 2, 2010 in the Annual Report of Sun Hydraulics Corporation on Form 10-K for the year ended December 31, 2011. We hereby consent to the incorporation by reference of said report in the Registration Statements of Sun Hydraulics Corporation on Forms S-8 (File No. 333-30801, effective July 3, 1997, File No. 333-83269, effective July 20, 1999, File No. 333-62816, effective June 12, 2001, File No. 333-66008 effective July 27, 2001, File No. 333-119367, effective September 29, 2004, File No. 333-124174, effective April 19, 2005, File No. 333-158245, March 27, 2009, and File No. 333-177448, effective October 21, 2011).

/s/ Kirkland, Russ, Murphy & Tapp, P.A.

March 12, 2012  
Clearwater, Florida

## CERTIFICATION

I, Allen J. Carlson, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2011, 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 Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) 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

(d) 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: March 13, 2012

/s/ Allen J. Carlson

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Allen J. Carlson

President, Chief Executive Officer

## CERTIFICATION

I, Tricia L. Fulton, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2011, 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 Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) 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

(d) 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: March 13, 2012

/s/ Tricia L. Fulton

Tricia L. Fulton

Chief Financial Officer

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

I, Allen J. Carlson, the Chief Executive Officer of Sun Hydraulics Corporation (the "Company"), certify that (i) the Annual Report on Form 10-K for the Company for the year ended December 31, 2011 (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 J. Carlson

Chief Executive Officer

March 13, 2012

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

I, Tricia L. Fulton, the Chief Financial Officer of Sun Hydraulics Corporation (the “Company”), certify that (i) the Annual Report on Form 10-K for the Company for the year ended December 31, 2011 (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/ Tricia L. Fulton  
\_\_\_\_\_  
Chief Financial Officer  
March 13, 2012